Current practices of Kazakhstani corporate governance framework

A Thesis Submitted for the Degree of Doctor of Philosophy

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Abstract

Corporate governance is the one of the most debated issues in legal practice. The topic has been investigated by many law scholars and researchers around the world to improve its aspects. This thesis investigates the existing framework of corporate governance in the Republic of Kazakhstan and suggests ways in which it can be enhanced in the future. The results of this research are important primarily for Kazakhstani businesses positioned to play a significant role in the global economy. To answer the research question, the thesis looks at the framework and current practice of corporate governance in Kazakhstan. It covers vital areas of corporate governance including transparency, accountability, stakeholders, boards of director and several other issues. Current Code of Corporate Governance, approved in 2005 and reviewed in 2007, lacks proper implementation mechanism and seems to be out-dated. Listed companies are required to adopt and disclose their own codes, which shall be shaped upon the stock exchange's model; however only half of the largest listed companies disclose complying with such obligation. There is also the conceptualisation of the fact that the effectiveness of the corporate organisations relies on how they complement the foreign practice. Although there are many challenges faced in the country as regards corporate governance, the study will offer recommendations for increasing transparency, disclosure and the associated principles in the Kazakhstani stock market and better protection of stakeholders. The thesis will conclude by presenting the Kazakhstani perspective on Board of Directors, disclosure and transparency and their prospects for future development.

Key terms: corporate governance, legal systems, good corporate governance framework.

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List of Abbreviations

ALP	Partnership with additional liability
ARKI	Agency of the Republic of Kazakhstan for Investment
CEO	Chief Executive Officer
CIS	The Commonwealth of Independent States
CPC	Civil Procedure Code
EBRD	European Bank for Reconstruction and Development
EC	The European Commission
EU	The European Union
EurAsEC	European Economic Community
FDI	Foreign Direct Investment
FIC	Foreign Investors' Council
FSA	Financial Service Authority
FSU	Former Soviet Union
GDP	Gross Domestic Product
IFC	The International Finance Corporation
IFRS	International Financial Reporting Standards
IMF	International Monetary Fund
IPO	Initial Public Offerings
JSC	Joint-stock company
KASE	Kazakhstan Exchange
LLP	Limited Liability Partnership
NBK	National Bank of Kazakhstan
NCS	The National Securities Commission

OECD	Organisation for Economic Co-Operation and Development
RK	Republic of Kazakhstan
RSFSR	Russian Soviet Federative Socialist Republic
SM	Securities Market
SOE	State Owned Enterprises
SPFIID	State Program on Forced Industrial and Innovative Development
SSR	Soviet Socialist Republics
T&D	Transparency and Disclosure
UNDP	United Nations Development Program
UK	The United Kingdom
USA	The United States of America
USSR	Union of Soviet Socialist Republics
WFE	World Economic Forum
WTO	World Trade Organization

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Declaration

I, Roza Jumabekova, confirm that the thesis is work of my own and has only been submitted for the degree of PhD at Brunel University London. It has not been submitted substantially the same form for the award of a higher degree elsewhere; and that all quotations have been distinguished and the sources of identification specifically acknowledged.

Chapter 1: Background and the research problem

> The governance of the corporation is now as important to the world economy as the government of countries.
>
> (Wolfensohn, J.D. (1999). 'A Battle for Corporate Honesty', The Economist: The World in 1999, p.38.)

1.1 Introduction to background of the study

The purpose of this study is to develop an integrated framework of corporate for enhancing economic and legal growth in Kazakhstan. This has been prompted by the fact that apparently corporate governance does not lead to economic growth in Kazakhstan as has been the general expectation from recent economic development policies. Corporate governance is not a new concept it has been in existence since the history of the formation of the corporation. Corporate governance refers to the mechanism through which investors safeguard themselves against expropriation by insiders[1]. This suggests that corporate governance is an important mechanism that seeks to ensure that the corporation is run in manner that enables it to maximize wealth creation. According to the Cadbury Report (1992) the successful maximization of shareholders' wealth eventually leads to enhanced economic growth. It follows therefore from this that improved corporate governance mechanisms are expected to promote economic growth.

The recent global financial crisis points to the need for changes in corporate governance around the world to prevent future problems and countries are now looking for ways to improve. It is important that Kazakhstan is not left behind in this process. For developing countries such as that of Kazakhstan to become successful, corporate governance will play a major role. It can be emphasised that effective corporate governance will ensure that corporations are better managed and more investors are attracted into the economy. Corporate governance framework establishes the division of rights and responsibilities of participating corporations and prescribes rules and procedures on decision-making. Through these steps a company is creating a structure that allows defining the objectives and the way to achieve them, and also allows monitoring the implementation of these objectives.

[1] La Porta. R. and others, *Investor protection and corporate valuation.* (*The journal of finance*, 57th ed., 2002. 1147-1170)

In his address to the Nation of Kazakhstan, Leader of the Nation N. Nazarbayev also talked about strengthening the responsibility of corporations, to ensure transparency and shareholders and, as a whole, to improve corporate governance across the country by fixing them in terms of legislation[2].

This research examines how the definition of corporate governance is understood by various authors, present practices and frameworks of corporate governance and seeks to critically evaluate how the existing framework of corporate governance in Kazakhstan can be enhanced in the future. It is motivated by the need for effective improvement and development of the system of corporate governance in the country.

1.2 Corporate governance in Kazakhstan

The research importance comes from the relevance of the corporate governance topic itself. There is no doubt that companies nowadays have a huge impact on many aspects of life, including everyday existence, society and the economy, which makes corporate governance a very important issue. Accordingly, corporate governance is still, "the bedrock of business sustainability, serving the long-term interests of investors and societies"[3]. Corporate governance helps to clear up the environment that is related to it and promotes the values of many principles such as transparency and accountability. Furthermore, corporate governance is important in improving the internal issues of a company - it goes beyond that to influence a wide range of issues in the external environment, including the institutional development of a country, which is very important as well.

The following section attempts to provide a critical review of some of the existing literature as relevant to the proposed research. This thesis will examine the corporate governance affairs within the specific framework of the Kazakhstani market. Despite the fact that corporate governance in every country has a different legal, cultural and political context, with a variety of business forms, the need for extra transparency and creating more confidence is the reason for the introduction of Corporates[4]. Many issues affecting Kazakhstan could be taken to reflect the situation across the Central Asian countries as a representative. From this viewpoint, the importance of corporate governance is reflected in the essential link between corporate governance on the one hand and development on the

[2] The President of Kazakhstan N. Nazarbayev's Address to the Nation of Kazakhstan *"Third Modernization of Kazakhstan: Global Competitiveness".* (31 January, 2017.) Available at: http://www.akorda.kz/en/addresses/addresses_of_president/the-president-of-kazakhstan-nursultan-nazarbayevs-address-to-the-nation-of-kazakhstan-january-31-2017 accessed 20 March, 2017

[3] IFC, "Corporate governance success stories" (International finance corporation, Washington DC 2015)

[4] Mallin, C. *Corporate Governance* (3rd ed. Oxford University Press, 2010) Page 26.

other. Moreover, corporate governance is possibly an effective solution to fixing many problems facing the world today[5].

According to some research corporate governance mechanisms are an essential tool for any corporation[6]. In last few decades, interest in corporate governance has increased significantly. Especially during and after the financial crises in various countries around the world, corporate governance is necessary for recovering and restructuring corporations at the internal level[7]. As a result of this interest, it is clear that the companies' catastrophes were due to a failure in investor confidence, disclosure and the lack of structured corporate governance and corporate transparency[8].

Generally, the law differentiates between commercial (established for the purpose of generating income) and non-commercial legal entities. There are a number of corporate forms through which a company may be incorporated in Kazakhstan. These comprise: JSC; limited liability company (LLC); additional liability company; general partnerships; production cooperative; and limited partnerships. Business practice in Kazakhstan shows that JSCs and LLCs are the corporate forms most commonly used, and in our experience foreign investors, in particular, prefer their subsidiaries or joint ventures to be organised in either of these two forms. The other types of corporate forms are rarely used by either foreign or domestic investors in Kazakhstan. Such preference is likely to be based on the fact that the applicable legislation expressly states that participants in LLCs and shareholders of JSCs are personally liable only to the extent of their participation interest/ shareholding in the declared capital in these types of legal entities. In terms of corporate governance, JCSs are normally used for joint ventures with a comprehensive corporate governance structure, while the use of LLCs for this purpose is generally problematic. As a result, LLCs are most commonly used either as a Kazakhstani subsidiary of a foreign company or, in the case of a joint venture, in those cases where complex corporate governance and control structures are not required and corporate conflicts among shareholders are not expected. Because of the foregoing, and taking into account the somewhat simplistic nature of corporate governance in LLCs, this thesis focuses on the status of corporate governance procedures in Kazakhstan as they apply to JSCs.

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[5] CIPE, *Corporate Governance: The Intersection of Public and Private Reform* (Centre for International Private Enterprises, 2009) Page:7

[6]El-Faitouri, R. *An investigation of corporate governance mechanisms and value creation in the United Kingdom* (PhD, University of Liverpool, 2012)

[7] Fombrun, C. *Corporate governance*, (Corporate reputation review: an international journal, 2005) 8(4), 267-271

[8] Ho, S and Wong K. *A study of the relationship between corporate governance structures and the extent of voluntary disclosure*, (Journal of international accounting, auditing and taxation, 2001) 10, 139-145.

Business partnerships include: full partnership (where the partners are jointly liable to the full extent of their property); partnership in commendam (where in addition to fully liable partners, there are partners whose liability is limited to their contributions to the charter capital); limited liability partnership (the liability of partners is capped to their contributions in the charter capital); and additional liability partnership (where the partners are liable up to their contributions to the charter capital, and if this is not sufficient, with additional property at a certain ratio to their charter capital contributions)[9].

In the current Law of RK "On Joint Stock Companies" the Corporate Governance code is defined as "a document approved by the general meeting of shareholders of the company, which regulates relations arising in the management, including the relationship between shareholders and the company's governing bodies, between the bodies of the company, the community and stakeholders". Under this Law a public company shall make provision for a Corporate Governance code, as per company's Charter[10].

Joint stock companies are legal entities which issue stocks, and where stockholders bear the risk of losses within the cost of stocks held. A joint stock company can obtain public status if it meets certain criteria, such as allocation of its stocks on a stock exchange by offering its stocks to an unlimited number of investors; not less than 1/3 of total number of distributed ordinary stocks being held by the stockholders[11].

The main advantages of a JSC are the free transfer of shares without reregistering the company, and the attracting of additional capital through a public offering of shares. However, JSCs are subject to complex requirements including:

- a large minimum share capital of KZT86,550,000;
- the registration of issues of shares and related reporting to competent authorities;
- a complex corporate structure and decision-making process;

[9] Idrisov E., *Kazakhstan's Investment Climate is Still Attractive.* (Investor, January 2000, Almaty).

[10] Kazakhstan Centre for Social Practices, 2014.

[11] Roger L. Martin, D., *The Problem with Corporate Governance*. (Roman School of Management, University of Toronto. March 23, 2003 (Draft)

- a mandatory annual financial audit.[12]

The growth of transition economy depends massively on effective corporate governance to keep in pace with the world business and financial globalisation.[13] Kazakhstan needs to enhance and improve on the corporate governance system presently in place. For the above reason, major economies such as the UK and the USA are presently reviewing different aspects of their corporate governance practices, it is important that Kazakhstan look at ways to also enhance its corporate governance.

Providing a suitable framework that will help the country to enhance its economy and living standards represents a significant challenge in twenty first century. The general trend in Kazakhstan is to attract foreign investment and open up its markets to outsiders. Thus, revising the existing regimes is essential for two additional main reasons. First, in order to attract foreign investment, it is essential to have a well-developed legal framework that would ensure the minimal protection for such investments. Second, Kazakhstani stock market, if compared with the developed markets, is limited in size. Thus, the absence of regulations that would protect investors from practices such as insider dealing and market manipulation would endanger the stability of the market.

Good corporate governance is now widely recognised as essential for establishing an attractive investment climate characterised by competitive companies and efficient financial markets. The Organisation for Economic Co-Operation and Development (OECD), and financial agencies such as the World Bank, the Asian Development Bank (ADB) and the International Monetary Fund (IMF) have combined their efforts to promote policy dialogue in the area of corporate governance and have established Regional Corporate Governance Roundtables in close partnership with national policy-makers, regulators and market participants. Today, Corporate Governance Roundtables exist in Asia, Russia, Latin America, South East Europe and Eurasia.

In case of Kazakhstan, both government bodies and the private sector recognise the need to further develop and improve corporate governance practice in country. In March 2017 ACCA (the Association of Chartered Certified Accountants) held special conference alongside the British Chamber of Commerce in Kazakhstan, the same month AIFC (Astana International Financial Centre) in partnership with REDmoney Group organised CIS (Commonwealth of Independent States) Forum; AIFC jointly with TheCityUK corporation, European Bank for Reconstruction and Development (EBRD), Samruk-Kazyna JSC and UK Embassy in Kazakhstan was hosting 1st UK-Kazakhstan

[12] Kassilgov R., *Establishing a business in Kazakhstan.* (UK Practical law: Thomson Reuters.) Available at: https://uk.practicallaw.thomsonreuters.com/5-551-5666?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1 accessed 1/11/2018.

[13] Dharwardkar, R, George, G and Brandes, P (2000): *Privatization in Emerging Economies: An Agency Perspective, (Academy of Management Review, 25(3)),* 650-669

Working Group (1 September, 2016) and 2nd Working Group (17 November, 2016) seminars on corporate governance; An International Conference on Corporate Governance has been held annually in Kazakhstan since 2005. The conference is initiated by the Working Group on Corporate Governance established by the Association of Financiers of Kazakhstan. The Conference is hosted by government bodies (Agency of the Republic of Kazakhstan for Regulation and Supervision of Financial Market and Financial Institutions), international institutions (International Finance Corporation; and "Effective Management" Program of the Department of Commerce of the USA), and the private sector (Association of Financiers of Kazakhstan). This conference may be viewed as an ongoing consultation between regulatory authorities, the public and corporations.

The principal legislation governing corporate governance in Kazakhstan is the Law on Joint Stock Companies (JSC Law) dated 13 May 2003 (Law No. 415-II, with alterations and amendments as of 27 April, 2015), as amended. The Council of Issuers approved a voluntary Corporate Governance Code on 21 February 2005 and by the Council of the Association of Financiers on 31 March 2005. The Code was revised in July 2007. The working group which developed the corporate governance included representatives of the Agency of the Republic of Kazakhstan for Regulation and Supervision of Financial Market and Financial Institutions, Ministry of Economic and Budget Planning, "Effective Management" Program of the Department of Commerce of the USA, Association of Financiers of Kazakhstan and Sentras Securities JSC[14].

Both the JSC Law and Stock Exchange Listing Rules refer to the Code but companies are only recommended to transpose the code's recommendations in their by-laws. It is not required by law to disclose the degree of compliance with the corporate governance code. Later Corporate Governance code of "Samryk-Kazyna" JSC was approved on 18 December, 2014. The Code is generally based on the Organisation for Economic Co-operation and Development (OECD) Corporate Governance Principles and the Recommendations on Application of Corporate Governance by Kazakhstan Joint Stock Companies, issued by the Expert Council on Securities Market attached to the National Bank of the Republic of Kazakhstan[15]. Corporate governance code applies to "Samryk-Kazyna" JSC and to the companies where "Samryk-Kazyna" JSC has more than 50 percent interest, directly or indirectly. The code consists of seven chapters and two parts: Main Principles and Annotations—rules and provisions that will force implementation of the code. The code includes chapters devoted to 1) interaction between "Samryk-Kazyna" JSC and the government as shareholder of "Samryk-

[14] *Corporate Governance Legislation Assessment*. Kazakhstan. European Bank of Reconstruction and Development. (Assessment based on legislation in force on 1 November 2007).

[15] Protocol of National Bank of RK (N19 dated September 24, 2002).

Kazyna“ JSC; 2) clarification of the relationships between “Samryk-Kazyna“ JSC and its portfolio companies; 3) sustainable development; 4) shareholders’ rights; 5) board and executive management effectiveness; 6) risk management, internal control, and audit; and 7) transparency. Since government is the sole shareholder of “Samryk-Kazyna“ JSC, the code made clear the relationships with the government, between the government and the board, and between the board and Samruk-Kazyna. It also clarified the director nomination process for the board of directors and for CEOs of portfolio companies.

The Law of the RK “Concerning Introduction of Changes and Amendments to Certain Legal Acts of the Republic of Kazakhstan in Respect of Protection of Rights of Minority Investors” was adopted on 19 February 2007. The Law came into force on 6th September 2007. It introduced amendments to a number of regulations, including inter alia: Civil Code, Civil Procedural Code, Code on Administrative Violations, Business Partnerships Law, Banking Law, Pension Security Law, Auditing Law, Insurance Activity Law, JSC Law, Stock Exchange Law, etc. Significant legal developments of above most certainly have been affecting corporate governance of Kazakhstan. Concepts such as “a public company”, “insider information”, “insider transaction” and other have been introduced as part of these amendments.

According to the European Bank for Reconstruction Development’s current report, Kazakhstan was found to be in “medium compliance” with the relevant international standards (the OECD Principles of Corporate Governance). The major shortcomings were found in the legislation on “disclosure and transparency” and on “ensuring the basis for an effective corporate governance framework”[16].

In addition, the current study will contribute to the growing literature in this field of study and mainly focusing on the corporate governance structure and corporate performance of Samruk-Kazyna JSC in Kazakhstan. The key area for Samruk-Kazyna JSC shall be modernisation and diversification of national economy in the framework of Annual Addresses of the President of Kazakhstan (31 January, 2017), Kazakhstan 2050 Strategy, Strategy of Industrial and Innovation Development of Kazakhstan 2003-2015, “Nurly Zhol” Economic Policy and “100 Special Steps” Nation’s Plan, aims and objectives assigned to the Company and other documents.[17] The changes in corporate governance approaches in Samruk-Kazyna JSC are also a part of a national program to become one of the top 30

[16] European Bank for Reconstruction Development’s report on Kazakhstan, (April 2012). Available at: http://www.ebrd.com/pages/country/kazakhstan.shtml accessed 1/11/2018.

[17] The President of Kazakhstan N. Nazarbayev’s Address to the Nation of Kazakhstan *“Third Modernization of Kazakhstan: Global Competitiveness”.* (31 January, 2017). Available at: http://www.akorda.kz/en/addresses/addresses_of_president/the-president-of-kazakhstan-nursultan-nazarbayevs-address-to-the-nation-of-kazakhstan-january-31-2017 accessed 20 March, 2017.

developed nations of the world by 2050[18], an ambitious transformation program of Samruk-Kazyna JSC, launched by the president of the country on October 6, 2014[19].

Kazakhstan has made significant progress in corporate governance over the last few years. The legal and regulatory frameworks have been adjusted to provide for better protection against abuse, a voluntary code of corporate governance has been developed and market participants have become more alert to the importance of exercising good corporate governance. It will of course take time for the full economic benefits from this process to be realised.

It is important that Kazakhstan maintains the momentum for reforms and put in place credible enforcement mechanisms. Markets have to be reassured that corporate governance reforms are irreversibly shifting towards global standards as economic reforms start to produce results and the enterprise sector realises the value of better corporate governance.

The Government is tasked to provide a qualitative transformation of Samruk-Kazyna JSC holding. It is necessary to conduct a thorough audit and optimisation. of both managerial and production business processes. As a result, it shall become a highly efficient, compact and professional. Management and corporate governance needs to get improved to the international level[20].

Samruk-Kazyna, the sovereign wealth fund of Kazakhstan, was created in 2006 to improve the efficiency and effectiveness of industrial state-owned companies, it includes enterprises operating in a number of industries – oil, transport and logistics, chemical and nuclear, mining and smelting,energy, mechanical engineering and real estate[21]. Samruk-Kazyna has its own law, "On National Wealth Fund", applicable to it and its group. The Prime Minister chairs the board of Samruk-Kazyna, and 40 percent of its members are independent. The boards of Samruk-Kazyna JSC portfolio

[18] *Kazakhstan's way – 2050: Common Aim, Common Interests*, Common future Address of the President of the Republic of Kazakhstan Nursultan A. Nazarbayev to the Nation, (January 2014).

[19] Transformation program for «Sovereign Wealth Fund «Samruk-Kazyna» JSC. Available at: http://sk.kz/en/investors/transformation/ accessed on 20 March 2017.

[20] The President of Kazakhstan N. Nazarbayev's Address to the Nation of Kazakhstan *"Third Modernization of Kazakhstan: Global Competitiveness"*. (31 January, 2017). Available at: http://www.akorda.kz/en/addresses/addresses_of_president/the-president-of-kazakhstan-nursultan-nazarbayevs-address-to-the-nation-of-kazakhstan-january-31-2017 accessed 20 March, 2017.

[21] Роль в экономике Казахстана. Официальный сайт организации. https://sk.kz/en/about-fund/about-the-fund/ [Role of the organisation in the economy of Kazakhstan Available at: https://sk.kz/en/about-fund/about-the-fund/ accessed 1/11/2018]

companies comprise independent directors (the new corporate governance code recommends up to 50 percent) and representatives of shareholders.[22]

Samruk-Kazyna JSC, manages state-held assets worth over $60 billion, representing around half of the country's annual gross domestic product and it is not a state company in its own right. Its core mission is to stimulate private enterprise as an engine for economic development. To facilitate and encourage private initiative, Samruk-Kazyna JSC creates, maintains and develops opportunities for private operators and investors to contribute to a dynamic business sector in Kazakhstan.

Kazakhstan - 2050 strategy sets an ambitious goal - to increase investment amount in the economy and to improve labor productivity to join TOP - 30 most developed countries of the world. Kazakhstan's main challenge lies in maintaining its strong economic performance while shifting its chief source of revenues from commodity sales to manufacturing and services. Samruk-Kazyna JSC is playing a fundamental role in this process. Currently, the fund has high profile industrial investment projects under development, representing total investments of $14 billion. The projects are being carried out by Kazakhstan's blue-chip industrial corporations, including the state-controlled national oil and gas company, KazMunaiGas; the national railroad company, Kazakhstan TemirZholy; the state nuclear company, Kazatomprom; and others. Sectors include oil and gas refining, petrochemicals, transportation and nuclear energy. Foreign partners include global multinationals. Furthermore, it is open to partnerships with international companies in such areas as agriculture, electricity generation, petrochemicals, chemicals, offshore oil and gas services, mining and metallurgy. [23]

It has been empirically tested that good governance practices of the Company are a positive signal for investors and likely to reduce the cost of capital, encourage more stable sources of financing and facilitate the broadening and deepening of local capital markets.

On a national level, an economy with sound systems of corporate governance will not improve the investment opportunities and the prospects for economic growth but it will also improve the overall reputation of Kazakhstan as a place to do business. That is why the Company plays fundamental role in fostering good self-governing corporate practices and transparent relations between the government and the private sector. Moreover, further development of such practices will help to

[22] Corporate Governance Code of the Sovereign Wealth Fund "Samruk-Kazyna", approved by Decree No. 239 of the Government of the Republic of Kazakhstan (15 April, 2015)

[23] Kazakhstan's 20th anniversary. The global edition of the New York Times. December, 15. 2011.

develop and improve the efficiency of the capital market and can act as a catalyst for economic growth.

The Government of Kazakhstan has no special plans in respect of legislation and court system, however, according to the Governmental plan for the development of Kazakhstan in 2017-2019, it is intended to re-allocate the tax burden from legal entities to individuals with the purpose of facilitating the competitiveness of the Kazakhstan economy[24]. It is planned to educate individual investors on the Kazakhstan stock exchange and to develop collective forms of investing. This issue has been included in a middle-term plan for social and economic development of Kazakhstan in 2017-2019. Moreover, International financial reporting standards are required for joint stock companies since 1st January, 2015[25].

1.3 Research significance

This research will contribute to the existing literature by evaluating the effect of corporate governance legislation on development of principles of corporate governance, which can provide the key to avoiding risk and guaranteeing the benefits of all stakeholders (including shareholders and other stakeholders, who has an interest in a company business) against mismanagement. This research will try to evaluate whether the implementation of the Kazakhstani Corporate Governance Code reforms with regard to corporate governance and Transformation of Samruk-Kazyna National Welfare Fund.

Corporate governance is about safeguarding the rights of all parties involved in the company's affairs, including shareholders, management, customers, suppliers, financiers, government and the community[26]. However, if corporate governance does not provide protection for the involved parties, this could lead to many risks and crises. This objective of Corporate governance concerns not only developed countries - developing countries like Kazakhstan also need effective Corporate governance, even more so, in order to ensure the safety of developments in business environments that have less effective legal and regulatory frameworks.

Good corporate governance gives more efficient operations to companies, facilitating capital access, providing more protection against mismanagement, reducing the risk, raising the level of transparency and accountability and calming the concerns of stakeholders, as it gives companies the

[24] Resolution of the Government of Kazakhstan (N822 dated August 25, 2016)

[25] The Law of the Republic of Kazakhstan (N234-iii dated February 28, 2007) "About financial accounting and the financial reporting" (Last edition of 28 December, 2016)

[26] Solomon, J. and Solomon, A., *Corporate Governance and Accountability (*John Wiley & Sons., Chichester 2004) p. 1.

tools to respond to their questions. For development, corporate governance is making access to capital easier, thereby improving the chances of new investment, the possibility of improving employment opportunities and boosting economic growth[27]. From this point, Kazakhstan as a developing country has more reasons to examine corporate governance as a tool, as it could be a solution to a range of issues. It can be seen very clearly that Kazakhstan is now moving towards the privatisation of many government held companies.

On this subject, Classes said: "good corporate governance has a strong association with the performance of corporations as follows: firstly, good corporate governance encourages external investment in corporations; secondly, it diminishes the cost of capital; and thirdly, it prompts reform, thereby achieving good operational performance. Finally, it would reduce the danger of contagion from financial distress"[28]. Oman develops the point by explaining that the quality of a country's institutions of governance also significantly matters for national development[29].

In summary, Kazakhstan, as a member of global community, needs to improve its corporate governance framework and bring it into line with the world best standards. We believe that it will provide the growth of the economy, attract new investors, and improve value and competitiveness of Kazakhstani corporations.

1.4 Research problem

The main question of this thesis is to what extend the current rules and regulatory framework of Corporate governance are able to offer an effective frameworks that promote an attractive business environment.

The investigation of the corporate governance issues will include evaluating corporate governance code, approved by Financial Institutions' Association of Kazakhstan (2005) and corporate governance code of the Sovereign Wealth Fund "Samruk-Kazyna" JSC (2015) and a number of laws and regulations in Kazakhstan. Further, the thesis will investigate the main obstacles facing Kazakhstan as a developing country in developing and improving its corporate governance principles.

[27] IFC official website, "Corporate governance overview" Available at: www.ifc.org/corporategovernance accessed 15 May 2018.

[28] Crais, W. and Pellegrini, M., *Corporate governance in institutions offering islamic financial services: issues and options*, (World Bank policy research working paper, No 4052, 2006) p.5.

[29] Oman, C., Fries, S. and Buiter, W., *Corporate governance in developing, transition and emerging-market economies*, (OECD development centre, 2003, Policy No 23) p.8.

1. Identify the lack of literature regarding Kazakhstani Corporate governance framework.
2. Determine whether the Kazakhstani Corporate governance framework can derive advantages from the standards of worldwide corporate governance principles.
3. Ascertain whether the Kazakhstani Corporate governance provisions regarding the shareholders' rights, the board of directors' responsibilities and disclosure and transparency requirements are adequate or in need of improvement.

Considering the above, the most important set of changes should be aimed at "separation of powers, functions and responsibilities of the bodies of a joint stock company". There is no doubt that for the purposes of corporate governance a balanced distribution of authorities between the bodies of a company is crucial. Such changes must first address the issue of strengthening the control functions of the board of directors of Kazakhstan joint-stock companies.

Despite this, in the current edition of the JSC Law 2003 (last edition on 27 April, 2015), very little attention is given to the control function of the board of directors. The law does not establish such powers of the board of directors as the possibility to check the activities of the executive body at any time or appeal the decisions of the executive body in court. Another fundamental problem is that the board structure in Kazakhstan joint-stock companies as a whole is deformed.
The goal of this thesis, as academic study of corporate governance in Kazakhstan from a legal perspective, is to provide recommendations for the policymakers the most appropriate corporate governance measures to be adopted or modified within the legal infrastructure of Kazakhstan. These will include recommendations for the Kazakhstani JSC law. Moreover, the establishment of new institutions will be recommended to improve shareholder protection while increasing investor confidence in the stock market.

1.5 Research methodology

Critical analysis will be carried out of the provisions and texts of the laws and regulations that should relate to the framework of corporate governance regulations in this study. The research methodology will be based on a traditional doctrinal legal analysis using existing materials such as books, journals articles, case reports, legislation, government statements.

To some extent, there is a relative dearth of academic literature related to corporate governance in Kazakhstan. The primary and essential sources for this research will be company law and corporate law of the state, stock market regulations, listing rules, case law, code on corporate governance (2005), JSC law 2003, the Corporate Governance Code of Samruk-Kazyna JSC (2015) and other

associated laws and regulations. The importance of this approach relies on the fundamental principles that will be provided by analysing such rules and regulations that form the Kazakhstani system of corporate governance.

Some aspects of the comparative approach on a descriptive and analytical basis will be used in this thesis in order to draw the main lessons and benefits from the different frameworks of law. This will help to present an overview of the main principles of every system through the support of this approach, which is important to produce good laws[30]. So, although the methodology of this research will be based on a traditional doctrinal legal analysis, the research will benefit from taking some aspects of a comparative law approach in the context of this thesis. This approach will help to provide an overview of the legal and regulatory frameworks and the mechanisms of corporate governance, and will shed light on the main developments as well as the main principles of corporate governance in each system. Legal improvements, as well as the legislative reforms, benefit from the comparative law approach. There are many objectives for using such an approach, including providing both criticisms and efficiency for the existing rules, as well as helping to draft new rules. Therefore, a comparative investigation into laws will help with the legislative development[31].

Finally, some important libraries in Almaty, Astana and London have been visited in order to find relevant and up to date material that relates to the research besides Brunel University Library. However, there are two important libraries that have special collections related to this research, which are the Institute of Advanced Legal Studies and British Library in London and the Central Library in Almaty.

1.6 Research aim and objectives

While scholars in the developed economies have used this basic premise and have developed a fairly sizeable literature on corporate governance, in Kazakhstan there have not been many studies on corporate governance. Accordingly the objective of this thesis is to review the literature on corporate governance in Kazakhstan, discuss specific corporate governance issues and challenges in Kazakhstan and identify the future research focus for corporate governance in Kazakhstan. This thesis mainly provides a critical study by evaluating the current rules and regulations of frameworks of corporate governance in Kazakhstan in order to create an attractive business environment. This research is seeking to illustrate and examine corporate governance regulations, and its legal and

[30] J. Hill. *Comparative Law, law reform and legal theory* (Oxford journal of legal studies, 1989), p.101

[31] K. Weigert, *An introduction to comparative law* (3rd ed., Oxford, Oxford university press, 1998), p 34.

regulatory frameworks, in order to identify weaknesses and improve it. It also provides a regulatory analysis to the existing legal framework in Kazakhstani stock markets with a particular focus being given to the National Welfare Fund of Kazakhstan Samruk-Kazyna.
The objectives of the thesis are:

1. To investigate the current practices of Kazakhstani corporate governance.
2. To suggest improvements to Kazakhstani corporate governance provisions in order to reach satisfactory corporate governance practices in line with international standards of corporate governance.
3. To discover how Kazakhstani corporate governance would benefit from the standards of foreign countries' corporate governance principles.

1.7 Research scope and limitations

The score of the project is to:

1) explore the concept of corporate governance and its importance.

2) identify the level of corporate governance at present in Kazakhstan and the extent to which it is being implemented.

3) discuss the Samruk-Kazyna JSC transformation program (10/10/2014) and investigate corporate performance of the corporation before and after.

4) conclude findings and recommendations.

1.8 Research structure

Accordingly, to achieve the goal of this study, the thesis will be organised as follows. Introduction part of whole thesis presents an overview and the general background of this research and its significance, methodology, aim and objectives, main problem and questions, scope and limitations.

The first chapter will provide the background and research problem of corporate governance framework in Kazakhstan.

The second chapter will be intended to give a general overview of Kazakhstani legal systems/structure and development of company and corporate laws in Kazakhstan.

The third chapter covers the definition of corporate governance and its importance. This part aims to offer an account of corporate governance definitions in literature, why it is so important and its mechanisms.

Chapter 4 narrows the focus from the general area of corporate governance to the development of corporate governance framework in Kazakhstan. This includes essential features of the corporate performance of Samruk-Kazyna JSC.

Chapter 5 will give an overview of existing disclosure regulations and identify transparency in the Kazakhstani Capital Market. Definitions of disclosure and transparency will be discussed, followed by the role, importance, advantages and principles of disclosure, including what types of information should be disclosed and to whom. It also considers important points regarding disclosure in financial aspect and various forms of disclosure applied to corporate governance as well as the legal and civil remedies for non-disclosure.

Chapter 6 will investigate the main obstacles facing Kazakhstan as a developing country in developing and improving its corporate governance principles.

Finally, chapter seven will be the conclusion and the needed reforms and major obstacles facing these reforms will be discussed, which will aim to reform good corporate governance practices in Kazakhstan and Kazakhstani companies.

Chapter Two: Background to Kazakhstani legal system and Development of Company law and Corporate Law

This chapter aims to explain the multiple issues that must be fully understood as they relate to the forthcoming chapters. It covers background information on Kazakhstan and the Kazakhstani legal structure and is divided into several sections. The first section provides a broad overview of Kazakhstan, offering a critical review of existing regulations that control the Kazakhstani legal structure; the second section covers constitutional law in Kazakhstan. Section Three examines the state's scope of authority by evaluating its executive authority, legislative authority and judicial authority. Forth section focuses on development of the Kazakhstani legislation in relation to corporate forms for business entities. A summary is provided at the end.

2.1 Overview of Kazakhstan

The Republic of Kazakhstan is a unitary state with a presidential form of government. The government structure is based on a three-branch system: executive, legislative and judicial branches.

Kazakhstan passed its own constitution as an independent state in January 1993, a second, and currently effective, Constitution was approved by national referendum in August 1995.

In December 1997, the capital was moved from Almaty to Akmola, now renamed to Astana, by presidential decree and was officially inaugurated on 10 June 1998. The largest city is Almaty and the biggest region by area is Karaganda oblast (428 thousand sq. km)[32]. The state language is Kazakh. The Russian language has the status of a language of interethnic communication. Monetary unit – Tenge.

It is Central Asian state with an average income level and the 9th largest country in the world by territory, but it is among the smallest by population density. Since its independence in 1992, Kazakhstan has achieved remarkable economic development, with an average annual GDP growth rate of 10% in the past decade. The economy is heavily dependent on commodity exports, mostly in the oil and gas industry. The oil and gas industry contributes enormously to the economic development of Kazakhstan. The industry accounted for almost 21% of the total GDP and represents almost 70% of the country's total exports. The industry also occupies almost 53.8% of the total industrial production of the economy. As the main industrial sector of the economy, the role of this industry in attracting foreign direct investment (FDI) is also significant. During the period of 2004-2014, the average FDI inflows in the oil and gas industry amounted to 22% of the total FDI in Kazakhstan[33]. Considering the leading role of the oil and gas industry in attracting FDI, the governance and image of the industry will play a pivotal role in the future economic development of the country. Therefore, the sustainability of the oil and gas industry is crucial for the economic development and social well-being of the country.

Kazakhstan aspires to be one of the top 30 developed nations by 2050.

In addition to oil and gas, Kazakhstan has significant reserves of iron ore and non-ferrous metals (lead, magnesium, titanium, zinc, molybdenum, silver, copper, gold, tin, industrial diamonds, chrome, uranium, tungsten, bauxite, manganese, vanadium, beryllium, nickel, rhenium and gallium).

[32] Committee on Statistics (Ministry of National Economy of the Republic of Kazakhstan, 2015) Available at www.stat.gov.kz accessed on 1 Nov.2018

[33] Doing Business in Kazakhstan. Available at: http://invest.gov.kz/pages/blagopriyatnyy-biznes-klimat accessed on 20 March 2017.

The country also has large coal deposits in Karaganda, Ekibastuz, Maikubinsk and Kushmurun.

The "Sovereign Wealth Fund "Samruk-Kazyna" JSC (Samruk-Kazyna) has complete or partial ownership of many strategically important companies. These companies operate in priority sectors of the national economy: oil & gas, power, energy, metallurgy, petrochemicals and infrastructure.

In accordance with the Constitution of the Republic of Kazakhstan of 1995 it is a democratic, secular, legal and unitary state with a presidential form of government and with state power divided into legislative, executive and judicial branches[34].

Kazakhstan is located in the centre of the Eurasian continent. The area of the Republic of Kazakhstan constitutes 2 724.9 sq. km, and extends from the Volga river in the West to the Altai Mountains in the East and from the Trans-Ili Alatau mountains, related to the Northern Tien Shan mountain range, in the South to the West Siberian lowland in the North. The length of the state border is 13 394 km: with the Russian Federation – 7 591 km, the Republic of Uzbekistan – 2 354 km, China – 1 782 km, Kyrgyz Republic – 1 241 km, Turkmenistan – 426 km[35].

According to the Kazakhstan Constitution and Law "On the administrative - territorial structure of the Republic of Kazakhstan" Kazakhstan is administratively divided into 14 oblasts (provinces) and 2 cities of republican significance. For optimal interaction of national and local interests, the territory of Kazakhstan is subdivided into two main categories – regions and settlements. Regions include an oblast, rayon and rural rayon. Oblasts, in turn, consist of rayons – administrative territorial units. Each oblast is governed by an akim, appointed by the President. Rayons are headed by rayon akims, who are appointed by the oblast akim[36].

Modern Kazakh statehood in the international context is developed on the basis of approval of Kazakhstan in the international arena as a sovereign and independent state, involved in international communication as an independent entity. The process of strengthening relations with the Republic of Kazakhstan of the Commonwealth of Independent States (CIS). Kazakhstan acts as the initiator of many integration programs within the Commonwealth of Independent States, the Eurasian Economic Community[37]. Kazakhstan has become a non-permanent member of the UN Security Council since

[34] The Constitution of the Republic of Kazakhstan, Article 1. (2005).00 Available at http://mfa.gov.kz/nd/hague/content-view/the-constitution-of-the-republic-of-kazakhstan accessed 1 Nov 2018

[35] Official site of the President of Republic of Kazakhstan. Available at: http://www.akorda.kz/en/republic_of_kazakhstan/kazakhstan. accessed 1 Nov 2018

[36] OECD, (2014). Available at: http://www.oecd.org/countries/kazakhstan/2/ accessed 29 Sept 2016

[37] Baikenzheyev, A., Dyussebaliyeva, S. and Utegenov, C. *The actual problems of state and legal system of the RK* (World applied sciences journal, 2014, 30(5)), pp. 624-629.

the beginning of 2017[38]. "EXPO-2017" international exhibition was hold in Astana last year. Kazakhstan is the first CIS countries and Central Asia to hold such an important global event.

Kazakhstan has been developing its legal system, while recognising the priority of the principles and norms of international law and international treaties of the Republic of Kazakhstan.

Foreign and local investors may establish their legal presence in Kazakhstan through various legal forms. The following legal forms are commonly used:

- legal entity in the form of a limited liability partnership ("LLP") or a joint stock company ("JSC"); or
- Subdivision of foreign legal entity: a branch or a representative office (representative offices are mostly used for preparatory and auxiliary activities and are not allowed to carry out commercial activities).

The President of the Republic of Kazakhstan is the head of state, its highest official, who determines the main directions of the domestic and foreign policy of the state and represents Kazakhstan within the country and in international relations. The President is the symbol and guarantor of the unity of the people and the state power, inviolability of the Constitution, rights and freedoms of an individual and citizen[39].

The Government implements the executive power of the Republic of Kazakhstan, heads the system of executive bodies and exercises supervision of their activity.

Legislative functions are performed by the Parliament of the Republic of Kazakhstan, which consists of two Chambers acting on a permanent basis: the Senate and the Majilis.

The Republic of Kazakhstan is an industrial country with mining operations being one of the main sources of its economic growth. The country holds first place in the world with regard to explored reserves of zinc, tungsten and barite, second – silver, lead and chromite's, third – copper and fluorite, fourth – molybdenum, six – gold. Kazakhstan also has considerable reserves of oil and gas, which are concentrated in its western areas. Nowadays the country belongs to the group of the world's leading oil-producing states with volumes amounting to more than 80 million tons of oil and gas

[38] The President of Kazakhstan N. Nazarbayev's Address to the Nation of Kazakhstan. *Third Modernization of Kazakhstan: Global Competitiveness.* (31 January, 2017). Available at: http://www.akorda.kz/en/addresses/addresses_of_president/the-president-of-kazakhstan-nursultan-nazarbayevs-address-to-the-nation-of-kazakhstan-january-31-2017 accessed 20 March, 2017

[39] Mukhamedjanov B.A., *The form of government of the Republic of Kazakhstan: constitutional model and Governance*. (Dissertation of the doctor of jurisprudence. Moscow, 2008). pp: 50.

condensate a year[40]. At present Kazakhstan is in 9th place in the world with regard to confirmed reserves of oil. Besides that, the country is in 8th place by the reserves of coal and 2nd place by the reserves of uranium[41].

Traditionally great attention in the country is paid to development of the agricultural sector. Kazakhstan is among world's top ten grain exporters and is one of the leaders in flour export.

Economy of Kazakhstan has been progressing due to the state policy of attracting foreign investments into extraction industries and structural and institutional adjustments in financial sector resulting in increasing living standards and accumulation of financial resources in the long run potentially able to ensure transfer to a post-industrial service and technology based development.

Today Kazakhstan has been acknowledged by the global community as a country with a market economy and is the first CIS country assigned with an investment sovereign rating[42].

Kazakhstan pays special attention to the creation of a favourite business climate for investors and improvement of business environment. According to the international ranking of the World Bank and the International Finance Corporation Doing Business 2017 in the overall rankings for Ease of Doing Business Kazakhstan occupies 35th place, 3rd place in "Protecting Minority Investors" and 9th place in "Enforcing Contracts"[43].

The economic model adopted by President N. Nazarbayev envisages a partial liberalisation of the economy and opening the country up to foreign investments. This has made it possible to skilfully utilise the country's rich deposits of mineral raw materials and to achieve success.

In December 2012, in the Address of the Head of State to the people of the nation, Development Strategy Kazakhstan-2050 was presented[44]. Its major goal is creating a wellbeing society on the basis

[40] Doing Business Guide Kazakhstan (2012). Available at: http://www.pwc.kz/en/home_page_banner/dbg_kazakhstan_2012_v8.pdf accessed 29 Sept. 2016

[41] OECD, *Multi-dimensional Review of Kazakhstan: Volume 1*. (Initial Assessment. OECD Development Pathways, OECD Publishing, Paris. 2016. Available at: http://dx.dio.org/10.1787/9789264246768-en accessed 20 January 2018.

[42] Ibrayeva, A., Abdikarim, Y. and Alimbekova M. *The Legal Policy of the Republic of Kazakhstan: New Priorities and Succession* (World Applied Sciences Journal, 2014, 29(8)) pp.1071-1074.

[43] Doing Business in Kazakhstan: Available at: http://invest.gov.kz/pages/blagopriyatnyy-biznes-klimat accessed 20 March 2017.

[44] Address by the President of the Republic of Kazakhstan, Leader of the Nation, N.Nazarbayev *Strategy Kazakhstan-2050": new political course of the established state*. (14 December, 2012). Available at: http://www.akorda.kz/en/addresses/addresses_of_president/address-by-the-president-of-the-republic-of-kazakhstan-leader-of-the-nation-nnazarbayev-strategy-kazakhstan-2050-new-political-course-of-the-established-state. accessed 1 Nov. 2018

of a strong state, developed economy and opportunities for universal labor, and Kazakhstan's entering the thirty most developed nations worldwide[45].

To achieve this goal, "Kazakhstan – 2050" Strategy provides for the implementation of the following seven long-term priorities[46]:

1.The economic policy of the new course – comprehensive economic pragmatism based on the principles of profitability, return on investment and competitiveness.

2. Comprehensive support for entrepreneurship – the driving force of the national economy.
3. New principles of social policy – social guarantees and personal responsibility.
4. Knowledge and professional skills – key milestones of the modern system of education, training and retraining.

5. Further strengthening of statehood and the development of Kazakhstan's democracy.
6. Consistent and predictable foreign policy - the promotion of national interests and strengthening regional and global security.

7. New Kazakhstan patriotism – the basis of the success of multi-ethnic and multi-confessional society.

Through Presidential Decree No. 922 as of 1st February, 2010, Kazakhstan Strategic Development Plan - 2020 was approved. This Plan outlines the following priority directions of the State:

- preparation for post-crisis development;
- ensuring sustainable economic growth by accelerating diversification through industrialisation and infrastructure development;
- investment in the future - improving the competitiveness of human capital to achieve sustainable economic growth, prosperity and social welfare of Kazakhstani people;
- providing the population with quality social, housing and communal services;
- strengthening interethnic harmony, security and stability of international relations[47].

To implement the above mentioned strategic documents, state development programs were approved in some areas of government activity. For example, the State Program on Forced Industrial and

[45] The official website of RK President (2013). Available at: http://www.akorda.kz/en accessed 20 January, 2018

[46] Message from the President of the Republic of Kazakhstan-Leader of the Nation Nursultan Nazarbaev of Kazakhstan *Strategy "Kazakhstan- 2050": a new policy established state* (Kazakhstan Pravda, 2012, December 14)

[47] The strategic plan for development of the Republic of Kazakhstan until the year 2020. Available at: http://www.akorda.kz/en/official_documents/strategies_and_programs accessed on 1 Nov 2018

Innovative Development (SPFIID) was approved through RK Presidential Decree No. 958 as of March 19, 2010. The program is aimed at ensuring sustainable and balanced economic growth through diversification and increasing its competitiveness.

2.2 The Constitution of the Republic of Kazakhstan - the Basic Law of Kazakhstan

Kazakhstan has the Romano-Germanic (so-called "continental law") legal system in common with certain countries in continental Europe (i.e., Germany, France, Italy, Spain, etc.), South and Middle America, CIS, etc. In contrast with the Anglo-Saxon (so-called "common law") legal system mainly based on judicial precedents, the Romano-Germanic legal system establishes supremacy of "written laws".

Constitution (from the Latin word "constitution" - structure) is the Basic Law of country which defines social and political structure, organisation of public administration, relations between state and society, citizens and state. Constitution is one of the most important institutions of democracy. There were several constitutions of Kazakhstan.

The Constitution of the Kazakh ASSR, 1926.

The final text of the first Constitution of Kazakhstan was adopted by the Resolution of the Central Executive Committee of the Kazakh ASSR from February 18, 1926 after the establishment of the USSR. This document was guided by the Constitution of the RSFSR of 1925 because Kazakhstan was a part of this country. The Basic Law defined the form of Government, state structure, political regime, structure of the bodies of state power, executive and administrative institutions. It determined fundamental principles of active and passive right to vote and budgetary law. According to this Constitution, being a part of the RSFSR Kazakhstan has equal rights with other republics.

The Constitution of the Kazakh SSR, 1937.

The Constitution of the Kazakh SSR was adopted on March 26, 1937 by the 10th All-Kazakh Congress of the Soviets. The Constitution of 1937 defined citizens' fundamental rights and obligations (articles 96-98).

The Constitution of the Kazakh SSR, 1978.

The Constitution of the Kazakh SSR was adopted by the 7th extraordinary session of the Supreme Council of the republic of 9th convocation on April 20, 1978. It defined national-state and administrative-territorial structure of the republic, competence of the highest and local authorities,

principles of the electoral system, legal status of peoples' deputies, institutions of the plan of economic and social development, state budget, justice, arbitration, and to name but a few.

The Constitution of the Republic of Kazakhstan, 1993.

The first Constitution of Independent Kazakhstan was adopted at the 9th session of the Supreme Council of Kazakhstan of 12th convocation on January 28, 1993. The Constitution absorbed many legal norms adopted with Kazakhstan's state sovereignty: national sovereignty, state independence, principle of the separation of powers, recognition of Kazakh language as state language, recognition of the President as the Head of state, and judicial authorities — Supreme, Constitutional and Supreme Arbitration Courts.

The Constitution of 1993 was based on the model of parliamentary republic. Along with the laying down Kazakhstan's Independence the Constitution of 1993 reflected complexity and inconsistency of the early years of the country's independence. On the one hand, it fixed legal frameworks for further transformation of all aspects of republic's activity in the line of market economy and democratic state formation. On the other hand, the Constitution caused discussions on the competence of legislative and executive branches of power because the text missed this issue. This didn't contribute to both the stabilisation of political and social situation in the country and transformation of all aspects of public life. Moreover, some principal provisions of the Constitution related to the character of statehood, state language, private ownership of land and citizenship became the subject of public controversy.

The Constitution of the Republic of Kazakhstan, 1995.

The current Constitution of the Republic of Kazakhstan was approved by popular referendum on August 30, 1995. Extensive discussion of the draft constitution preceded the adoption of the Basic Law. Since the adoption the current Constitution was amended three times: in 1998, 2007 and 2011. In 1998 19 articles of the Basic Law were amended and complemented. The changes affected the term and competence of the President, Deputies of the Senate and the Majilis. In addition, amendments made provisions for election of 10 Deputies of the Majilis from party lists according to the principle of proportional representation. More significant amendments were adopted in 2007. In February 2011 the Constitution was amended to establish constitutional basis for the announcement and conduction of extraordinary Presidential election.

Furthermore, current Constitution covers main institutions of Kazakhstan and refers to the platform of all aspects of life in Kazakh society. The first section deals with general provisions, the second part explains rights and obligations of the individual and citizen, next six sections (Sections 3-8)

addresses the State's authorities: the President, the Parliament, the Government, the Constitutional Council, Court and justice, Local public administration and self-administration.

Other laws

In addition to the Constitution, legal system includes various legislative acts, including the codes, laws and other regulatory acts of state authorities. There are also laws and other legislative acts passed by state authorities, which regulate in more detail the relations covered by the codes. To be effective, all legislative acts and international treaties are published in official mass media so they are easily accessible to the population.

According to the law the hierarchy of the legislative acts is as follows:

1. Constitution;

2. Laws introducing amendments to the Constitution;

3. Constitutional laws and the Decrees of the President having the force of

constitutional law2;

4. Codes;

5. Laws and the Decrees of the President having the force of law;

6. Regulatory Resolutions of the Parliament and its Chambers;

7. Regulatory Decrees of the President;

8. Regulatory Resolutions of the Government;

9. Regulatory Orders of the Ministers and other heads of Central State

Authorities; Regulatory Resolution of Central State Authorities, Central Election Committee, Accounts Committee for Control Over Execution of the Republican Budget;

10. Regulatory Orders of the heads of subdivisions of Central State Authorities;

11. Regulatory Resolutions of Maslikhat (local authority); Regulatory Resolutions of Akim (Mayor);

International Agreements

Kazakhstan is a member state of the Vienna Convention on the Law of Treaties dated 23 May 1969 and undertook all obligations set forth therein. To implement the process of execution of international treaties, Kazakhstan has the Law on International Treaties. The Law on International Treaties stipulates certain types of international treaties subject to ratification by the Parliament.

2.3 The State's authorities

The Republic's state power is united and, based on the principle of its division, is divided into the following three branches: executive, legislative and judicial.

2.3.1 Executive authority

The Government implements the executive power of the Republic of Kazakhstan, heads the system of executive bodies and exercises supervision of their activity. The Government is a collegial body and in its entire activity responsible before the President of the Republic, and in the cases provided by the Constitution, before the Majilis of the Parliament and Senate the Parliament. Members of the Government are accountable to the Chambers of Parliament on the issues of their activities that stipulated by paragraph 6 of Article 57of the Constitution. The jurisdiction, the procedure of organisation and activity of the Government shall be determined by constitutional law. It consists of the Prime Minister and his or her deputies, ministers and other key officials. The Prime Minister is responsible for direct management of the Government and can sign resolutions or issue orders. Ministers decide on the structure of the ministries and agencies for which they are responsible.

The President of the Republic of Kazakhstan.

The President of the Republic of Kazakhstan is the head of state; its highest official determining the main directions of the domestic and foreign policy of the state and represents Kazakhstan within the country and in international relations. Nursultan Nazarbayev has led Kazakhstan since 22 June 1989, initially as the First Secretary of the Communist Party of the Kazakh SSR. Since the establishment of the presidential post on 24 April 1990, Mr. Nazarbayev has been the President, winning successive elections. Under the current Constitution, the President is elected for five years and may be re-elected for another 5-year term. The same person may not be elected as a President more than two times in a row, but this restriction shall not apply to the first President.

The President of the Republic of Kazakhstan appoints (with the Parliament's consent) and releases the Prime Minister of the Republic, determine the structure of the Government of the Republic at the

proposal of the Prime Minister, appoint to and release from office its members, as well as form, abolish and reorganise central executive bodies of the Republic which are not included into the Government, charge the Government with bringing a bill into the Majilis of Parliament, annul or suspend completely or partially the effect of the Government's acts and those of the akims of the oblasts, major cities and the capital. The President of the Republic of Kazakhstan may dissolve Parliament in certain cases.

The RK President, as proposed by the Prime Minister, forms, dissolves and reorganises the Government, which exercises executive power of the Republic. The RK Prime Minister, according to Article 67 of the RK Constitution (1995) organises and supervises the Government. He also signs Governmental decrees, reports to the RK President on major activities of the Government. In accordance with Article 66 of the Constitution of the Republic of Kazakhstan (1995), the RK Government carries out the development of basic directions of socio-economic policy, submits the National budget to the Parliament, and ensures implementation and accountability of the budget. Besides, the Government of the Republic of Kazakhstan introduces draft laws to Majilis, organises supervision of state property, supervises Ministries and other executive bodies, as well as develops measures for the conduct of national foreign policy.

2.3.2 Legislative authority

The highest representative and supreme legislative power is exercised by the Parliament of the Republic of Kazakhstan. The Parliament consists of two Chambers: the Senate (the upper Chamber) and Majilis (the lower Chamber). The right of legislative initiative belongs to the President of Kazakhstan, members of Parliament and the Government, and is implemented in Majilis. In separate sessions of the Chambers, the issues first are addressed in Majilis, and then the Senate adopts constitutional laws. Besides, the Parliament, in separate sessions of the Chambers: approves the National budget, establishes and annuls state taxes and duties, establishes the procedure for addressing issues related to the administrative-territorial structure of Kazakhstan, establish state awards, addresses the issues on state loans and issues related to amnesty[48].

The Parliament, at a joint session of the Chambers, approves reports of the Government and the Accounts Committee for control over execution of the national budget, addresses issues of war and peace, hears annual addresses of the Constitutional Council on the constitutional legality in the

[48] Parliament of the Republic of Kazakhstan (official website). Available at: http://www.parlam.kz/en accessed 1Nov. 2018.

Republic elects and dismisses Commission chairmen of the Chambers. Also, on the proposal of RK President, the Parliament, in a joint session of the Chambers, amends or supplements the Constitution, delegates legislative powers to RK President for the period of up to one year and decides to use the Armed Forces of the Republic to fulfill international commitments to maintain peace and security[49].

The Senate is composed of deputies elected in twos from each oblast, major city and the capital of the Republic of Kazakhstan. The elections of the deputies of the Senate are carried out on the basis of indirect electoral right under secret ballot. Half of the elected deputies of the Senate are re-elected every three years. Seven deputies of the Senate are appointed by the President of the Republic for the term of the Senate.

The Majilis consists of seventy-seven deputies. Sixty-seven deputies shall be elected in constituencies having one mandate and formed according to the administrative-territorial division of the Republic with an approximately equal number of constituents. Ten deputies shall be elected on the basis of the Party Lists according to the system of proportional representation and in the territory of a unified national constituency. Elections of the deputies of the Majilis shall be carried out on the basis of the universal, equal and direct right under secret ballot.

Institutions of the Parliament: Committees

The Majilis and Senate are divided into seven committees devoted to agrarian questions; legal and judicial reforms; international affairs, defence and security; social and cultural development; ecology and the environment; finance and the budgetary issues; and economic reforms and regional development. Each deputy serves on multiple committees. The committees meet regularly during the course of a well-defined parliamentary schedule, with membership determined internally by the party. In a one-party Majilis, with several current members having served in previous parliaments, Nur-Otan political party is able to populate the committees based on deputies' relative expertise in the subject areas and based on their knowledge of parliamentary mechanisms[50].

Committees also take part in key regional questions, such as standardisation of laws and approaches to CIS collective treaties or other agreements with neighbouring countries, by meeting with

[49] The Constitution of the Republic of Kazakhstan (2005). Available at: http://www.parlam.kz/en/constitution. accessed 20 October, 2018

[50] Lillis, J. *Kazakhstan Plans Political Reform (*Eurasia Insight, February 26, 2007). Available at: http://www.eurasianet.org; and Cummings, Sally N. *Kazakhstan: Power and the Elite,* (I.B. Tauris & Co, Ltd., London, 2005).

counterparts from foreign legislatures at home or abroad[51]. As with any national legislature, the schedule is demanding and deputies to multi-task and have the support staff to keep their schedules in order.

The key documents to be reviewed are numerous, and include the Constitution; the Law on Parliament and the Status of its Deputies; the Law on Elections; the Law on Commissions and Committees within Parliament; the Law on Normative Rights Acts; the Codes of Conduct for the Senate, Majilis, and joint Parliament; and the Informational Directory of the Apparat of the Majilis of the Parliament.

2.3.3 Judicial authority

The judicial power is realised through constitutional, civil, administrative, criminal and other statutory forms of proceedings. Since 1 January 2016, Kazakhstan has a three-tier court system: (1) Specialized district courts, district courts and courts equivalent to them; (2) Appellate courts; and (3) The Supreme Court.

Judicial power is exercised on behalf of the Republic of Kazakhstan and is intended to protect the rights, freedoms and legitimate interests of citizens and organisations, ensuring compliance with the Constitution, laws and other regulatory legal acts, international treaties.

Judicial power is exercised on behalf of the country and is intended to protect the rights, freedoms, and legal interests of the citizens and organisations for ensuring the observance of the Constitution, laws, other regulatory legal acts, and international treaties of the Republic.

The Supreme Court is the highest judicial body for civil, criminal and other cases which are under the courts of general jurisdiction. The Supreme Court also exercises the supervision over their activities in the forms of juridical procedure stipulated by law, and provides interpretation on the issues of judicial practice (Article 81).

Constitutional Council of the Republic of Kazakhstan

The Constitution provides for the Constitutional Council of the Republic of Kazakhstan which consists of seven members whose powers shall last for six years. It is a standalone state body, which ensures supremacy of the Constitution over the whole of Kazakhstan. The Chairperson of the Constitutional Council is appointed by the President. Two members of the Constitutional Council are

[51] Bowyer, A. *Parliament and political parties in Kazakhstan*. (Central Asia-Caucasus Institute and Silk Road Studies Program, April 2008). 73p.

appointed by the President, two - by the Chairperson of Senate, and two - by the Chairperson of the Majilis. Half of the members of the Constitutional Council shall be renewed every three years. Article 72 of the Constitution stipulates the functions of the Constitutional Council.

The main functions of the Constitutional Council are to decide on correctness of elections of the President, deputies of Parliament, and an all-nation referendum in case of disputes, to review laws, Parliament resolutions and international treaties for compliance with the Constitution and to provide official interpretation of the Constitution's provisions.

There is also the Court in the International Financial Centre Astana, which consists of two instances and is not included in the court system. In addition, there are several international commercial arbitrations in Kazakhstan, which settle disputes if at least one of the parties is a non-resident of Kazakhstan.

2.4 Development of Kazakhstani Company Law and Corporate Law.

2.4.1 Introduction

This part is focused on a brief analysis of development of the legislation of the Republic of Kazakhstan in relation to corporate forms for business entities during the period after collapse of the Soviet Union. Comparing it with the notion of company law in European jurisdictions, the author notes the absence of a clear concept of company law and of a legal term 'corporation' in the law of Kazakhstan and also claims that a company (or corporate) law of Kazakhstan has not been adequately institutionalised yet within the national legal system.

Nevertheless, it is shown that special legislation to regulate corporate forms for entrepreneurial activity (apart from forms for non-commercial activities) has been developed in Kazakhstan since the 1990s. The most important stages of such development are highlighted with special emphasis on an influence of Russian legal developments. The article also includes description of the current structure, content, and specifics of Kazakhstan's legislation on corporate forms for economic activity as well as identifying main trends in development of company / corporate law in Kazakhstan and concerns related to it.

2.4.2 Meaning of Company Law and Corporate Law in European jurisdiction

Within the European legal environment the notions of 'company law' and 'corporate law' are used mostly as synonyms in identifying the legal background for:

(i) creation of legal entities formed on the basis of an association of persons with the purpose of earning profit and

(ii) conduct of economic activity by such legal entities observing adequate balance in protecting rights of a company, its members (shareholders) and creditors, and public interest. The company law is called on to become a 'special private law' combining laws on capital companies, general partnerships, and limited partnerships[52].

Depending on the terms of such association, all respective commercial legal entities are classified into two groups – partnerships (also sometimes called associations of persons) and companies (entities formed on the basis of joint capital contributions of their members / shareholders). This classification of business entities was also known in Soviet-time civil law[53]. Formation of a partnership allows its members (partners or participants) to conduct their entrepreneurial activity on the basis of joint property, common management, and unlimited liability of members of the partnership, who often are required to have or acknowledged as having a status of entrepreneurs. In turn, a company is set up, and performs its activities, on the basis of a separation of participation in the company's capital from the company's management and on limited liability of its members (shareholders), who, in general, can be considered investors in the company, not entrepreneurs. As a formal criterion for such distinction between companies and partnerships Varul mentions existence of a corporate structure: the corporate structure shall be established in any company, but it does not exist in a partnership[54].

There is a conclusion drawn in scientific publications that in some states partnerships are not recognised as having a separate legal personality but capital companies always have the status of legal entities[55]. However, there are jurisdictions where, like in France, partnerships have been

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[52] Hommelhoff, P. *Corporate and business law in the European Union: Status and perspectives. (*Towards a European Civil Code. 2nd revised and expanded ed. 1997). Nijmegen: Ars Aeque Libri (1998), pp. 602–603.

[53] Гражданское и торговое право капиталистических государств. Р.Л. Нарышкина. Москва: Издательство 'Международные отношения', 1983, с.148 (in Russian). [Naryshkina, R. *Civil and Commercial Law of Capitalist States* (Moscow: International Relations, 1983. Volume I), 286 p.]

[54] П. Варул. Место корпоративного права в правовой системе. – Гражданское право и корпоративные отношения: Материалы междунар. науч.-практ. конф. в рамках ежегодных цивилистических чтений, посвященной 90-летию видного казахстанского ученого-цивилиста Юрия Григорьевича Басина. М.К. Сулейменов. Алматы, 2013 (736 p .), p . 108 (in Russian). [Varul, P. *The Place of Corporate Law within a Legal System*. (Civil Law and Corporate Relations : Materials of the International Scientific and Practical Conference". Almaty, 13–14 May 2013. M. Suleimenov ed. Almaty, 2013 (736 p.)), p. 108.]

[55] Е.А.Суханов. Очерк сравнительного корпоративного права. – Е.А.Суханов. Проблемы реформирования Гражданского кодекса России: Избранные труды 2008 – 2013 гг. Москва: Статут, 2013 (494 p.), с. 155–163 (in

recognised as legal entities together with joint-stock companies and companies with limited liability. Varul also indicates that in Germany only certain types of partnerships are not considered to be legal entities and in the UK and Estonia they are[56].

In some European jurisdictions, the term 'company law' applies to regulate both partnerships and companies; in the others, it is related to regulation of companies only. For example, in English law, companies are treated as distinct from partnerships and also a distinction exists between partnership law and company law. Although it is said that 'the distinction between partnership and companies is often merely the one of machinery and not of function', nevertheless it entails separate regulation of legally significant specifics of these two types of corporations and relevant legal provisions have been largely codified in different acts – in the Partnership Act 1890 and the Companies Act 1985, respectively[57].

In most jurisdictions in continental Europe (in the civil-code countries particularly), company law includes regulation of both types of business entities: partnerships and companies. All the business entities formed on the basis of association of persons for common objectives are combined under the term 'company', and all the entities are classified as being either partnerships or companies. For instance, that is true in German law[58]. A similar approach can be found in the French Code du Commerce 2000: all forms of business entities with separate legal personality have been united under a single term for a commercial company (societe) regulated in Book II of the Code, including general and limited partnerships; companies with limited liability; and various types of joint-stock companies (societe par actions), such as ordinary JSC (SA), simplified JSC (SAS), and limited partnership issuing shares (SCA)[59]. The same is obviously true for the Estonian Commercial Code 1995: §2 of

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Russian). [Civil and commercial law of capitalist states (Note 2), pp . 148–150; Ye . Sukhanov. "Essay on comparative Corporate Law". Ye. Sukhanov. 'Problems of Reforming the Civil Code of Russia: Selected works 2008–2013'. Moscow: Statut, 2013. (494 p.), pp. 155–163.

[56] П. Варул. Место корпоративного права в правовой системе. – Гражданское право и корпоративные отношения: Материалы междунар. науч.-практ. конф. в рамках ежегодных цивилистических чтений, посвященной 90-летию видного казахстанского ученого-цивилиста Юрия Григорьевича Басина. М.К. Сулейменов. Алматы, 2013 (736 с.), с. 108 (in Russian). [P . Varul. "The Place of Corporate Law within a Legal System". Civil Law and Corporate Relations : Materials of the International Scientific and Practical Conference … Almaty , 13–14 May 2013. M . Suleimenov ed. Almaty, 2013 (736 p.), p. 108.

[57] Davies, P. *Gower's Principles of Modern Company Law*.(6th ed. London: Sweet & Maxwell, 1997 (867 p.)), pp. 3 – 5.

[58] Х.-Й.Шмидт-Тренц. Ю.Плате, М.Пашке и др. Основы германского и международного экономического права / Grundlagen des Deutschen und internationalen wirtschasrecht . Учебное пособие. Санкт-Петербург: Издательский дом С.-Петерб. гос. ун-та, Издательство юридического факультета СПбГУ, 2007.(in Russian). [Basics of German and International Economic Law. St. Peterburg: Publishing house of the St. Peterburg ' s state university, and publishing office of its law faculty, 2007. 736 p. pp. 296–297.

[59] Коммерческий кодекс Франции 2000/предисловие, перевод с французского, дополнение, словарь-справочник и комментарии В.Н. Захватаева. Москва: Волтерс Клувер, 2008. с.144–346 (in Russian).

Chapter 1 applies the general term 'company' with respect to general partnerships, limited partnerships, private limited companies, public limited companies, or commercial associations, as well as to other companies if prescribed by law[60].

Nevertheless, there is one detail that can be noted when the terms 'company law' and 'corporate law' are compared. When a company law is referred to, it mostly applies to the law surrounding organisational forms and activity of business entities[61]. However, the notion 'corporate law' embraces both commercial and non-commercial corporations (i.e., all organisations formed on the basis of association of persons)[62]. This view has become reflected in the Russian Civil Code, which now includes legal classification of commercial and non-commercial corporations, as well as general provisions applicable to all commercial corporations and to non-commercial corporate organisations[63].

2.4.3 Development of Corporate Law in Russia

During the era before 1917, the concept of corporation was fully recognised in Russian law. In Article 13 of Chapter II of the draft of the Russian Civil Code (Grazhdanskoye Ulozheniye) it was proposed that private partnerships be acknowledged as private-law legal entities. In explanations to Articles 13 and 14 the following statements were included: (i) both partnerships (tovarischestvo) and societies (obschestvo) were defined as types of private-law; (ii) joint conduct of an enterprise with the purpose of gaining profit was established as the subject-matter of partnerships' activities, while societies could be created only for non-commercial purposes of social development; and (iii) decisions of a general

[French Code du Commerce. Commercial Code of France 2000 / introduction, translation, amendments, dictionary and commentaries by V. Zakhvatayev. Moscow: Wolters Kluver, 2008. 1272 p., pp. 144–346.

[60]Estonian Commercial Code. (RT I 1995, 26, 355.) Available at https://www.riigiteataja.ee/en/eli/504042014002/consolide accessed 3 Nov. 2017.

[61] Hommelhoff, P. *Corporate and business law in the European Union (*Status and perspectives, 1997. – Towards a European Civil Code. 2nd revised and expanded ed. Nijmegen: Ars Aeque Libri 1998 (652 p.)) pp. 601–602.

[62] П. Варул. Место корпоративного права в правовой системе. – Гражданское право и корпоративные отношения: Материалы междунар. науч.-практ. конф. в рамках ежегодных цивилистических чтений, посвященной 90-летию видного казахстанского ученого-цивилиста Юрия Григорьевича Басина. М.К. Сулейменов. Алматы, 2013 (736с. (in Russian). [P . Varul. "The Place of Corporate Law within a Legal System". Civil Law and Corporate Relations : Materials of the International Scientific and Practical Conference. Almaty, 13–14 May 2013. M . Suleimenov (ed.). Almaty, 2013 (736 p.), p.108

[63] Е.А. Суханов. Проблемы кодификации законодательства о юридических лицах. – Кодификация российского частного права 2015. П.В. Крашенинников. Москва: Статут, 2015, 447 с. (in Russian). Ye . Sukhanov. Problems of codification of legislation concerning legal entities. Codification of Russian private law 2015. P. Krasheninnikov ed. Moscow: Statut, 2015, p.56

meeting of its members were acknowledged to be the form for expression of the will of each corporation[64].

The Grazhdanskoye Ulozheniye has never been adopted as a law. However, the legislation of that time regulated the following forms of private corporations for a trade business: a type of co-operative (artel'noye tovarischestvo), general partnership (polnoye tovarischestvo), limited partnership (toverischestvo na vere), and joint-stock partnership (aktsionernoye tovarischestvo). The core difference between those forms was based on whether the personal participation by efforts of members of a corporation represented an essential element of its existence or the members only participated in formation of its capital –e.g., in a co-operative, participation with personal efforts was mandatory, and in general and limited partnerships it was implied on the side of their general partners, whereas investors in limited partnerships and shareholders in joint-stock partnerships were required to pay their shares in the capital of the respective partnership[65].

The Soviet-time law practically rejected acknowledgement of entrepreneurship and corporate relations; no corporate law was developed in the USSR. However, today the law of the Russian Federation fully operates with the legal terms 'corporation' and 'corporate legislation'. In particular, creation of corporate law as a 'full-weighted branch of civil legislation' has been declared as one of two main goals in the process now being implemented of modernisation of the acting Civil Code of the Russian Federation. And as a starting point there was a proposal made to classify all legal entities as either corporations (i.e., those 'created on the basis of the principle of membership') or non-corporate legal entities[66]. The recently amended Russian Civil Code now declares that civil legislation regulates, among other elements, 'relations pertaining to participation in corporate organisations or their managing', which relations have been clearly defined as corporate ones (§1 of Article 2). Corporate organisations – as such 'legal entities where their members implement corporate rights with respect to an organisation' – have been acknowledged as a separate type of legal entities (§2 of Article 48). Their classification, including both commercial and non-commercial corporate organisations, has been established in Article 65.1. And, finally, corporate rights (as rights of

[64] Гражданское уложение. Кн.1. Положения общие: проект Высочайше учрежденной Редакционной комиссии по составлению Гражданского уложения (с объяснениями, извлеченными из трудов Редакционной комиссии) / под ред. И.М. Тютрюмова; сост. А.Л. Саатчиан. Москва: Волтерс Клувер, 2007. с. 70–74 (in Russian). [*Grazhdanskoye Ulozhenie*, Civil Code . Book I. General provisions: the draft of the appointed editorial comission for preparation of the Civil Code (with explanations extracted from works of the editorial comission. I. Tyutryumov (Ed.), A. Saatchian (compiler)]. Moscow: Wolters Kluwer, 2007, pp. 70–74

[65] Г.Ф. Шершеневич. Учебник торгового права / по изданию 1914 г. / Вступительная статья Е.А. Суханова. Москва: Фирма 'СПАРК', 1994. с. 104–166 (in Russian). G. Shershenevich. Textbook on commercial law / according to edition of 1914 /. Introductory article by Ye. Sukhanov. Moscow: SPARK, 1994, pp. 104–166

[66] Концепция развития гражданского законодательства Российской Федерации. Вступ. ст. А.Л. Маковского. Москва: Статут, 2009.с. 48–49 (in Russian). [The concept paper concerning development of civil legislation of the Russian Federation. Introductory article by A. Makovskii. Moscow: Statut, 2009, pp. 7, 48–49.

members of a corporation) have been recognised and defined in Article 65.2. In addition, Articles 66 through 123.16-2 now contain general provisions and specific norms applicable for each and every type of commercial corporations (including economic partnerships and companies) and non-commercial corporations regulated by acting Russian law[67].

2.4.4 Inadequate institutionalisation of Company Law and Corporate Law in Kazakhstan

Since for a long time Kazakhstan was a part of the Russian Empire and the Soviet Union, Kazakhstan's law has to a great extent inherited a legal culture and traditions, as well as legal concepts and instruments, from Russian and Soviet Union law. And currently close economic and social co-operation exists between those countries. Therefore, the process and results of the legal development in the Russian Federation matter for the development of modern law in Kazakhstan.

Nevertheless, such terms as "company law" and "corporate law" do not have their legal definitions in the law of Kazakhstan. The phrase "company law" is not used at all in the legislation or in either official or unofficial communications.

However, the concept of corporate law has been widely referred to in scientific and informal discussions and has also been included in certain programming or conceptual documents addressing legal development and improvement of the regulatory framework for entrepreneurial activity and practice of corporate governance. Nonetheless, in the concept paper on development of the corporate legislation of Kazakhstan adopted in 2011 (the "Corporate Law Development Paper")[68] clear statements were made that no legal definition of the notion of "corporation" exists in Kazakhstani legislation, nor are the terms "corporate law" and "corporate legislation" fixed and widely accepted in the law and practice. Also, no place for corporate law has been determined in the legal system of Kazakhstan.

These conclusions remain true today. But one should note that there was an attempt made to define corporate law in the aforementioned Corporate Law Development Paper. In particular, in the preamble to the Corporate Law Development Paper it was stated that "corporate law is represented

[67] The Civil Code of the Russian Federation. Available at http://www.consultant.ru/popular/gkrf1/ accessed 15 Oct. 2018 (in Russian).

[68] Концепция развития корпоративного законодательства Республики Казахстан, утвержденная Министерством юстиции Республики Казахстан 28 марта 2011г. (in Russian) [*The concept paper concerning development of corporate legislation of the Republic of Kazakhstan* (dated 28 March 2011). Available at http://online.zakon.kz/?doc_id=30956110. accessed 9 March 2017.

by a set of general and special provisions of private law and corporate norms intermediating corporate relations, and corporate legislation means an aggregate of normative legal acts that include rules of different branches of law (both private and public) that regulate relationships within a corporation and outside". However, this attempt appeared to be unsuccessful, because there: no legal definition of a corporation has been proposed and no nature of corporate relations as an object of legal regulation has been clearly identified, either in the Corporate Law Development Paper or in the law of Kazakhstan.

In the modern civil law doctrine of Kazakhstan, however, only one position with respect to the essence of corporate law has been clearly expressed as of this moment. Namely, according to Suleimenov, corporate law shall be considered a part of civil law and as such it shall develop as a separate institution of civil law focused on regulation of relations pertaining to participation in corporate organisations and managing their activity. He specifically mentions that it is the most common view that corporate law should be treated as part of law concerning legal entities. However, he argues that the institution of legal entities has been developed to regulate legal entities in civil relations with third parties ("existing outside a legal entity"), whereas corporate relations exist as so-called internal organisational relations within a corporate organisation[69].

Unlike the law of the Russian Federation, Kazakhstani legislation fails to define what the term "corporation" means and what type of social relations can be identified as corporate relations, and, in addition, it does not refer to the term "corporation" at all. No specific legal provisions addressing the notions of corporate organisations and corporate relations can be found in the Civil Code or other legislative acts of the Republic of Kazakhstan. This situation has existed since the very start of development of the law of independent Kazakhstan: Basin mentioned that Kazakhstani law does not operate with the term "corporation" for indication and characterisation of a certain type of legal entities[70].

[69] М.К. Сулейменов. Гражданское право и корпоративные отношения: проблемы теории и практики – Гражданское право и корпоративные отношения: Материалы междунар. науч.-практ. конф. в рамках ежегодных цивилистических чтений, посвященной 90-летию видного казахстанского ученого-цивилиста Юрия Григорьевича Басина (Алматы, 13-14 мая 2013) (in Russian) [M. Suleimenov. Civil law and corporate relations: Problems of theory and practice. - "Civil Law and Corporate Relations: Materials of the International Scientific and Practical Conference" (Almaty, 13-14 May, 2013),pp.43-44].

[70] Ю.Г. Басин. Коммерческие корпоративные отношения и юридическая ответственность. – Ю.Г. Басин. Избранные труды по гражданскому праву. Предисловие М.К. Сулейменов, Е.У. Ихсанов. Сост. М.К. Сулейменов. Алматы: АЮ – ВШП "Адилет", НИИ частного права КазГЮУ, 2003. стр.135. (in Russian) [Yu. Basin. "Commercial Corporate Relations and Legal Liability" - Yu. Basin. "Selected Works on Civil Law". Introduction by M. Suleimenov and Ye. Ikhsanov. Compiled by M. Suleimenov. Almaty: Law School 'Adilet', 2003, p.135].

Nevertheless, this does not mean that there is no a legislative framework for foundation of corporations and their activities existing in Kazakhstan.

First of all, there are specific corporate forms regulated in the law and thousands of corporations are active in Kazakhstan. This fact allows claiming existence of corporate (or company) law in Kazakhstan.

In addition, certain legal terms that include the word "corporate" have been established in the law. For example, all legal entities (whether they are corporations or instead non-corporate organisations) pay "corporate income tax" under the Tax Code 2008[71]. In accordance with the Law on Joint-Stock Companies 2003 (the "JSC Law")[72], each joint-stock company is required to adopt its "corporate governance code", maintain its "corporate web site", disclose certain "corporate events", and appoint its "corporate secretary" to perform prescribed functions. The Civil Procedure Code (the previous one, of 1999[73], as well as the new code, of 2015[74]) (the "CPC") invests courts with the competence to solve "corporate disputes", while the JSC Law and the Law on Partnerships with Limited and Additional Liability of 1998 (the "LLP Law")[75] require JSCs and LLPs to disclose information about a company's involvement in a corporate dispute, as well as about other facts specified as so-called corporate events.

Moreover, not provisions of the Civil Code (General Part of 1994[76] and Special Part of 1999[77]) but norms of other laws allow respective qualification of corporate relations and understanding of what forms the sphere of corporate relations. Particularly, during the last 15 years there have been certain

[71] Кодекс Республики Казахстан "О налогах и других обязательных платежах в бюджет (Налоговый кодекс)" (in Russian) ["The code of the Republic of Kazakhstan on taxes and other obligatory payments to the budget" (The Tax Code)], 10 December 2008, No 99 - IV (last edition on 1 January 2015). Available at http://online.zakon.kz/Document/?doc_id=30366217 (Accessed on 20 January, 2018)].

[72] The Law of the Republic of Kazakhstan "On Joint-Stock Companies" (13 May 2003, N415-ii). Available at: http://adilet.zan.kz/eng/docs/K080000099 accessed 20 January, 2018.

[73] "Civil Procedure Code of the Republic of Kazakhstan", (dated 13 July 1999, No 401-i no longer in effect as of 1 January 2016). Available at: http://online.zakon.kz/Document/?doc_id=34329053&doc_id2=1013921 accessed 20 January, 2018.

[74] "Code of Civil Procedure of the Republic of Kazakhstan", (dated 31 October 2015, No 377 - V in force as of 1 January 2016, last edition of 27 February, 2017). Available at http://online.zakon.kz/Document/?doc_id=34329053 accessed 20 January, 2018) (in Russian).

[75] "Law of the Republic of Kazakhstan on Partnerships with Limited and Additional Liability" (dated 22 April 1998, No 220 - i (as amended)). Available at http://online.zakon.kz/Document/?doc_id=1009179 accessed 20 January, 2018 (in Russian).

[76] "Civil Code (General Part)", (27 December 1994 No 269 - XII (as amended)). Available at http://online.zakon.kz/Document/?doc_id=1006061 accessed 20 January, 2018 (in Russian).

[77] "Civil Code (Special Part)" (1 July 1999, № 409-1, (as amended)). Available at http://online.zakon.kz/Document/?doc_id=1013880 accessed 20 January, 2018 (in Russian).

categories of legal acts (mainly regulations of the National Bank and enactments of the Government but also some laws) adopted on implementation of measures to introduce a system of "corporate governance" in commercial organisations and improve it. Practically all of them have been focused on regulation of corporate governance in joint-stock companies. Thus, Kazakhstan's legislation certainly considers JSCs to be corporations, and existence of corporate law norms in its legal system (even if they are not sufficiently developed) can be confirmed.

However, not only a JSC is a corporation under Kazakhstan's law. According to Basin, the term "corporation" has been well-known in the legal theory and legal practice. In the law of many foreign states, this has a clear meaning as a "self-organised legal entity where its founders, being at the same its members, act jointly and on equal legal ground"[78]. The common understanding has always existed between Kazakhstan's researchers in the field of civil law that a corporation means an economic or business entity with its separate legal personality founded by its members who either 1) joined their property and efforts for participation in the business environment or 2) combined their investments to set up the business entity in exchange for receiving respective membership rights. In addition to JSCs, the Civil Code also regulates other forms of commercial (and non-commercial) organisations based on membership, though without qualifying them expressly as corporations.

At the same time, in 2008 the old CPC was amended with the notion of corporate disputes and clear specification of corporate disputes as a type of disputes under civil law. The amendment included a definition of "corporate dispute" according to which initially the dispute could be between commercial legal entities or a dispute related to specified matters wherein a legal entity and/or its shareholders (participants or members) participated. Since 2011, not only commercial organisations but also individual entrepreneurs and non-commercial organisations of any allowed organisational forms as well as current or former members of an organisation have been able to be parties to corporate disputes. Additionally, the list of grounds for the acknowledgement of a corporate dispute has been significantly extended. Similar provisions have been reproduced in the new version of the CPC (2015), which has been in effect since 1 January 2016.

[78] Ю.Г. Басин. Коммерческие корпоративные отношения и юридическая ответственность. – Ю.Г. Басин. Избранные труды по гражданскому праву. Предисловие М.К. Сулейменов, Е.У. Ихсанов. Сост. М.К. Сулейменов. Алматы: АЮ – ВШП "Адилет", НИИ частного права КазГЮУ, 2003. стр.135. [Yu. Basin. "Commercial Corporate Relations and Legal Liability" - Yu. Basin. "Selected Works on Civil Law". Introduction by M. Suleimenov and Ye. Ikhsanov. Compiled by M. Suleimenov. Almaty: Law School 'Adilet', 2003, p.135 (in Russian)].

2.5 Development of Corporate legislation in Kazakhstan (starting from 1990).

The following most important periods of development of Kazakhstani legislation concerning business corporations can be identified (although this description is very simplified, it seems to be sufficiently illustrative):

1) The time before adoption of the Civil Code (General Part) in 1994, including the following stages:

- Until the beginning of the 1990s: There was no corporate legislation or corporate law recognised as existing (we disregard the Civil Code of the RSFSR of 1922[79], as well as legislative provisions of the Civil Code of the Kazakh SSR of 1963[80] concerning kolkhozes, various types of consumer co-operatives, and other non-profit social membership organisations).
- Starting on 31 May 1991: The new Basics of Civil Legislation of the USSR and the Union Republics defined the notion of a commercial organisation, distinguished economic partnerships from economic societies / companies, and made provision for regulation of the legal status of separate types of economic partnerships and companies by special legislative acts[81]; also, certain enactments and regulations by the USSR's Council of Ministers concerning joint-stock companies, economic partnerships, and some other specific forms of associations for commercial purposes were in effect[82].
- After 21 June 1991: The Law of the Kazakh SSR on Economic Partnerships and Joint-Stock Companies[83] was adopted, and very important concepts were introduced as a start for formation

[79] Гражданский кодекс РСФСР: официальный текст с изменениями на 1 января 1952 г. ['Civil Code of the RSFSR: Official Text with Amendments as of 1 January 1952']. Москва: Государственное издательство юридической литературы, 1952 [Moscow : publishing house of law texts , 1952] (159 p .) (in Russian).

[80] Гражданский кодекс Казахской ССР (Официальный текст с изменениями и дополнениями по состоянию законодательства на 1 января 1988 г. ['Civil Code of the Kazakh SSR (Official Text with Changes and Amendments as of 1 January 1988)]. Алма-Ата: Казахстан, 1989 [Alma - Ata : Kazakhstan , 1989] (256 p .) (in Russian).

[81] Основы гражданского законодательства Союза ССР и союзных республик, утверждены Постановлением Верховного Совета СССР от 31 мая 1991 г. [' Basic of Civil Legislation of the USSR and Union Republics Approved by the Supreme Council of the USSR on 31 May 1991], №2211.–Ведомости Съезда народных депутатов СССР и Верховного Совета СССР, 1991, №26, ст.733 [the Bulletin of the Congress of Peoples Representatives of the USSR and the Supreme Council of the USSR , 1991, #26, Art . 733] (in Russian).

[82] Положение об акционерных обществах и обществах с ограниченной ответственностью, утвержденное Постановлением Совета Министров СССР от 19 июня 1990 г. [' Regulations Concerning Joint ‑ stock Companies and Companies with Limited Liability , Approved by the Resolution of the Council of Ministers of the USSR dated 19 June 1990']. – Собрание постановлений правительства СССР, 1990, №15, ст.821 [' Collection of Resolutions of the Government of the USSR , 1990', #15, Article 821] (in Russian).

[83] Закон Казахской ССР «О хозяйственных товариществах и акционерных обществах» [' Law on Economic Partnerships and Joint - stock Companies], 21 June 1991 (now no longer in effect). – Ведомости Верховного Совета Казахской ССР, 1991, №26, ст. 343 [Bulletin of the Supreme Council of the Kazakh SSR , 1991, #26, Article 343]. Available at http://online.zakon.kz/Document/?doc_id=1000574 (most recently accessed on 20 January, 2018) (in Russian).

of corporate legislation in Kazakhstan; a joint‑stock company was recognised as one of the allowed forms of economic partnerships; payment for shares was established as the only obligation of a shareholder; mandatory real-value asset contributions to the capital of a company were required; a guarantee function of the authorised capital was fixed for the first time as a precondition to later regulation of capital maintenance obligations; and regulation of directors' and managers' liability, along with a requirement for adoption of a code of conduct for directors and managers of a JSC, and other important provisions were established.

2) The time after adoption of the new Civil Code as the basis for development of modern corporate legislation in Kazakhstan:

- 27 December 1994: The Civil Code (General Part) was adopted to regulate (among many other aspects of private law) the notion of economic partnership as the legal organisational form for commercial entities.
- 2 May 1995: The Law on Economic Partnerships was enacted to regulate general partnerships, limited partnerships, partnerships with limited liability (LLP), and partnerships with additional liability (ALP) and the JSC as special forms of economic partnerships[84].
- 5 October 1995: The Law on Production Co-operatives was adopted[85].

3) The time after separate regulation of the status of JSC and LLP / ALP was introduced in the law of Kazakhstan:

- 28 April 1998: The LLP Law was adopted, and special provisions regarding LLPs and ALPs were excluded from the Law on Economic Partnerships of 2 May 1995, although the latter remains restrictedly in effect with respect to LLPs and ALPs since it regulates general principles applicable to all forms of economic partnerships, including LLPs and ALPs.
- 10 July 1998: The Law on Joint-Stock Companies (no longer in effect) and the law on amendments to a number of legislative acts on matters related to the legal status of JSCs were adopted, and the JSC was recognised as a separate organisational form and it no longer remains a type of economic partnerships[86]. That was a start for development of an independent (joint-stock) company law.

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[84] Закон Республики Казахстан «О хозяйственных товариществах» [' Law on Economic Partnerships '], 2 May 1995, №2255 (as amended). Available at http://online.zakon.kz/Document/?doc_id=1003646 (most recently accessed on 20 January, 2018) (in Russian). Also available in English (unofficial translation), at http://adilet.zan.kz/eng/docs/U950002255_(most recently accessed on 20 January, 2018).

[85] Закон Республики Казахстан «О производственном кооперативе» ['Law on Production Cooperatives'], 5 October 1995, №2486 (as amended). Available at http://online.zakon.kz/Document/?doc_id=1003955 (most recently accessed on 20 January, 2018) (in Russian). Also available in English (unofficial translation), at http://adilet.zan.kz/eng/docs/Z950002486 (most recently accessed on 20 January, 2018).

[86] Закон Республики Казахстан «Об акционерных обществах» ['Law on Joint-Stock Companies'], 10 July 1998, №282 (now no longer in effect). Available at http://nationalbank.kz/cont/publish234665_240.pdf (most recently accessed on20 January, 2018) (in Russian). Also available in English (unofficial translation), at http://online.zakon.kz/Document/?doc_id=1017168 (most recently accessed on 20 January, 2018); Закон Республики

4) The time since May 2003, in which significant changes in the status of joint-stock companies have been introduced:

- 13 May 2003: The JSC Law was adopted, and the previous law, of 10 July 1998, concerning joint-stock companies was terminated, which fact caused numerous and significant amendments being introduced to the legislation – e.g., classification of JSCs into closed-type and open-type JSCs was cancelled, rules on the structure of capital of a JSC and its maintenance were changed, the figure of corporate secretary and a requirement for independent directors were introduced, protection of shareholders' rights has been improved and directors' and managers' liability has been increased, the requirement of a corporate governance code and for disclosure of major corporate events/disputes were established, etc.
- Later: Significant amendments have been introduced in the 2003 JSC Law, from its adoption until the present day.

2.6 Current structure of Kazakhstan's corporate legislation.

The structure of Kazakhstan's legislation concerning corporations rests on the following important approaches. First of all, the Civil Code (in its General Part) defines the basic concept of a legal entity and establishes various classifications of legal entities, depending on such different criteria as: whether the entity is a commercial or non-commercial organisation and who are the founders of the legal entity and what the legal nature of the relations between the entity and its founder(s) is.

A legal entity shall be recognised as a commercial organisation if it is founded for the purpose of earning profits and its profit is distributable to its founders/members. A non-commercial organisation cannot pursue profit-earning as its main goal, and its profit cannot be distributed among its founders / members under any circumstances.

Legal entities of corporate type can be set up by one or more persons by way of cash or other property contributions to the capital or assets of a company in exchange for membership rights with respect to the company and its profit. There are also other types of legal entities (both commercial and non-commercial), which can be founded by a single founder who transfers property to the legal entity but remains the owner of the property transferred, and such entities cannot be considered corporations.

Казахстан «О внесении изменений и дополнений в некоторые законодательные акты Республики Казахстан по вопросам акционерных обществ» ['Amending Law Concerning Joint-stock Companies'], 10 July 1998, №282. Available at http://online.zakon.kz/Document/?doc_id=1009824 (most recently accessed on 20 January, 2018) (in Russian).

There is no classification of legal entities in Kazakhstani law wherein an organisation can be either a private law company or a public law company.

Secondly, each legal entity can be founded and perform its activities in one of the organisational forms allowed by the law, in a manner depending on the commercial or non-commercial nature of the entity and on specifics of its foundation.

The founders of a legal entity decide whether it is to be a commercial or non-commercial organisation, and whether they want to be its members or choose to remain the owner of its property. This decision is a precondition for the founders' decision on the organisational form of the legal entity. For each type of legal entities (commercial and non-commercial), the Civil Code proposes allowed organisational forms. For entrepreneurial activity, if the founder is the State (either the Republic of Kazakhstan or a local state authority) and if the law allows this, it may choose to found a state enterprise and remain the owner of the property transferred to the entity while the enterprise would exercise the so-called right of economic management with respect to the property[87]. This legal construction has been inherited from the system of Soviet times, and this is the reason there is such a specific legislative system for regulation of legal forms for business activities in Kazakhstan.

Nevertheless, the vast majority of commercial legal entities in Kazakhstan perform in organisational forms based on principles of association and membership. The Civil Code allows the following organisational forms for such commercial entities: economic partnership, production co-operative, and joint-stock company. In turn, economic partnerships can be set up in any of the following four organisational forms, depending on the intention and personality of their founders and expected members: general partnership, limited partnership, partnership with limited liability, and partnership with additional liability.

Private persons (legal entities and individuals) as well as the State or a local state authority may be shareholders / members in a JSC or LLP, while only individuals can be general partners in general and limited partnerships.

The state of corporate governance in Kazakhstan is in infancy. The regulatory guidelines of good corporate governance are provided in the Law on Joint Stock Companies, the Law on Accounting and Financial Reporting, the Law on Securities Market, and the Law on Banks and Banking

[87] Субъекты гражданского права. М.К. Сулейменов. Алматы: НИИ частного права КазГЮУ, 2004. стр. 172-178. ["Persons in Civil Law". M. Suleimenov (ed.) (Almaty: Institute of private law, 2004) pp. 172-178 (in Russian)].

Activity[88]. In addition, the Code on Corporate Governance was adopted in 2005 to improve accountability, transparency, fairness, and professionalism for effective CG practices with respect to the legal and regulatory framework of the country. Critics noted that many important aspects of good CG such as specific directions for board composition, board members' qualification, board gender diversity requirements, etc. are missing in the legal frameworks[89].

The important tasks on the route of development of corporate law in Kazakhstan is development of the legal framework for use of a joint-stock company as an organisational form to conduct large-scale business and qualified types of business activities (mostly in the fields of finance, banking, and capital markets). The legal framework for formation and activities of JSCs shall be based on imperative legal regulations and companies' professional management allowing a guarantee of transparent corporate governance and efficient control of the financial performance of the company, better protection of shareholders' rights and creditors' interests, effective achievements of business goals of the company, and correlation of its activities with public interests.

Since 2001, the National Bank of Kazakhstan has concentrated on creation of a proper corporate governance and financial reporting system and their improvements in joint-stock companies acting in the jurisdiction of Kazakhstan. Enactment of the current JSC Law, in 2003, has been implemented as a major step in this regard. And in this context the JSC Law has been amended to a significant extent numerous times. For example, in 2007 an amending law was passed to improve protection of rights of minority shareholders and new concepts were introduced into the legal environment - "minority shareholders", "corporate secretary", and some others – together with introduction of the disclosure and information access mechanisms ensuring heeding of interests of shareholders in JSCs and members of LLPs. In 2008, a new set of amendments to the JSC Law were made, to ensure sustainability of the financial system in Kazakhstan by way of increasing the role of the board of directors alongside the management board in managing a company, as well as restricting possibilities for major shareholders to interfere in the functioning of the corporate governance bodies of a JSC. Later, in 2011–2014, other amendments were made to the JSC Law and other legislative acts of Kazakhstan, to regulate JSCs and LLPs with the State's direct or indirect participation in their capital, to provide better protection of investors' rights by strengthening provisions related to responsibilities and liability of JSC directors and managers, to promote development of the securities market, etc.

[88] EBRD, *Corporate governance in transition economies: Kazakhstan country report*. (European Bank for reconstruction and development, Almaty, Kazakhstan. 2016)

[89] EBRD, *Corporate governance in transition economies: Kazakhstan country report.* (European Bank for reconstruction and development, Almaty, Kazakhstan; Lukin I., 2017. Reforms of Kazakhstan's corporate governance framework).

The idea of a better legal framework for corporate governance practice and organisational structure in JSCs still remains important in Kazakhstan. So this thesis focuses on creation of a legislative basis harmonised with modern patterns of legal regulation for corporate relations in the Kazakhstan, the EU and worldwide.

- Improvement of legislation related to economic partnerships. This is needed to exclude inconsistency in current legislation addressing the status and activity of different types of economic partnership, as well as to increase investment attractiveness of Kazakhstani business. The need for such reform is obvious in Kazakhstan, and it has great significance in terms of both legal development in the field of private law and economic growth in Kazakhstan.

- Harmonisation or unification of corporate legislation in the space of the Eurasian Economic Union has been inevitable, and an attempt at harmonisation of private law within the Eurasian Economic Community (EurAzEC) has taken place already. This work remains unfinished for various reasons, of different nature. One of them was the failure to agree on the role and significance of the proposed EurAzEC civil code: 1) whether it should serve as a binding legal instrument or as a set of recommendations to improve national legislation and 2) whether such improvement should be made with a view to unification or harmonisation, or as something else.

Nevertheless, this co-operation had a very positive impact on creation of common approaches to regulate corporate relations and improve national laws on private law corporations. Particularly, this gave rise to discussions of whether only commercial organisations having members can be considered to be corporations or, instead, such entities as non-commercial organisations can also be subject to corporate law.

The approach adopted to amend the Russian Civil Code by direct indication that corporate relations shall be regulated by civil legislation and that most of the legal entities performing business activities in a market economy are corporations[90] has been shared in Kazakhstan.
However, even with the recent modernisation of Kazakhstani Civil Code, a certain inconsistency remains in separating commercial entities and non-commercial organisations. The newly introduced classification into corporations and non-corporate organisations has been carried out in addition to

[90] The concept paper concerning development of civil legislation of the Russian Federation (Note 15), p. 25; Ye. Sukhanov (Note 4), p .147 – 187; Г.Е. Авилов, Е.А. Суханов. Юридические лица в современном российском гражданском праве [G . Avilov , Ye . Sukhanov . ‘ Legal Entities in Modern Russian Civil Law ’]. Москва: Вестник гражданского права, том 6, 2006, №1, [Moscow : Herald of Civil Law , Volume 6, 2006, #1], pp . 17–18 (in Russian).

the existing separation between commercial and non-commercial organisation[91]. And this seems to cause unnecessary complication in the legislative structure for the following reasons: 1) non-commercial organisations have a different organisational structure, and no membership rights exist in non-commercial membership organisations similar to those existing in business corporations, and 2) as Basin indicated, there are some commercial organisations (like state enterprises) as well as non-commercial organisations (like public unions and funds, along with religious organisations) that are not corporate organisations, and totally different rules apply to these types of legal entities[92]. Finally, there are more common legal characteristics for all types of non-commercial organisations than for non-commercial and commercial corporations, which makes it more reasonable to avoid extension of any general regulation to both commercial and non-commercial corporations (other than that common for all types of legal entities).

Therefore, it appears to be more practicable if corporate law (or company law) were institutionalised in Kazakhstan primarily as the law regulating relations pertaining to implementation of the material interest and property rights of private persons in connection with their participation in business entities of any corporate form. In turn, any membership in non-commercial organisations and their activities would be regulated by a separate set of rules because the primary goal for such regulation is to provide adherence to public and non-property interests, and not to protect property rights of a private person (whether it be a private law corporation, a member of one, or a creditor). It has been the traditional approach in Kazakhstani law to regulate commercial and non-commercial organisations separately[93], and this has been reflected in the legislation: 1) the law on non-commercial organisations has been separated from the legislation dealing with organisational forms for commercial organisations (though regulation of both types of legal entities is based on the Civil Code's concept of a legal entity and its general provisions applicable to all legal entities) and 2) the

[91] Е.А. Суханов. О концепции развития законодательства о юридических лицах. - Е.А. Суханов. Проблемы реформирования Гражданского кодекса России: избранные труды 2008-2012 гг. Москва: Статут, 2013. стр. 82-83. [Ye. Sukhanov. "About the Concept of Development of Legislation Concerning Legal Entities" - Ye. Sukhanov. "Problems of Reforming the Civil Code of Russia: Selected Works 2008-2012". Moscow: Statut, 2013, pp. 82-83 (in Russian)].

[92] Ю.Г. Басин. Коммерческие корпоративные отношения и юридическая ответственность. – Ю.Г. Басин. Избранные труды по гражданскому праву. Предисловие М.К. Сулейменов, Е.У. Ихсанов. Сост. М.К. Сулейменов. Алматы: АЮ – ВШП "Адилет", НИИ частного права КазГЮУ, 2003. стр.95. [Yu. Basin. "Commercial Corporate Relations and Legal Liability" - Yu. Basin. "Selected Works on Civil Law". Introduction by M. Suleimenov and Ye. Ikhsanov. Compiled by M. Suleimenov. Almaty: Law School 'Adilet', 2003, p.95 (in Russian)].

[93] Ю.Г. Басин. Коммерческие корпоративные отношения и юридическая ответственность. – Ю.Г. Басин. Избранные труды по гражданскому праву. Предисловие М.К. Сулейменов, Е.У. Ихсанов. Сост. М.К. Сулейменов. Алматы: АЮ – ВШП "Адилет", НИИ частного права КазГЮУ, 2003. стр.101-104. [Yu. Basin. "Commercial Corporate Relations and Legal Liability" - Yu. Basin. "Selected Works on Civil Law". Introduction by M. Suleimenov and Ye. Ikhsanov. Compiled by M. Suleimenov. Almaty: Law School 'Adilet', 2003, pp.101-104 (in Russian)].

notion of corporation has been applied with respect to commercial organisations based on membership (though often limited to joint-stock companies) only and not to non-commercial organisations. Such an approach differs from the one reflected in Russian law wherein the distinction between commercial and non-commercial organisations has not been made so clear[94].

Although the corporate legislation (or company law) of most European countries is acknowledged as developed, our study reveals that there are a lot of aspects wherein our European colleagues see the potential for its further development. A range of key issues under consideration for such development has usually been identified in relevant publications (though mostly in the context of harmonisation and/or unification)[95].

Similar issues related to development of corporate law are urgent in Kazakhstan. But, besides these, there are many other problems awaiting an adequate legislative solution. In particular, we need corporate relations to be clearly recognised and the term "corporation" to find its legal definition in the law. Reclassification of corporations is also required, to differentiate between regulation of partnerships and of capital companies. Reconsideration of the legal framework for general and limited partnerships, as well as for LLPs, is necessary. Also, significant modernisation of the legislation concerning joint-stock companies is on the agenda. And there is also the important topic of harmonisation or even unification of corporate legislation, which remains relevant in the context of Kazakhstan's participation in the Customs Union alongside the Russian Federation and the Republic of Belarus, as well as in the Eurasian Economic Union.

As a separate challenge there is a task to eliminate such types of property rights as the right of economic management (pravo khozyaistvennogo vedeniya) from the law of Kazakhstan and cease to use the form of a state enterprise (gosudarstvennoye predpriyatiye) for legal entities performing business activities[96]. The following understanding is becoming more common among legal scholars: that corporate forms of legal entities represent the most appropriate choice for business purposes, and that developed corporate legislation serves the purpose of economic progress.

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[94] Субъекты гражданского права [' Persons in Civil Law ']. М.К. Сулейменов [M . Suleimenov] (ED .). Алматы: НИИ частного права КазГЮУ, 2004 [Almaty: Institute of private law, 2004] (538 p.), pp. 177–178 (in Russian).

[95] G. Roth, P. Kindler. The Spirit of Corporate Law: Core Principles of Corporate Law in Continental Europe. Germany: C.H. Beck, Hart, Nomos, 2013 (190 p.), pp. 1–26; P. Davies (Note 6), pp. 61–71; P. Hommelhoff (Note 1), pp. 585–603.

[96] М.К. Сулейменов. Гражданское право как наука: проблемы теории и практики [M . Suleimenov . ' Civil Law as the Science : Problems of the Theory and Practice ']. – Гражданское право как наука: проблемы истории, теории и практики: Материалы междунар. науч.-практ. конф. в рамках ежегодных цивилистических чтений, посвященной 70-летию М.К. Сулейменова (Алматы, 29-30 сентября 2011 г.) ['Civil Law as the Science: Problems of the History, Theory and Practice: Materials of the International Scientific and Practical Conference' (Almaty, 29–30 September 2011)]. М.К.Сулейменов [M. Suleimenov] (Ed.). Алматы [Almaty], 2012 (800 p.), p. 34 (in Russian).

The following can be considered to be important tasks on the route of development of corporate law in Kazakhstan: Development of the legal framework for use of a joint-stock company as an organisational form to conduct large-scale business and qualified types of business activities (mostly in the fields of finance, banking, and capital markets) could be carried out. The legal framework for formation and activities of JSCs shall be based on imperative legal regulations and companies' professional management allowing a guarantee of transparent corporate governance and efficient control of the financial performance of the company, better protection of shareholders' rights and creditors' interests, effective achievements of business goals of the company, and correlation of its activities with public interests.

2.7 Conclusion.

First section of this chapter has provided background to Kazakhstan and the Kazakhstani legal structure. This chapter attempted to answer the research question regarding how the Kazakhstani legal structure works. Particularly, the Basic Law of Governance and the country's executive, legislative and judicial authorities were examined respectfully and briefly.

Second section is focused on a brief analysis of development of Kazakhstan's legislation in relation to corporate forms for business entities since independence of Kazakhstan. The Civil Code of Kazakhstan establishes the most important provisions for regulation of organisational corporate forms for economic activities. These provisions include the legal definition of the concept of a legal entity, classifications of legal entities and their organisational forms, and general regulation applicable to each separate form of legal entities. All the detailed regulation of each of the allowed organisational forms of commercial legal entities is done on the level of separate legislative acts supported by lower-level regulations.

There are sufficient grounds to conclude that the Kazakhstani legislator acknowledges that:

1) a corporation shall be considered to be a legal entity established by its members participating in formation of the entity's assets and being entitled to participate in the process of managing the entity;

2) the core object of corporate relations includes rights and obligations in connection with foundation of a corporate organisation, formation of its assets, managing its affairs and its representation in the process of its economic activities, and protection of rights of its members and creditors; and

3) such corporate relations are predominantly regulated by civil law.

Nevertheless, since the company and corporate laws in Kazakhstan do not have its institutionalisation in accordance with the best patterns of developed jurisdictions, the need for their further development and improvement seems to be obvious. Certain directions for such development are of a similar nature to those existing in countries with a developed market economy, though others can be identified as Kazakhstan specific issues. The following position seems to have more perspective for implementation:

1) the concepts of a corporation and corporate relations shall be those of "business law", not of legislation of non-commercial organisations, and

2) legislation pertaining to business activities should be separated from laws regulating non-commercial activities. And it can be effective within the legal system of Kazakhstan.

Chapter 3: Corporate Governance and Its Importance

This chapter will mainly concern with two issues. Firstly, it discusses the definition of corporate governance in a more extensive way. It seeks to provide an overview of those reasons that explain why good corporate governance makes sense, with an eye on those elements and indications that reflect its increasing importance and provide clear sight of the reasons that it matters both for business and economic development and the protection of shareholders' rights. It intends also to add a core layer to the literature review and the discussion of the theoretical background of corporate governance and how to measure its legal and institutional significance. One main question is, therefore, addresses: why care about good corporate governance?

As a dynamic flexible notion assuming economic, social, legal and, even and more recently, political dimensions, the term will be defined according to various disciplines. Reference will also be made to the debate over the terminology in the context of Kazakhstan. The other issue to be addressed is the importance of corporate governance in the present age. Discussing the political, social and economic factors which make the topic so vital, the study will show why corporate governance matters for the Republic of Kazakhstan as it does at the international level.

3.1 The Definition of Corporate Governance

There are significant global trends and influences that shape an understanding of corporate law and, whilst corporate law scholars from around the globe can discuss these trends using a common corporate law language, they do so with different local corporate governance dialects. Those dialects signify local history, customs and practices that should not be ignored[97]. One brief example is found

[97] Gugler, K., Mueller, D. and Yurtoglu, B., "The impact of corporate governance on investment returns in developed and developing countries" (2003) The Economic Journal, 511-539.

in Bernard Black's definition of corporate law as including "laws - whether made by legislators, judges or regulators - that primarily govern the relationship between a company's managers and investors". He goes on to exclude, without saying why, "laws that regulate corporate action primarily to benefit others, such as employees, neighbours, and local communities"[98].

Corporate law has become a relatively extensive area of law covering company law principles and extending to corporate finance, takeovers, corporate securities law and corporate insolvency law; it also extends further to cover areas of soft law such as principles of corporate governance[99].

The term "corporate governance" has become increasingly more prominent as a concept in recent years. Its prominence has been reinforced, to a large extent, as a result of the scandals and spectacular failures, which have occurred in several large public companies in almost every country all over the world. However, corporate governance cannot easily be defined and, hence, it is even harder to determine its precise meaning.

Some observers find the concept of corporate governance difficult to define. The differences among the definitions of the concept of corporate governance can be slight or fundamental[100].

Corporate governance has many definitions depending on the perspective; therefore, it may be hard to find a certain definition for the term corporate governance. Moreover, some researchers referring the lack of agreed definition to the multi-facet orientation "due to its multi-facet orientation, a single unanimously agreed upon definition does not exist as yet"[101]. In the view of Parkinson, there is a range of meanings for the term "corporate governance", and it can be divided into two meanings for the present purposes: Firstly, with regard to the "public interest" where the company itself is being governed. This is attributed to the societal attempts to control the behaviour of the company, which can be seen via the state's regulations including employment law, consumer law and environmental law requirements. Secondly, the company-level governance that is described by Parkinson as the one that is familiar to company lawyers[102].

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[98] Roman Tomasi (ed.), *Rutledge handbook of Corporate law*, (Taylor and Francis, London 2017), p.284.

[99]Andenas M. and Wooldridge F., *European Comparative Company Law*, (Cambridge University Press, Cambridge 2009).

[100] Du Plessis Jean Jacques, McConvill James, Bagaric Mirko, *Principles of Contemporary Corporate Governance* (United States of America: Cambridge University Press, 2005), at p.1-3.

[101] S Ahmad and R Omar, 'Basic Corporate Governance Models: A Systematic Review' (2016) 58 International Journal of Law and Management 73.

[102] J. E. Parkinson, 'Corporate governance and the regulation of business behaviour' in S MacLeod (ed), Global Governance and the Quest for Justice, vol 2 (Global Governance and the Quest for Justice, Hart 2006) Page: 1.

Claessens has divided the defintions on offer into two types as well. The first one "concerns itself with a set of behavioural patterns" while the second one "concerns itself with the normative framework"[103]. Alternatively, corporate governance definitions can be divided into a narrow view and broad view in the opinion of Allen. The narrow view is typically used in the UK and the USA, which takes the interests of shareholders as the priority by ensuring the operation of the firm for their interests, with standard mechanisms such as the unitary board of directors and executive compensation. The broad view, which is often stressed by Germany, Japan and France, goes beyond the narrow view as it concerns corporate governance ensuring society's resources are used efficiently[104]. Lowry and Reisberg, for example, think that corporate governance is about alignment; ensuring the alignment between the interests of the managers and the shareholders. The alignment concerns the mechanisms or the legal system of corporate governance[105].

Parkinson has defined corporate governance as "the process of supervision and control (of 'governing') intended to ensure that the company's management acts in accordance with the interests of the shareholders"[106].

The definition of corporate governance differs from country to country and from school to school[107], as each corporate system or theory has its own definition. The corporate governance definitions vary in terms of the accountability that the corporation should discharge, and to whom the accountability should be discharged. Moreover, it can be distinguished from each other depending on which corporate governance model has been adopted by a country's regulator. An effective corporate governance model should be based on universal values, willingness to change, dialogue of stakeholders, cooperation with society and the state, accountability and transparency.

It thus follows that if the corporate governance systems have integrity, then the organization has a higher chance of survival thereby sustaining economic growth. Furthermore, corporate governance is a mechanism used to coordinate the relationships among shareholders. This definition suggests that corporate governance is a mechanism for unifying the interests of the majority of stakeholders in an entity. If this is the case, it also follows that corporate governance ensures its survival by aligning the

[103] S Claessens, 'Corporate Governance and Development' (2006) 21 The World Bank Research Observer 91.

[104] F Allen, 'Corporate Governance in Emerging Economies' (2005) 21 Oxford Review of Economic Policy 164.

[105] J Lowry and A Reisberg, Pettet's Company Law: Company Law & Corporate Finance (4 edn pearson, 2012) P:141.

[106] J. E. Parkinson, Corporate Power and Responsibility : Issues in the Theory of Company Law (Clarendon Press, 1993) Page: 159.

[107] Solomon Jill & Solomon Aris, *Corporate Governance and Accountability,* England, John Wiley & Sons Ltd, 2004, pp: 12-15

different interests in an organization.

A selection of some of the definitions, and the codes from which they are taken:

- Corporate governance is the system by which companies are directed and controlled." Para 2.5, Cadbury Report (UK)

- "Corporate governance describes the legal and factual regulatory framework for managing and supervising a company." Preamble, Berlin Initiative Code (Germany)

- "Corporate governance, in the sense of the set of rules according to which firms are managed and controlled, is the result of norms, traditions and patterns of behaviour developed by each economic and legal system." Para 2. Preda Report (Italy)

- "Corporate governance is used to describe the system of rules and procedures employed in the conduct and control of listed companies." Introduction, Securities Market Recommendations (Portugal)

- "Corporate governance ...involves a set of relationships between a company's management, its board, its shareholders and other stakeholders. Corporate governance also provides the structure through which the objectives of the company are set, and the means of attaching those objectives and monitoring performance are determined" based on OECD Principles.

A broadened OECD definition contains more detail, as it is defined broadly as follows: "refers to the private and public institutions, including laws, regulations and accepted business practices, which together govern the relationship, in a market economy, between corporate managers and entrepreneurs ("corporate insiders") on one hand, and those who invest resources in corporations, on the other"[108].

The Cadbury Committee provides a definition that stressed the importance of the internal control mechanism of company corporate governance, the Board of Directors. The Committee's objectives are to strengthen the unitary board system and to increase its effectiveness[109]. According to the Cadbury Committee:

[108] C P. Oman, Corporate Governance and National Development (OECD Development Centre, 2001).

[109] Cadbury, A., *Report of Committee on the Financial Aspects of Corporate Governance* (1992) Gee, London. para.2.5 p. 40.

> Corporate governance is the system by which companies are directed and controlled. Boards of directors are responsible for the governance of their companies The shareholders' role in governance is to appoint the directors and the auditors and to satis themselves that an appropriate governance structure is in place. The responsibilities of the board include setting the company's strategic aims, providing the leadership to put them into effect, super sing the management of the business and reporting to shareholders on their stewardship. The board's actions are subject to laws, regulations and the shareholders in general meeting.

Furthermore, some researchers take a narrow definition of corporate governance, the corporation is only accountable to its shareholders as in the Cadbury definition and as is evident in the Anglo-American corporate governance systems such as those in the US, the UK, Australia and Canada, to slightly varying degrees. On the other hand, under a wider/broad definition, the corporation is accountable to all its stakeholders, including its employees, creditors, the local communities, and the environment in some countries[110] and to encompass different interests and groups following the approach taken for a long time by Germany and many countries in Continental Europe. This broader definition has become, in recent years, a generally supported idea in many other countries across the globe, including Britain, which was regarded as one of the strongest supporters of the narrow definition.

In today's business world we find many different definitions for the term corporate governance. The two most named and used ones in literature describe the term in a very detailed, and brief way. The first definition comes from the OECD and is defined in the following way:

"Corporate governance is the system by which business corporations are directed and controlled. The corporate governance structure specifies the distribution of rights and responsibilities among different participants in the corporation, such as, the boards, managers, shareholders, and other stakeholders, and spells out the rules and procedures for making decisions on corporate affairs. By doing this, it also provides the structure through which the company objectives are set, and the means of attaining those objectives and monitoring performance"[111].

In 1999, the OECD Guidelines have fixed stated "corporate governance structure should recognise the statutory rights of the interested parties (stakeholders) and encourage active cooperation between

[110] Solomon Jill & Solomon Aris, *Corporate Governance and Accountability*, England, John Wiley & Sons Ltd, 2004, pp: 12-15

[111] Organisation for Economic Co-Operation and Development, OECD Principles of Corporate Governance, 2004, p. 11.

corporations and stakeholders in creating wealth, jobs and the sustainability of financially sound enterprises". Stakeholders are any individuals, groups or organisations that have a significant impact on decision made by a company or are influenced by these decisions. The principles of the OECD are: "Corporate governance framework should proceed from the fact that the recognition of the interests of stakeholders and their contribution to long-term success of the corporation meets its own interests of the corporation".

This definition includes many useful details that lead to an understanding of corporate governance. The OECD definition of corporate governance provides for a set of relationships among the business corporation elements (the board, the management, the shareholders and the stakeholders)[112], in a way that helps each element understand its own rights and obligations. Furthermore, the OECD definition of corporate governance refers to the procedures that must be followed when management makes a decision. Lastly, the OECD definition expressly provides for setting the objectives of the business corporation and for monitoring its performance. This part of the OECD definition is derived from its principles of corporate governance, which are disclosure and transparency.

The second definition is shorter and is briefly compared to the first one. "Corporate governance deals with the ways in which suppliers of finance to corporations assure themselves of getting a return on their investment"[113].

Based on two definitions above, corporate governance can be seen as a set of processes, customs, policies and laws which determine how a corporation is directed and controlled. Furthermore, the corporate governance structure specifies the distribution of rights and responsibilities among different participants in the corporation, such as the board, managers, shareholders and other stakeholders, and spells out the rules and procedures for making decisions on corporate affairs. By doing this, it also provides the structure through which the company objectives are set, and the means of attaining those objectives and monitoring performance.

A company which is dedicated to good corporate governance has well - defined and protected rights for their shareholders, a stable control environment, high transparency and disclosure as well as an empowered board. The company's and the shareholder's interests are perfectly aligned.

[112] OECD Principles of Corporate Governance 2004, at p.11.

[113] Shleifer, A., Vishny, R., "A survey of corporate governance" (1997). 52 The Journal of Finance, 737-783.

According to the IFC, there are several benefits of good corporate governance, which shows the importance of corporate governance not only in the context of the Central Asian countries and developing countries, as these benefits are crucial for the rest of the world as well.

First of all, good corporate governance gives more efficient operations to companies. Secondly, another benefit is facilitating capital access. Thirdly, it will provide more protection against mismanagement. Fourthly, good corporate governance will reduce the risk. Fifthly, it raises the level of transparency and accountability. Sixthly, it will calm the concerns of the stakeholder as it gives companies the tools to respond to their questions.

Moving to corporate governance's benefits for development, there are three benefits from good corporate governance practice as stated by the IFC. First of all by making the access to capital easier, good corporate governance will improve the chances of new investment. Secondly, employment opportunities could also be improved. Lastly, good corporate governance will boost economic growth[114].

As a result, the importance of corporate governance can be seen very clearly in its impact. First of all, corporate governance is key to bringing stability to the markets. Secondly, to promotes the institutions of the country. Thirdly, the mechanisms of corporate governance play a central role in preventing the risks from occurring. Fourthly, it improves investments and reduces the cost of capital. Fifthly, effective corporate governance could be a tool for weakening corruption. Sixthly, it promotes lending and reforms the state's own projects. The seventh point is promoting successful privatisation. Eighth is enhancing the competitiveness for companies and economies. Ninth, good corporate governance builds transparent relationships between the business community and the state. And, finally, it helps to combat poverty[115]. Putting some of the corporate officials' failings under the microscope shows the importance of corporate governance. These actions include reckless board practices, unjustified remuneration for executives and insufficient risk management. It is widely accepted that, the lack of good corporate governance is blamed as an important contributor to the global financial crisis[116].

[114] IFC official website, "Corporate governance overview"

[115] A. Shkolnikov and A. Wilson, "From sustainable companies to sustainable economies" in E. Hontz and A. Shkolnikov (eds.), Corporate governance: the intersection of public and private reform (Centre for international private enterprise, 2009) p. 15.

[116] A. Arora, "The corporate governance failings in financial institutions and directors' legal liability" (2011) 32 Company lawyer 3.

Good governance is about both achieving desired results and achieving them in the right way[117]. It equals "sound development management"[118]. The United Nations published a list of characteristics of good governance. They include[119]:

- Participation: providing all men and women with a voice in decision making;
- Transparency: built on the free flow information;
- Responsiveness: of institutions and processes to stakeholders;
- Consensus orientation: differing interests are mediated to reach a broad consensus on what is in the general interest;
- Equity: all men and women have opportunities to become involved;
- Effectiveness and efficiency: processes and institutions produce results that meet needs while making the best use of resources;
- Accountability: of decision-makers to stakeholders;
- Strategic vision: leaders and the public have a broad and long-term perspective on good governance and human development, along with a sense of what is needed for such development.

It is important to note from the onset that the concept of corporate governance has no set definition of what it means.[120] Many commentators and scholars have attempted to provide a definition of corporate governance yet it is clear that one definition varies over the other[121]. In view of all the varying definitions of corporate governance out there, and for the purpose of this research, it becomes important to focus on a particular approach and adopt an operational definition with supporting major principles. This will enable our discussion have focus and keep in mind what tools we are using to achieve our aims. There is a fear with this realisation that one would be too narrow in their approach and not be able to have a broad and holistic understanding of corporate governance.

Looking to the term in more detail, it has been said that "governance" as a concept comes from the Latin words gubernare and gubernator, which refer, respectively, to steering a ship and to the captain of the ship[122]. Governance as comes from the old French word gouvernance means control and the

[117] Institute on Governance, 2005. "Governance Basics: What is good governance?" Retrieved 10 August 2005.

[118] Dyck. A. "Privatization and corporate governance: Principles, evidence and future challenges". World Bank Research Observer. 2001. 16. p. 59 - 84.

[119] United Nations Development Programme. Governance for Sustainable Human Development. New York: United Nations. 1997.

[120] Jean Jacques du Plessis, James McConvill, Mirko Bagaric, *Principles of Contemporary Corporate Governance* (2005) 1.

[121] Jean Jacques du Plessis, James McConvill, Mirko Bagaric, *Principles of Contemporary Corporate Governance* (2005) 1.

[122] Farrar, J. *Corporate governance in Australia and New Zealand. (*Oxford University Press, Melbourne 2001) p. 3; Solomon, J. and Solomon, A., *Corporate Governance and Accountability (*John Wiley & Sons., Chichester 2004) p. 1.

state of being governed. Accordingly, governance can be referred to as the way in which something is governed and the function of governing. For instance, the governance of the country refers to the ways in which the powers and actions of the legislative assembly, the executives and judicial system are shared and exercised.[123] It can be pointed out, therefore, that corporate governance, in general, refers to the way in which companies are governed and to what purpose.[124] In that sense, corporate governance should be concerned with practices and procedures for trying to ensure that a company is run effectively and its objectives achieved.[125]

Although the idea of corporate governance was known long before the 20th century, its necessity was first realised in 1930s, when people during the industrial revolution and after the Wall Street Crash of 1929 started to notice the deviation between interests of ownership and control. When Berle and Mean published their book "The Modern Corporation and Private Property" in 1932, the discussion about the "divergence of interest between the ownership and the management"[126]. They stated that the owners were distinguished primarily by the fact that they were in a position both to manage an enterprise or delegate its management and to receive any profits or benefits which may accrue. The managers on the other hand were distinguished primarily by the fact that they operated an enterprise, presumably in the interest of the owners.[127] In the following decades after this publication, various authors gave a lot of attention to this issue and tried to establish theories and explanations. Soon corporate governance had become an important determinant of the distribution of economic power.[128] Today, in the time of an international economic crisis, the issue gained tremendous importance again. Bad corporate governance practices are blamed a lot for the failure of companies.

As far as a historical perspective is concerned, corporate governance could be described as a new concept in the modern business world. Some researchers think that corporate governance as a term has appeared during the mid 1970s. However, corporate governance is practically there since the

[123] Coyle, B. *ICSA Professional Development Corporate Governance. (*ICSA Publishing, London 2003) p. 4.

[124] Sternberg, E. *Corporate Governance: Accountability in the Marketplace* (Institute of Economic Affairs, London 2004) p. 27.

[125] Sternberg, E. *Corporate Governance: Accountability in the Marketplace* (Institute of Economic Affairs, London 2004) p. 27.

[126] Shleifer, A., Vishny, R., "A survey of corporate governance" (1997). 52 The Journal of Finance, 737-783.

[127] Berle A. and Means G., *The Modern Corporation and Private Property* (Transaction Publishers, London 2002) 112-113.

[128] Morck, R. and Steier, L. "The Global History of Corporate Governance: An Introduction", NBER Working Paper No. 11062 (2005)

beginning of the nineteenth century when the limited liability corporations has emerged[129]. Initial empirical researches on corporate governance mechanisms were generally concerned with two questions regarding a particular mechanism. First, whether a mechanism ensures that managers are managing the firm activities to increase its performance measured affects the response made by firms towards management turnover and replacement, investment policy, and reactions to outside offers for control.[130] Later, empirical researches went on to examine the legal and evolutionary differences between various countries to understand different kind of investor protection regimes. Some scholars who have conducted research into the historical origins of this concept suggest, however, that the pioneering work of Berle and Means is of significance in the historical development of corporate governance as a concept[131]. In this context, it is said that their contribution has formed, to a large extent, the literature on many issues which are associated with a joint stock company such as corporate control, corporate ownership, corporate finance, the relationship between top management and shareholders and other issues that coloured the thinking on, and discussion about, the joint stock company during the last century. However, the term itself, i.e. corporate governance, was first used as such, it is claimed in 1962 by Richard Fells in his book, The Government of Corporations[132].

During the last decade, policy makers, regulators and market participants around the world have increasingly come to emphasise the need to develop good corporate governance practices. The reason for this is an increasing amount of empirical evidence showing that good corporate governance facilitates corporate access to capital market, improves investor's confidence and contributes to corporate competitiveness. From this perspective, considerable effort at the national and international level has been invested to promote and assist efforts to improve corporate governance[133].

The importance of corporate governance is reflected in many important issues. Implementing the principles of Corporate governance is essential, such as transparency, accountability and responsibility to guarantee the supervision of companies by improving accountability and disclosure and separating ownership from the management. These mechanisms will create a balance between

[129] S Ahmed and R Omar, Basic Corporate Governance Models: A systematic review (2016) 58 International journal of law and management 73.

[130] Denis, D.K. and McConnell, J.J. (2003) "International corporate governance", Journal of Financial and Quantitative Analysis, Vol.38, No. 1, pp.1-36.

[131] La Porta, R., Silanes, F. and Shleifer, A., "Corporate Ownership around the World" (1999) 54 Journal of Finance, p. 474.

[132] Farrar, J., *Corporate governance in Australia and New Zealand.* Oxford University Press, Melbourne 2001 p. 4.

[133] White paper on Corporate governance in Russia. Available at: https://www.oecd.org/corporate/ca/corporategovernanceprinciples/2789982.pdf accessed 18 November 2016.

the companies and the stakeholders. Likewise, ensuring an effective framework will lead to improving both the business environment and companies' efficiency[134].

Additionally, provisions of corporate governance are not only significant for local corporations, but are also essential for withdrawing foreign investment for local to ensure a powerful economy and the quality of a country's institutions of governance.[135] Consequently, there is much discussion about what comprises effective corporate governance and its significance when attracting external investment and ensuring the sustainable development of the country's economy as a whole. In this regard, Classens admits that good corporate governance has a strong association with the performance of corporations as follows: Firstly, good corporate governance encourages external investment in corporations; secondly, it diminishes the cost of capital; and thirdly, it prompts reform, thereby achieving good operational performance. Finally, it would reduce the danger of contagion from financial distress.[136]

A more advanced definition by Shleifer and Vishny sought to be more specific in relation to the provision of finance, considering the protection of outside investors against expropriation of their financial resources by companies. According to them, corporate governance deals with the ways in which suppliers of finance to corporations assure themselves of getting a return on their investment; making sure that managers do not steal the capital they supply or invest it in bad projects; suppliers of finance control managers. So corporate governance deals with the mechanisms that ensure investors in corporations get a return on their investments.[137]

By the 1970s to 1990s, on an ideological level, development of theories like "industrial democracy" and "stakeholder society" exerted a great impact on the definition of corporate governance.[138] Additionally the theory of "firm-specified human capital" fundamentally reformed the theoretical structure of corporate governance in an economic sense.[139] This movement forced corporate governance to shift from the shareholder-oriented model to the stakeholder-oriented model. The stakeholder model which requires corporate governance to promote the interests of stakeholders has

[134] A. Khader, Corporate governance (1st ed. Dar Alfikr Aljamiey, 2012) p. 2-3

[135] Johannesson J., Palona I., Francisco J, Guillen S. and Fock M., "UK, Russia, Kazakhstan and Cyprus governance compared" (2012) 12(2) Corporate Governance: The international journal of business in society, 226-242.

[136] Grais W. and Pellegrini M., "Corporate Governance in Institutions Offering Islamic Financial Services: Issues and Options" (2006), World Bank Policy Research Working Paper, No. 4052, p. 5.

[137] Shleifer, A., Vishny, R., "A survey of corporate governance" (1997). 52 The Journal of Finance, 737-783.

[138] Pettet B. (ed), *Company Law* (2nd ed, Person Education Limited, London 2005) p.58

[139] Williamson O., "*Transaction Cost Economics"*, in Schmalensee R. and Willing R. (ed.), *Handbook of Industrial Organization* (Elsevier Science Pub, Amsterdam 1989) p.135

become a widely accepted international standard.[140] Following this trend, corporate governance is oriented by the "enlightened shareholder value" in the UK. Here, the director is not only responsible to the shareholders, but also to the stakeholders and even to the community as a whole.

During 1980s to 1990s, a series of scandals triggered a widespread rethinking of the corporate governance regime in the UK. These re-assessments of corporate governance were fruitful. A series of reports concerning the regulation of corporate governance were published in this period, of which the Cadbury Report is arguably most influential. The Cadbury Committee's Report defined corporate governance as "the system by which companies are directed and controlled. Boards of directors are responsible for the governance of their companies. The shareholders' role in governance is to appoint the directors and the auditors and to satisfy themselves that an appropriate governance structure is in place"[141]. This report was later designated the "Cadbury Report", which became famous for setting out requirements for corporate governance to be adhered by the UK listed corporations. Apparently, this definition was accepted at the time, but much has changed since, and the nature of corporate governance has taken on additional perspectives. Sir Adrian Cadbury's definition was extended, and he stated that: "corporate governance is concerned with holding the balance between economic and social goals and between individual and communal goals. The governance framework is there to encourage the efficient use of resources and equally to require accountability for the stewardship of those resources. The aim is to align as nearly as possible the interests of individuals, corporations and society"[142].

More importantly for the international context, this definition has been adopted by the OECD in 1998. In its report on corporate governance, the OECD added to the Cadbury's definition that "the corporate governance structure specifies the distribution of rights and responsibilities among different participants in the corporation, such as, the board, managers, shareholders and other stakeholders, and spells out the rules and procedures for making decisions on corporate affairs. By doing this, it also provides the structure through which the company objectives are set and the means of attaining those objectives and monitoring performance"[143].

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[140] OECD Principles of Corporate Governance (April 2004). Available at: http://www.oecd.org/corporate/ca/corporategovernanceprinciples/31557724.pdf Accessed 20 July 2016.

[141] Cadbury, A., *Report of Committee on the Financial Aspects of Corporate Governance* (1992) Gee, London. para.2.5 p. 40.

[142] Iskander M. and Chamlou N., Corporate Governance: A Framework for Implementation (1999), The World Bank, p.6

[143] OECD Principles of Corporate Governance, Paris, 1999. Available at: www.oecd.org accessed 25 June 2016; Dignam, A., and Galanis, M., "Governing the World: The Development of the OECD's Corporate Governance Principles", European Business Law Review, 10(9/10), at pp.396-407.

The pioneers of corporate governance, the economic scientists Monks and Minow defined corporate governance in their book as the relationship between various participants (chief executive officer, management, shareholders, and employees), believed to be crucial in determining the direction and performance of corporations[144]. This definition also focuses on the relationship between primary corporate governance participants, like (1) the shareholders, (2) the management, and (3) the Board of Directors. However, corporate governance has additional aspects that determine the performance of the corporation, such as financial and social aspects, which have been omitted in this definition.

Gabrielle O'Donavan gave the following definition for corporate governance, he stated that: Corporate governance is an 'internal system encompassing policies, people and processes which serves the need of shareholders and other stakeholders, by directing and controlling management activities with good business savvy, objectivity, accountability and integrity.[145]

He gave the above definition from looking at how the objectives of the stakeholders can be achieved through internal and external activities, control for the corporation is provided through ensuring that there is accountability for each activity within the corporation in the interest of shareholders.

Some researchers included legal, cultural and environmental factors in their definitions. For instance, Blair believed that it is more convenient to approach corporate governance issues with an understanding of a whole range of aspects which come from various subjects such as company law, corporate finance, and organisational theory rather than treating each subject separately and described corporate governance as:

> covering the entire set of legal, cultural and institutional arrangements that determine what publicly trading corporations can do, who controls them, how that control is exercised, and how the risks and returns from the activities they undertake are to be allocated.[146]

This definition describes corporate governance in reference to publicly trading corporations. However, it is known that corporate governance determines the legal, cultural and institutional arrangements not only of the publicly trading corporations, but also of non-public corporations, including closed corporations and state-owned corporations.

Another definition by scientists Kose and Lemma stated that corporate governance deals with

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[144] Monks R. and Minow N., *Corporate Governance*, Blackwell Publishing, Oxford, 2004, p. 20

[145] O'Donovan G., "A Board culture of Corporate Governance (2003) 6(2) Corporate Governance International Journal, p.__

[146] Blair M., *Ownership and Control: Rethinking Corporate Governance for the Twenty-First Century* (The Brookings Institution Press, London 1995) p. 388.

mechanisms by which the stakeholders of a corporation exercise control over corporate insiders and management in such a way that their interests are protected[147]. Unquestionably, corporate governance is a mechanism, and this definition concerns the external mechanism of corporate governance. However, we ought not to forget that there are additional internal mechanisms that imply that control and management lie within the corporation.

Weimer and Pape argue that their definition allows them to approach of governance issues from different theoretical angles, such as economical, sociological and psychological[148].

According to Ticker, corporate governance in terms of the role of governance is not concerned with the business of running the company, but with providing overall directions to the enterprises. It functions by overseeing and controlling the executive actions of management, also satisfying legitimate expectations for accountability and regulation according to the interests beyond the corporate boundaries; that is to say, all companies need governing as well as managing[149]. This definition describes the term to some extent, by demonstrating the difference between corporate governance and running a company business, which is predominantly expressed in relation to corporate management, emphasising oversight and control over the company's management while also directing the enterprise.

Solomon and Solomon described corporate governance as a system of checks and balances, both internally and externally, that are applied to companies to ensure that they discharge their accountability to all their stakeholders and act in a socially responsible way in all areas of their business[150]. The definition seems to cover all aspects, however it has to be taken into account the fact that in nowadays business environment not all companies are accountable to their stakeholders and not all act in a socially responsible way, especially those conducting their business activities in developing and transitional countries. For the purposes of the present study, good corporate governance describes a system that assures that all those necessary checks and balances are in place, in an effort to achieve business development and protect shareholders' rights. Key aspects of such system of checks and balances are considered to be first, the existence of well-functioning laws, regulations, and business practices to govern and promote the corporate affairs, and second the proper

[147] Kose J. and Lemma S., *Corporate Governance and Board Effectivenes (* Journal of Banking and Finance, 1998) p. 372.

[148] Weimer, J and Pape, J. *Taxonomy of systems of corporate governance*. (Corporate governance, 1999 N7). pp. 152-166.

[149] Yavasi M., A *Socio-Legal and Economic Introduction to Corporate Governance Problems in the E.U* (Company Lawyer, 2001 N22) p. 162.

[150] Solomon J. and Solomon A., *Corporate Governance and Accountability (*John Wiley& Sons, Chichester 2004), p. 40.

implementation and compliance of such rules.

Another scholar, Rossouw, stated that the term "corporate governance" is a system that certifies that the board of directors and management of corporations obtain a balance with the interests of their stakeholders[151].

Groot concurred that: "corporate governance is the regulation of the corporate form that by re-thinking corporate law with the purpose of guaranteeing the enhancement of shareholder value in the long term-addresses the roles of the corporation's centralised administration (unitary or dual board and the managers) and of the corporation's shareholders, by specifically taking into account elements like integrity, transparency, proper supervision and accountability"[152].

The World Bank looked at corporate governance from the stakeholders' interest side. According to World Bank, Corporate governance can be defined as: "The blend of law, regulation and appropriate voluntary sector practices which enable the corporation to attract financial and human capital, perform efficiently and thereby perpetuate itself by generating long-term value for its shareholders while respecting the interest of stakeholders and society as whole"[153].

Broadly speaking, corporate governance can be seen as a dynamic flexible notion assuming economic, social, legal and, even and more recently, political dimensions. Thus, there are many different definitions of corporate governance and that there is no consensus about what it exactly means. As they view it from various perspectives, academics, whether, for example, economists or social scientists, have envisaged corporate governance as a process where problems resulting from the separation of ownership and control can effectively be alleviated.[154] From this perspective, corporate governance would focus on:

a) the internal structure and rules of the board of directors;

b) the creation of independent audit committees;

c) the rules for disclosure of information to shareholders and creditors; and,

[151] Rossouw G., "Balancing Corporate and Social Interests: Corporate Governance Theory and Practice" (2008) 3 African Journal of Business Ethics, p. 29.

[152] C. de Groot C., *Corporate Governance as a Limited Legal Concept (*Wolters Kluwer, New York 2009) p.18.

[153] World Bank Online (2001). Corporate Governance. http://www.worldbank.org accessed 12 June 2016.

[154] Sullivan J., *Building Sound Corporate Governance for Global Competitiveness (*The Colombian Confederation of Chambers of Commerce, Colombia 2000) p.4.

d) the control of management[155].

Corporate managers, investors, policy makers and lawyers tend to favour a narrower definition[156]. They envisage corporate governance as the system of rules and institutions that determine the control and direction of the corporation as well as define relations among the corporation's primary participants[157]. As is the case in the Cadbury definition, they focus exclusively on the internal structure and operation of the corporate decision-making processes.

Thus, the American literature sees "corporate governance" as involving a narrow consideration of the relationship between corporate capital providers and top managers as mediated by a board of directors[158]. Such a narrow view of the role played by corporate governance has recently been questioned by academics, as it confines corporate governance to be the relationship between the firm and its capital providers[159]. In this regard, it has become well understood that corporate governance also implies how the various constituencies define the business, and how they serve, and are served by the corporation[160]. This means that all relationships a company has should fall within the ambit of a relevant definition of corporate governance.

In this respect, Freeman, among others, provides a broader definition of corporate governance that recognises the relationships between the company and the community and goes beyond the notion that profit maximisation is the only relevant objective of the enterprise[161]. They argue that good corporate governance consists of a system of structuring, operating and controlling a company so as to fulfil the long - term strategic goals of the owners, i.e. shareholders, as well as to consider, implicitly or explicitly, the interests of other relevant group of people who have some kind of relationship with the company, be it employee, creditor, customer or, in large measure, the

[155] Levanova, L, "The Definition of the System of Corporate Governance and Its Forms" (2014) Journal of Economics, Governance and Law. Saratov University Publishing, 308-314.

[156] Salacuse, J., "Corporate Governance in the New Century" (2004) 25(3) Company Lawyer. p.70.

[157] Salacuse, J., "Corporate Governance in the New Century" (2004) 25(3) Company Lawyer. p.71.

[158] Bradley M., Schipani C., Sundaram A. and Walsh J. "The Purposes and Accountability of the Corporation in Contemporary Society: Corporate Governance at a Crossroads" (2000) 62(3) Law and Contemporary problems, pp.10-85.

[159] Shleifer, A., Vishny, R., "A survey of corporate governance" (1997). 52 The Journal of Finance, 737-783.

[160] Berghe, L. and Carchon, S., "Redefining the Role and Content of Corporate Governance from the Perspective of Business in Society and Corporate Social Responsibility", in P. Cornelius and B. Kogut, (eds.), *Corporate Governance and Capital Flows in a Global Economy*, Oxford University Press, New York; Oxford 2003: at p.481.

[161] Freeman, R. and McVea, J., "A Stakeholder Approach to Strategic Management". (2001) *Darden Business School Working Paper No. 01-02.*

community as a whole[162]. In essence, corporate governance under this broader view is about improving the company's relationships with shareholders, as owners of the company and with stakeholders who are affected somehow by decisions taken by the internal institutions of such companies[163].

Moreover, there has been a growing perception in the last decade that corporate governance should also concern the ethics, values and morals of the firm and its directors. The issues of environment, atmospheric pollution, the demands of consumer lobbyists, and so on, must form part of corporate culture, corporate decision-making and yet they must be taken into account by firms in practice[164].

More importantly in our consideration of the notion of corporate governance from a legal perspective is that there should be a distinction which has to be made between the concept of corporate governance and its scope, on the one hand, and the traditional corporate law and its appropriate issues on the other. This is because some researchers might be confused about these two different areas of the literature and therefore prone to using the two terms interchangeably. Although these two terms are discussed in the corporate context, they have been intended to refer to different meanings. From a legal point of view, while corporate law should be concerned with "inter alia" (the regulation of the management of the corporation or the relationships between shareholders and board of directors or top management), corporate governance as a clear legal concept should be viewed as "a special profile of a whole set of legal tensions and relationships that find their focus point within the company"[165].

'Corporate governance means different things to different people[166]. It can be referred to as "a system"[167], "a set of provisions"[168], "a set of methods"[169], "control of corporations and systems of

[162] Dean, J., "Stakeholding and Company Law" (2001) 22 Company Lawyer, p.70.

[163] Ireland, P., "Property and Contract in Contemporary Corporate Theory" (2003) 23 The Journal of the Society of Legal Studies, pp. 475-82.

[164] Sheikh, S. and Rees, W., *Corporate Governance and Corporate Control. (*Cavendish Publishing, London 1995) p.4.

[165] Visentini, G., "Compatibility and Competition between European and American Corporate Governance: Which Model of Capitalism?" (1998) 23 Brooklyn Journal of International Law, p.834.

[166] Kendall, N. and Kendall, A. Real-World corporate governance: a programme for profit-enhancing stewardship (1998). London: Pitman Publishing.

[167] Cadbury Committee, 1992. Report of the Committee on the Financial aspects of corporate governance. London: Gee and Co.

[168] Scott, K. 1998. "The role of corporate governance in South Korean Economic Reform". Journal of Applied Corporate Finance 10: pp.8-15.

[169] Shleifer, A. and Vishnu, R. A survey of corporate governance (1997). The Journal of Finance 52; pp.737-783.

accountability"[170], or simply "the rules of the game"[171]. In addition, some think that corporate governance is an "end" of organisational operation[172], while others assert that it is a "means" rather than an "end"[173].

According to Visentini, corporate governance should thus be concerned not only with the regulation of the company but also with all other areas of law affecting corporate action as well as the exercise of power within the institutions of the firm[174].

Crucial to an understanding of the scope of the term "corporate governance" is the recognition that it includes a range of various themes: economic prosperity; legal and social accountability, internal constituencies as well as external regulatory bodies[175]. Therefore, in order to understand corporate governance in both its theoretical and practical senses, the importance has to be noted of the internal mechanisms and patterns of communications within the firm, on the one hand, and the external factors including markets that have fatal influence on the firm's operations, on the other hand[176].

Hence, corporate governance may be looked on as an umbrella term encompassing specific issues arising from the interactive communications between senior management personnel, shareholders, board of directors, other constituencies, and society at large. As it apparent, most of definitions are formulated with the intent to balance the interests of all corporate participants, including external stakeholders. Hence, it can agreed that corporate governance should create a system within a corporation that facilitate the interests of all stakeholders, both internal and external. It deals with the exercise of power over the directions of the enterprise, the supervision of executive actions, the directors' acceptance of a duty to be accountable to the corporate constituencies and to be subject to the rules and laws that guide the corporate activities.

Within the framework of this research, as carried out in the field of law, we made an attempt to define corporate governance from legal perspective. Thus, for the purpose of this research, the following definition of corporate governance defines it as the process by which it is possible to ensure

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[170] Farrar, J. Corporate governance in Australia and New Zealand (2001). Australia: Oxford University Press.

[171] Gan, C, Lee, G.W. and Hoon, A. Poor corporate governance, Undisciplined market and cronyism in the 1997 Asian crisis (2001). Lincoln: N.Z.: Commerce Division, Lincoln University.

[172] Kilmister, T. Brilliant boards: the Art of governance (1989). Wellington, N.Z.: NFP Press.

[173] Smerdon, R. Practical guide to corporate governance (1998). London: Sweet & Maxwell.

[174] Visentini, G., "Compatibility and Competition between European and American Corporate Governance: Which Model of Capitalism?" (1998) 23 Brooklyn Journal of International Law, p.835.

[175] Proctor G. and Miles L., *Corporate governance (*Cavendish, London 2002) p.3.

[176] Proctor G. and Miles L., *Corporate governance (*Cavendish, London 2002) p.4.

compliance with norms, restrictions and standards that regulate interrelations between a corporation and its external environment, as well as among the principal corporate participants operating inside the corporation (initially between shareholders and management) in order to protect their legitimate rights and interests and to optimally resolve problems concerning separation of control (ownership) from management.

For the purposes of the present study, a broader definition will be adopted as to what we mean by a system of corporate governance. Such a system would consist of: "those formal and informal institutions, laws, values, and rules that generate the menu of legal and organisational forms available in a country and which in turn determine the distribution of power; how ownership is assigned, managerial decisions are made and monitored, information is audited and released, and profits and benefits allocated and distributed"[177].

The merits of such a definition stems from its inclusiveness. This makes it particularly suited to the purposes of this study, which seeks to discuss a wide range of issues associated with the governing of companies in a setting where informal factors are as important as formal ones.

In turn, when considering a suitable definition of corporate governance, the policymaker, a legislator, or a practitioner must first give a consideration to the conditions of each country from many aspects, including the country's economy, its legal framework, and its society. In light of it is important to note that the corporate governance code (2005) is a newly enacted code within the auspices of the Kazakhstani corporate and capital market system. It was thought that this code was promulgated by the Board of Directors of "Sovereign Wealth Fund Samruk-Kazyna JSC in line with other international corporate and capital market standards. Notwithstanding, the Samruk-Kazyna JSC Board of Directors was not concerned with the significance of the definition contained for corporate governance. Consequently, the code was transplanted inside Kazakhstani corporate and capital market system in accordance with widespread international corporate governance standards, but in the absence of a comprehensive definition. It is to be recalled that corporate governance as a terminology is a relatively recent phenomenon, accordingly numerous scholars are of the opinion that many institutions and individuals who are not well familiar with the terminology itself.

As mentioned above, it may be difficult to find a definition that can describe all aspects of Corporate governance, as the different perspectives cause variations among the definitions[178]. However, generally speaking, all definitions agree on main themes: control and supervision of the company

[177] Cornelius P. and Kogut, B., *Corporate Governance and Capital Flows in a Global Economy (*Oxford University Press, New York 2003) pp.2-3.

[178] R. Monks and N. Minow, Corporate governance (3rd ed. Malden, 2004) p 1.

and/or of management as stated by Law. The reason for not finding an agreement upon one corporate governance definition is because of its multi-facet orientation[179]. However, the OECD definition may be the most accepted corporate governance definition.

3.2 The Importance of Corporate Governance: The International Context.

3.2.1 General Overview

Few topics are more central to the international and development agenda than that of corporate governance. This can be seen in the media, especially the press, in the scandals that come to light and in the heated debate that engages the business community. However, one can note from the outset that the importance of corporate governance stems initially from the pivotal role played by the company, particularly in public corporations where large numbers of people are affected, in any society whether from a communitarian world or, conversely, an individualistic one. Companies are created to serve contrasting, and in many cases conflicting, interests with the ultimate objective of boosting people's prosperity and satisfaction.

A series of events over the last two decades have placed corporate governance issues as a top concern for both the international business community and the international financial institutions[180]. These events have occurred around the world and impacted on developed countries as well as developing ones. The Asian financial crisis of the late 1990s, as a staggering example in this regard, has driven the process worldwide much further. It has been said that there are several lessons that can be learnt out of such crises. One of these lessons is associated with the suggestion that ineffective corporate governance procedures can create huge potential liabilities for both individual firms and, more importantly, for societies[181]. In that sense, according to Klapper and Love, corporate governance failures can potentially be as devastating as any other large economic shock[182].

More specifically, the Asian crisis has revealed widespread deficiencies in monitoring mechanisms as well as in the ability of regulators to supervise and control the financial institutions conducting

[179] S. Ahmed and R. Omar, "Basic corporate governance models: a systematic review" (2016) 58 International journal of law and management. p 73.
[180] Monks A.G. & Minow Nell, *Corporate Governance, 4th Edition* (England: John Wiley & Sons Ltd, 2008).

[181] McGee R. (ed.), *Corporate Governance in Developing Economies (*Springer Science + Business Media, LLC 2009). pp.143-147.

[182] Klapper, L. and Love I. "Corporate Governance, Investor Protection and Performance in Emerging Markets" (2004) 10(5) Journal of Corporate Finance, pp.703-728 .

their businesses in that region[183]. It has also shown that leaving firms to be monitored only by the market might have been a fundamental flaw. Certainly, without the intervention of government as an essential part of the society and whose pivotal role is to set up a sound framework for a market economy by which all economic participants are governed through binding rules and structures, anarchy will be the consequence[184].

Many organisations and national development agencies such as the OECD and the World Bank, have realised the central importance of corporate governance and thus contributed to this area by either launching or expanding programmes with the dawn of the 21st century. In this regard, the OECD Principles, the first set of internationally acceptable standards of corporate governance, have become a reference point used by both developed and developing countries for self-assessment, and for issuing as well as developing codes of best practice in corporate governance. They represent one of the most substantial efforts made to ensure that proper importance, recognition and appreciation are given to corporate governance.

The OECD, as the international organisation that has extensively reviewed and examined corporate governance issues, has raised awareness of the importance of corporate governance for public companies and the economy at large[185]. In this context, the OECD Corporate Governance Principles stress the importance for corporations to apply basic principles of good corporate governance.

The vital importance of corporate governance is more obvious in the context of large public companies where the separation of ownership from management is much wider than in small private companies or in companies known as closely-held corporations[186]. In the case of public companies, there are also concerns about the raising of capital on the stock markets where the institutional investors hold vast portfolios of shares and other types of investments[187]. From the point of view of investors, these investments should be put in a safe place so that, if there is any doubt about the integrity or the intentions of the individuals in charge of the company, often the directors, the value of the company's shares may be affected and thus the company might face financial difficulties in

[183] Iu J. and Batten J., "The Implementation of OECD Corporate Governance Principles In Post-Crisis Asia" (2001) 4 The Journal of Corporate Citizenship, p.48.

[184] Mallin C., *Corporate Governance (*Oxford University Press, London 2007) pp.___

[185] OECD (2004), "OECD Principles of Corporate Governace"

[186] CIPE (Centre for International Private Enterprise) (2002), Instituting Corporate Governance in Developing, Emerging and Transitional Economies: A Handbook, CIPE, Washington D.C.

[187] Klapper L. and Love I., "Corporate Governance, Investor Protection and Performance in Emerging Markets" (2004) 10(5) Journal of Corporate Finance, pp.703-728 .

raising any new capital if it sought to do so[188].

Furthermore, it has been noted that the ability of countries to attract foreign or inward investments is, in many cases, affected by their systems of corporate governance and the degree to which corporate directors are compelled to respect the legal rights of creditors, customers, employees and, more importantly, minority shareholders[189]. It is well-known that there is a high degree of sensitivity in the capital markets that those involved in making decisions relating to financial movements tend to look vigilantly at a variety of factors such as financial policy, legal system, business culture, and so on, in the targeted economy. In other words, it can be said with some confidence that the most crucial factors influencing foreign enterprises, and decisions made by multinational companies in particular, to invest in any country, or to list their equity in any stock market, are that it has a system where different interests connected with a corporation are well balanced and firmly preserved.

In addition, and as mentioned above, many commentators have noted that the impetus for the development of codes of best practice and strict regulatory regimes has come largely from scandals and financial setbacks, where evidence of bad, or improper structures of, corporate governance has emerged, and where company share prices and the stock markets generally have suffered as a consequence[190].

Kazakhstan law provides for only two types of shares: common shares and preferred shares. Article 12.4 of the JSC Law (2003) provides that shares of each type shall provide equal rights to all holders of such shares unless otherwise provided by the JSC Law. Currently the JSC Law does not provide for different rights to holders of the shares of the same type. Article 13.4.1 provides that if the general meeting of shareholders considers a decision which can affect the rights of the holders of preferred shares, then the preferred shareholders can participate in such general meeting and the decision is deemed adopted only if at least two thirds of the total number of the issued (placed) preferred shares voted in favour of the decision. In addition, the basic rights of shareholders are provided for by Article 14 of the JSC Law and pursuant to this article they cannot be limited. Additional rights can be established by the charter and the charter can be amended only by the general meeting of shareholders.

Moreover, three phenomenal developments, which took place in the last century and which are still affecting economies worldwide, are of significance to understand the rapidly growing tendency amongst corporate practitioners, lawyers, and policy makers to address corporate governance. The

[188] R.W. McGee (ed.), *Corporate Governance in Developing Economies*, Springer Science + Business Media, LLC (2009). p.143-147

[189] Salacuse, J.: 2004, "Corporate Governance in the New Century." *Company Lawyer, Volume* 25 (3): at p. 70.

[190] Salacuse, J.: 2004, "Corporate Governance in the New Century." *Company Lawyer, Volume* 25 (3): at p. 70.

liberalisation of trade and investments policies, the significant scale of the privatisation of state-owned corporations and, more importantly, the globalisation phenomenon are all regarded as economic and political drivers which have led, inter alia, to the subject of corporate governance being top on the agenda of many governments all over the world[191]. Those economic, political and, to some extent, cultural drivers are thought to be responsible for the interminable debate among scholars as well as policy makers regarding the effectiveness of the political and social reforming programmes that have spread all over the world and which focus on the large corporations, since these are seen as essential to any economy. Therefore, the focus here will be on the last-mentioned phenomenon as it encompasses, and actually derives from, the other two. Besides which, it is more relevant to the context of corporate governance as a concept that has gained prominence as a consequence of globalisation.

Currently, in order to support corporate governance worldwide, it is necessary to develop principles of corporate governance, which can provide the key to avoiding risk and guaranteeing the benefits of all stakeholders' groups (including shareholders, employees, lenders, customers, the environment and local communities) against mismanagement.[192] Corporate governance provisions have described the importance of the connection between shareholders' and other stakeholders' groups, the board of directors and the top management of corporations. As a result, the corporation regime has produced a variety of considerations for regulators, relating to its effectiveness for employees, the environment, local communities and shareholders.[193]

3.2.2 Corporate Governance in an Era of Globalisation

The globalisation phenomenon in particular has heightened the current importance of corporate governance from many perspectives. This is because it has serious implications not only in the field of economics but also in the political and socio-cultural arenas[194].

It is now understood that international economics has had to address a diversity of expected and unexpected circumstances, one of which is the attendant pressure exerted by globalisation. It is becoming increasingly difficult to ignore the effect of globalisation on individual economies and

[191] Oman, C., 2001, "Corporate Governance and National Development", in *Corporate Governance in Developing Countries and* Emerging Economies: OECD Development Centre: at pp.19-20.

[192] Robert Monks and Nell Minow, Corporate Governance, Blackwell Publishing, Oxford, 2004, p . 2.

[193] Robert Monks and Nell Minow, Corporate Governance, Blackwell Publishing, Oxford, 2004, p . 2.

[194] Clarke, T. (2004). Theories of Corporate Governance: The Philosophic Foundations of Corporate Governance. Bell & Bain Ltd.

financial markets, since globalisation has placed many developed and developing countries under pressure, including Kazakhstan. The process of globalisation, especially the global integration of financial markets, has allegedly generated pressure that has encouraged the national systems of corporate governance to converge.[195] As a result, the pressure to open up the market to transparency in a company's operations has necessitated good corporate governance practices.[196] For this reason, these countries have been trying to implement good corporate governance practices, because they desire their markets to be efficient and viable. Developing countries, in particular, have struggled with the propaganda generated by globalisation, which has influenced their restructuring plans, and consequently such countries have had to alter their economies to make them more attractive prospects for investment.[197]

Globalisation has turned the world into a "small village" where interaction between various groups of people and organisations becomes much easier and where the successes or, conversely, failures, of some participants in that interaction might have constructive, or harmful, effects on others. Although consideration of this phenomenon goes beyond the parameters of the thesis, it is worth mentioning some of the common aspects of globalisation that are pertinent to our current explanation. Of particular interest is the impact of globalisation on developing countries where calls for structural reforms of their systems of corporate governance are occurring in the wake of processes of fundamental change across the world[198]. Kazakhstan, as a developing country, which has experienced some fundamental changes in various areas of its development can be viewed as a conspicuous example of how globalisation can lead some countries to improve their formal as well as informal structures to address accelerating challenges[199].

More importantly in terms of the impact that globalisation could have is related to economic factors. The economic factors, which have been observed in the last decade or so as a consequence of this phenomenon would contain:

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[195] Mary O'Sullivan, 'Corporate Governance and Globalisation', Annals of the American Academy of Political and Social Science, 2000, 750, Dimensions of Globalisation, p. 154.

[196] Kami Rwegasira, 'Corporate Governance in Emerging Capital Markets: Whither Africa', Corporate Governance, 2000, Volume 8(3), p.259.

[197] Kami Rwegasira, 'Corporate Governance in Emerging Capital Markets: Whither Africa', Corporate Governance, 2000, Volume 8(3), p.258.

[198] Reed D.: 2002, "Corporate Governance Reforms in Developing Countries." *Journal of Business Ethics. Volume* 37. p.231; Waltz, K.: 1999, "Globalisation and Governance." *Political Science and Politics Volume* 32. p. 695.

[199] Avdasheva, S. Public corporations: is it possible to assess the corporate governance Txt. / S. Avdasheva, Yu Sgshachev // Problems of Economics. 2009. - № 6. - p.99-105.

a) Capital mobility, i.e., free movement of capital across the globe;

b) Global waves of liberalisation of markets;

c) Appearance of regional economic integrations and international organisations such as World Trade Organisation; and

d) The growth and prominence of global and multinational corporations, and worldwide transport of goods and services[200].

As to the technological factors, it can be seen by looking at the profound progress in transportation networks with a tremendous acceleration and cost reduction in transportation, and the information revolution as a result of the increasing use of the Internet. As for the latter, it has been said that because of the advances in communication technology, detailed information about individual companies and about their national governance structures is accessible via the Internet, whereby public scrutiny of business can be more intense[201].

In terms of the socio-cultural factors, globalisation is thought to be the cause of a massive increase in cross border relations and of cultural interaction between miscellaneous cultures. We have all witnessed, at least in the corporate arena, as will be considered later, how the social underpinnings prevailing in Continental Europe, especially the consideration for stakeholder interests in Germany, have been partially incorporated in the UK as a result of the EC Directives, especially in the area of employees rights against their employers, i.e. companies[202].

As far as the effect of globalisation on corporate governance systems is concerned, it has been noted that this phenomenon has offered opportunities to national systems all over the world to open their financial and commercial markets to cross-border movements of capital as well as workforce[203]. This opening up of markets to foreign movements and international competition would likely lead such markets to adapt to the new strategies and corporate structures to which the new movers have been

[200] Palepu K., T. Khanna, and J. Kogan, 2002. "Globalisation and Similarities in Corporate Governance: A Cross-Country Analysis". Harvard NOM Working Paper No. 02-31; Strategy Unit Working Paper No. 02-041; Harvard Business School Working Paper No. 02-041. available at: http://ssrn.com/abstract=323621 [1/09/2016]

[201]Palepu K., T. Khanna, and J. Kogan, 2002. "Globalisation and Similarities in Corporate

Governance: A Cross-Country Analysis". Harvard NOM Working Paper No. 02-31; Strategy Unit Working Paper No. 02-041; Harvard Business School Working Paper No. 02-041. available at: http://ssrn.com/abstract=323621 [1/09/2016]

[202] Martell, L. 2004, National Differences and the Rethinking of Social Democracy: Third Ways In Europe, In *Good Governance,* Democratic *Societies and Globalisation*, edited by S. Munshi and B. Abraham, New Delhi: Sage Publications Inc: at pp.92-93.

[203] Visentini, G.: 1998, "Compatibility and Competition between European and American Corporate Governance: Which Model of Capitalism?" *Brooklyn Journal of International Law. Volume* 23: at p.845.

subject. This can be done through amending, where needed, the legal rules whereby the law becomes seen as a facilitator for, rather than a hindrance to, these movements[204].

More specific to the context of corporate governance and national corporate laws is the current debate about the convergence of legal systems to a model that best fits or, more accurately, satisfies the various needs of the global markets. In practice, expecting globalisation, as a powerful economic and political driver, to lead to the establishment of a harmonised set of rules and regulations across countries seems to be somewhat illusory. This might be true even though the latest efforts made by the international and supranational organisations as well as the tendency of multinational companies to list their equities in foreign stock markets have actually narrowed the gap between the differing systems[205]. Having said that, it should be emphasised that if the political will of any given country goes along with the idea that the integration of domestic corporate practices with the best standards exercised by large corporations in the advanced world, this does not lead necessarily to the outcomes expected by policy makers, when seeking to emulate others' experiences.

3.3 Corporate Governance Mechanisms

This part considers the mechanisms of corporate governance by reviewing corporate governance models and the Cadbury Report and the reports which followed it. The principles of corporate governance (the role of shareholders, the role of boards of directors, disclosure and transparency, the other stakeholders, and non-executive members of the board) provided by the OECD, will be discussed in detail. In addition, an attempt is also made to incorporate some of the more recent empirical studies published in the area, in both developed and developing countries.

The legal system ensures that other mechanisms are protected through legal recourse. La Porta et al examined legal rules covering protection of corporate shareholders and creditors, the origin of these rules, and quality of their enforcement in different countries. They found that common law countries generally have the best and French civil law countries located in the middle. They also found that concentration of ownership of shares in the latest public companies is negatively related to investor protections, consistent with their hypothesis that small, diversified shareholders are unlikely to be important in countries that fail to protect their rights. They further hypothesis that the legal system is a fundamentally important corporate governance mechanism. In particular, they argue that the extent

[204] Visentini, G.: 1998, "Compatibility and Competition between European and American Corporate Governance: Which Model of Capitalism?" *Brooklyn Journal of International Law. Volume* 23: at p.845.

[205] Hansmann, H. and Kraakman, R.: 2004. "The End of History for Corporate Law", in J. Gordon and M. Roe, (eds.), *Convergence and Persistence in Corporate Governance*, Cambridge University Press, Cambridge: at p.18.

to which a county's laws protect investor rights and extent to which those laws are enforced and the most basic determinants of the ways in which corporate finance and corporate governance evolve in that country[206]. La Porta et al presented a model of the effects of legal protection of minority shareholders and cash-flow ownership by a controlling shareholder on the valuation of firms and found evidence of higher valuation of firms in countries with better protection of minority shareholders and in firms with higher cash-flow ownership by the controlling shareholder[207].

Today, in the world corporate governance systems are categorised into either the Anglo – American or European continental approach. The models are classified based on the dominant pattern of corporate ownership. The Anglo American model is associated with a system where the finance and corporate governance of the company is controlled by managers on behalf of many shareholders who are spread across who own the company[208]. This means that a large percentage of long term finance is shareholder's equity and not debt like in Germany and Japan[209]. The Anglo American is also called the market based system and it is commonly used in UK and USA. According to Dallas the major corporate governance problem in these systems is characterised by challenges of dispersed ownership and control, lack of board effectiveness and independence, weak internal control and risk management, excessive compensation and short termism arising from the capital market scrutiny[210]. Corporate governance under Anglo American models such as the Cadbury Report and the Sarbanes Oxley Act view the primary objective of corporate governance as promoting accountability and transparency so as to achieve enabling maximisation of wealth creation. Despite sharing similar corporate governance models, compliance under SOX is compulsory whilst it is voluntary in many other jurisdictions. This further demonstrates that, even though there can be similarities in corporate governance patterns of countries, a country specific context approach is required in order to facilitate the development of good corporate governance systems.

The insider system is the other category through which corporate governance characteristics can be understood. The insider corporate governance system is one where the company's finance is funded by insiders and it is characterized by concentrated ownership unlike if it is financed by the outsider

[206] La Porta, R., Lopez-de-Silanes, F., Shleifer, A. and Vishny, R. (1998) "Law and finance", Journal of Political Economy, Vol. 106, No. 6, pp.1113-1155.

[207] La Porta, R., Lopez-de-Silanes, F., Shleifer, A. and Vishny, R. (2002) "Investor protection and corporate valuation", Journal of Finance, Vol. 57, No. 3, pp.1147-1170

[208] Solomon, J. 2011. Corporate governance and Accountability 3rd Edition. West Sussex. John Wiley & Sons.

[209] Rwegasira, K. 2000. Corporate Governance in Emerging Capital Markets: whither Africa?. *Corporate Governance*, 8(3): 258-268

[210] Dallas. G.S 2004. Governance and risk: An analytical handbook for investor, managers, directors and stakeholder. New York: McGraw-Hill

then it will have dispersed ownership. The insider corporate governance systems are also known as continental European corporate governance systems. This model of corporate governance is commonly used in European countries that have civil law origin like Sweden, Netherlands and Switzerland. The European continental model is characterized by concentrated ownership, pyramidal ownership, industrial group and bank holding and this plays an active role in controlling and monitoring management. The concentrated systems are also characterized by bank based corporate governance systems. He explicates that, banks are the main sources that provides long term finances and as a result, banks take the responsibility of representing the interest of the other entire stakeholders on the supervisory board. Keasey highlights that, for example in Japan the wealth creation is dominated by large groups of companies that are interrelated (keiretsu). Under this corporate governance model, there is an interdependent supplier and subcontracting relationship that exists hence monitoring and controlling of management take place within each group[211]. This demonstrates that corporate governance systems, procedures, structures and practices are different because of country specific differences. This suggests that the effectiveness of corporate governance is dependent on the extent to which it has been tailor-made to address the needs of each specific context.

There is also another corporate governance system that is popular in emerging countries. Most countries in the East Asian block fall under the category of insiders dominated model. The shareholder members under the insiders‘ model might be family members, blocks shareholder ownership and banks. It means that under this model the agency problem is not prominent because management and the owners are the same people. Corporate governance challenges in this model are likely to arise from the lack of separation of ownership from control. Corporate governance problems such as: excessive power, abuse of power, lack of transparency, misuse of funds, unequal ownership and unequal treatment of minority shareholder are likely to be common under this system. East Asian region is an example of a region that is dominated by the insider model and it is characterized by a weak corporate governance systems and weak legal systems that overlook protection of minority shareholder. East Asian region is prone to excessive abuse of company funds because of weak corporate governance and the absence of protection of minority shareholders. Claessens et al further points out that excessive abuse of power and disregard for minority shareholders largely contributed to the Asian crisis in 1997[212]. It is evident that corporate governance is required not only in the corporate form of ownership but also in family or block of shareholder owned companies in order to

[211] Keasey. K, Thompson. S and Wright .M. 1997. Corporate governance, economic, management and financial issues. Oxford. Oxford University Press.

[212] Claessens. S. 2006. Corporate governance and development. The World Bank Research Observer, 21: 91-122.

prevent abuse of resources and mismanagement of finances and resources. It can be argued that corporate governance is inevitably required in any company regardless of its ownership. This is because mismanagement of resources exists in both concentrated and dispersed ownership companies.

Bruno and Claessens investigated the impact on company performance by company-level corporate governance practices and country-level legal investor protection. They found that in any legal regime there are a few specific governance practices that improve performance. They suggested a threshold level of country development above which stringent regulation hurts the performance of well governed companies or has a neutral effect for poorly governed companies.[213]

Thus, it is important to understand the choice of mechanisms and identify the conditions that influence this choice. For example, Henderson and Fredrick son found that Chief Executive Officer (CEO) compensation varied with information processing demands placed on the CEO[214]. They examined the impact of investigated opportunities on corporate governance. McConnell and Servaes investigated the impact of growth potential on company ownership characteristics[215]. McGuire found company growth potential influenced a wide range of corporate governance mechanisms[216].

An important challenge that organisers and planners of the business sector face is community confidence in joint-stock companies and activating their performance. After Enron's bankruptcy and the WorldCorn scandal, some economic obtaining disparaged the accounting and auditing profession. It is known that the directors of these companies, the boards of directors, and their international audit companies were involved in their financial scandals, and there may have been acts of political collusion. As a result, many investors have lost confidence in joint-stock companies, and they have questioned the sufficiency of accounting standards, the efficiency of internal control systems, the independence of auditors, and so on. Since then it is important to ensure perfect standards to obtain best practice in the management and supervision of joint-stock companies, known as corporate governance.

[213] Bruno, V. and Claessens, S. (2010) "Corporate governance and regulation: can there be too much of a good thing?" Journal of Financial Intermediation, Vol.19, No. 4, pp.461-482.

[214] Henderson, A. and Fredrickson, J. (1996). "Information processing demands as a determinant of CEO compensation", Academy of Management Journal, 39,575-606.

[215] McConnell, J. and Servaes, H. (1995). "Equity Ownership and The Two Faces of Debt", Journal of financial Economics, 39, 131-157.

[216] McGuire, J. (2000) "Corporate Governance and Growth Potential: an empirical analysis". Corporate Governance: An International Review, Vol. 8. No. 1, 32-42.

Cuervo pointed out that to solve this problem two mechanisms can be used. These mechanisms can be viewed from two perspectives, mechanisms which are either: internal or external to the firm. Internal is found among others in the boards of directors or managerial compensation. External, however, are the market for corporate control, managers, and products and services[217]. Furthermore, these mechanisms are strictly related to the corporate governances systems. According to Lane et al. as corporate governance is embedded in the cultural, legal, and financial framework of various countries, these frameworks have given rise to these two models[218].

From reviewing the literature on corporate governance, there are two main models in terms of the board: the two tier board or "insider-dominated system" and the unitary board model or "outsider-dominated system". Both of these have evolved in different regulatory, institutional and political environments. The two tier board or "insider-dominated system" is based upon the separation between managerial decision-makers and monitoring, which helps avoid direct conflicts of interest between managers[219]. Solomon and Solomon stated: "An insider-dominated system of corporate governance is one in which a country's publicly listed companies are owned and controlled by a small number of major shareholders. These may be members of the companies' founding families or a small group of shareholders, such as lending banks, other companies (through cross shareholdings and pyramidal ownership structure) or the government[220]". In other words, it separates the supervisory function and the management functions into different bodies. A "supervisory board" is composed of non-executive board members, whereas a "management board" is composed of executive board members. This model largely practiced in European countries and in Japan, where banks play an important role. That is why this model can be called the German-Japanese model[221].

The other one is the unitary board model or "outsider-dominated system", which is based upon its built-in concentration of power and conflict of interest[222]. Solomon and Solomon comment on it as follows: The term "outsider" refers to systems of finance and corporate governance where most large

[217] Cuervo, A. (2002). Corporate Governance Mechanisms: a plea for less code of good governance and more market control. Corporate Governance, vol.10, No.2, p.84-93.

[218] Lane, S., Astrachan, J., Keyt, A., and Mc Millan, K. (2006). Guidelines for Family Business Boards of Directors. Family Business Review, vol. 19, No. 2, p.147-167.

[219] DahyaJ, KarbhariY, and Xiao J (2002). "The Supervisory Board in Chinese Listed Companies: Problems, Causes, Consequences Remedies". Asia Pacific Business Review.

[220] Solomon, J. and Solomon, A.: 2004, *Corporate Governance and Accountability Chichester:* John Wiley & Sons.

[221] Davidson, I, H. (1994), "On the Government Companies", Corporate Governance, An International Review", Volume 2(1). pp 217-223.

[222] Dahya J, Karbhari Y, and Xiao J (2002). "The Supervisory Board in Chinese Listed Companies: Problems, Causes, Consequences Remedies". Asia Pacific Business Review.

firms are controlled by their managers but owned by outside shareholders, such as financial institutions or individual shareholders. This situation results in the notorious separation, or divorce of ownership and control[223]. In other words, it brings together executive and non-executive board members. In this model, markets play a major role. A company and its managers must act in the best interest of shareholders. Moreover, the role of the government is to create a strong competitive environment in which companies operate. This model can be called the Anglo-American model, due to the influence of the UK and the USA stock markets on others around the world.

Many researchers have examined both models to discover the most appropriate model for individual countries. Although each model has its "pros" and "cons", it has been suggested that the German-Japanese model may be a more appropriate model for implementing in emerging economies since it provides greater insight for practitioners. They summarised the dominant characteristics associated with traditional insider and outsider corporate governance systems as follows:

- in insider systems, firms are owned predominantly by insider shareholders who also wield control over management. In outsider systems, large firms are controlled by managers but owned predominantly by outside shareholders.

- insider systems are characterised by little separation of ownership and control such that agency problems are rare. Outsider systems are characterised by separation of ownership and control, which engenders significant agency problems.

- in insider systems, hostile takeover activity is rare. In outsider systems, frequent hostile takeovers act as a disciplining mechanism on company management.

- in insider systems, concentration of ownership is in a small group of shareholders (founding family members, other companies through pyramidal structures state ownership). On the other hand, in outsider systems, ownership is dispersed.

- in insider systems there is excessive control by a small group of insider shareholders, whereas moderate control by a large range of shareholders is exercised in outsider systems.

- in insider systems, wealth transfers from minority shareholders to majority shareholders, whereas there is no transfer of wealth from minority shareholders to majority shareholders in outsider systems.

- in insider systems there is weak investor protection in company law whereas in outsider

[223] Solomon, J., Solomon, A. and Park, C. Y. (2002). "A Conceptual Framework for Corporate Governance Reform", Corporate Governance: An International Review, Vol. 10.No. 1, pp.29-46.

systems strong investor protection exists in company law.

- in insider systems there is potential for abuse of power by majority shareholders whereas in outsider systems the potential for shareholder democracy exists.

- in insider systems, the majority of shareholders tend to have more "voice" in investee companies whereas in outsider systems, shareholding is characterised more by "exit" than by "voice".

3.4 Summary

In conclusion, this chapter has debated the definitions of corporate governance, its importance and mechanisms. The purpose of this chapter has been to provide an introductory chapter offering a review of corporate governance literature and to explore the most appropriate definition of corporate governance for this thesis. Research shows that corporate governance definitions are varied, since each definition represents a difference school or point of view. Furthermore, the corporate governance definition may vary from country to country, depends on the legal and economic systems of such countries and regions too.

Since the Corporate Governance Code (2005) does not yet have an agreed definition of corporate governance, it is recommended that the Samruk-Kazyna JSC should add a definition from other successful worldwide corporate governance ideologies, for example the OECD principles of corporate governance. We believe that this definition is detailed and clear enough, and therefore that definition has been chosen as the subject definition for this thesis. The OECD's definition of corporate governance accompanied by many provisions (individual OECD corporate governance principles) that help to understand and apply corporate governance appropriately.

Undoubtedly, the OECD corporate governance principles are not a magical recipe for governments or firms to solve all the problems faced in the business environment, as there are many issues surrounding this matter, especially in emerging economies and developing countries like Kazakhstan. Thus, requiring companies to adopt the OECD corporate governance principles "will not necessarily lead to better corporate governance"[224].

In addition, the corporate governance is about promoting corporate fairness, transparency and accountability. In the similar context, it can be argued that the corporate governance structure specifies the distribution of rights and responsibilities of the board, managers, shareholders and other

[224] Chen, V., Li J. and Shapiro D., *Are OECD-prescribed "good corporate governance practices" really good in an emerging economy?* (28 Asia pacific journal of management, 2011). p.115.

stakeholders, and spells out the rules and procedures for making decisions on corporate affairs. This definition suggests that the corporate governance is the acts or tasks of the leaders to distribute the tasks, duties and responsibilities to all stakeholders of the company and effectively manage corporate harmony. In the similar vein, it has been claimed that the aim of corporate governance system is to "align as nearly as possible the interests of individuals, corporations and society". Hence, the effective governance system effective aligns the interests of all stakeholders of the company as well as the society concerned.

As research shows, there is no universally accepted definition of corporate governance in the world. Generally speaking, corporate governance can be defined as a system distributing the managing and supervising powers to different corporate organs and it covers the system regulating relationships among all parties with interests in a business organisation, usually spelling out shareholders as a particularly important group. Moreover, this indicates that corporate governance is deemed to be an institution which regulates internal corporate arrangements and power distributions.

The importance of good corporate governance practices and rules shows a steady increase during the last years due to business scandals, which occurred all over the world. Managers and boards of companies have to be aware of the fact that such governance guidelines are inevitable for a stable and efficient growth and performance of a firm. It is not only the company itself which benefits from the implementation of sound governance codes, also possible investors and the public sector are interested in their development, as well as other stakeholders of the firm like banks, suppliers and employees.

Sound corporate governance is a critical element in helping these emerging markets meet their full economic potential. Good corporate governance, defined as the structures and processes by which companies and banks are directed and controlled, helps firms operate more efficiently, improves access to capital, mitigates risk, and safeguards against mismanagement. Good governance also facilitates appropriate consideration of other critical issues for enterprises, including environmental and social responsibility. It is the foundation for long-term business growth and sustainability, adding value for investors and contributing lasting dividends for economies.

Chapter 4: Current practice and improvement of the Kazakhstani Corporate Governance Framework

4.1 Introduction

The preceding chapter described the corporate governance as a set of processes that provide management and control over the activities of the company and including relations between the sole shareholder, board of directors, the board, other bodies of the company and stakeholders in the interest of the sole shareholder. The Company considers corporate governance as a means to improve the efficiency of the company, strengthening its reputation and reduce the cost of its capital. The company is considering a proper system of corporate governance as an important contribution to the rule of law in the Republic of Kazakhstan and the factor that determines its place in the modern economy and society as a whole. Corporate governance of the company is built on the principles of fairness, honesty, responsibility, transparency, professionalism and competence. Effective corporate governance structure presupposes respect for the rights and interests of all interested parties in the company and contributes to the success of the company, including the growth of its value, maintaining financial stability and profitability.

4.2 Current status and prospects of corporate governance in Kazakhstan

The globalisation of economies, and thereby financial and investment markets in the 1990s, has led to the increasing convergence of originally separate initiatives in corporate governance. The fact is that good corporate governance practices are now becoming a necessity for every country and business enterprise, and are no longer restricted to the activities of publicly-listed corporations in advanced industrial economies.

As regulatory barriers between national economies are removed and global competition for capital increases, investment capital will follow the path to those countries and corporations that have adopted efficient governance standards. There is a need to focus on policies and structures occurring on implementation of the structural adjustments. In the Commonwealth there is a necessity for micro-economic policy instruments which will support the macro-economic policies arising from the transition. Corporate governance can be considered a powerful micro-policy instrument and an effective lever for change at the business enterprise and sectorial levels.

Several programs worldwide have initiated the appointment of national task forces in the countries concerned with drafting national codes of corporate governance and defining strategies for implementation. They have to look at their legal and regulatory systems, business enterprise structure, inherent cultural characteristics and heritage before defining any specific approaches to address issues of corporate governance. Kazakhstan, being a part of global economy and being prospective for investments, needs to develop and establish common rules and procedures for corporate governance. The basis for a positive movement towards better practices must be based on the creation of the Kazakhstan Concept on corporate governance with the main principles of transparency, accountability and responsibility.

Domestic business only recently discovered the benefits of corporate governance, but in the world, this practice has been around for centuries. All this time, the basic principles of corporate governance remained unchanged: the transparency of all processes and collegiality in decision-making.

Quite often, corporate governance refers to the general management, strategic management of the organisation and others. However, it is important to separate the concept of corporate management and corporate governance. Under the first term refers to the activities of professionals in the course of business operations. In other words, management is focused on the mechanisms of doing business. The second concept is much broader: it means the interaction of many individuals and organisations that are related to various aspects of the functioning of the company. Corporate governance is at a higher level leadership of the company, rather than management.

Corporate governance, especially as management of corporate law. At the same time, if corporate rights is taken as the most common object of corporate governance, it can be characterised as follows: corporate governance is the process of adjusting its corporate owner of the rights in order to profit, corporate governance now, reimbursement by obtaining a share of assets upon liquidation.

At the first stage it is necessary to gather all the information about the components of the Corporate Governance system and then make the rules of the game equal for owners, financial and investment markets, government bodies, and other interested parties. A fruitful step in the creation of this system should the analysis of the principles laid by the OECD, taking into account experience of developed countries, and the expertise of different models on corporate governance worldwide.

The set of objectives for the current situation in Kazakhstan is clear. It needs to: Increase awareness of the necessity for institutionalised corporate governance policies and practices amongst all interested parties; Identify the best applicable corporate governance practices; Increase corporate transparency and accountability in the region; Develop and disseminate initiatives on corporate governance which could be immediately applied; Establish equal rights and responsibilities and acceptable framework for foreign and local investors.

To achieve these objectives we should start with the collection and processing of the information available about major players. This chapter is an effort to scan the corporate governance environment in Kazakhstan in order to establish further steps in the implementation and development of such an important instrument in the market.

Law "On Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on securities market and joint-stock companies" dated July 8, 2005 at the legislative level introduced the concept of "corporate governance code"[225].

Most experts and researchers consider corporate governance in two ways: in the narrow sense – corporate governance – a system of rules and incentives that encourage executives to act in the interests of shareholders; in the broader sense, corporate governance – a system of organisational, economic, legal and administrative relations between the subjects of economic relations, the interest of which is associated with the company.

[225] Avdasheva, S. Public corporations: is it possible to assess the corporate governance Txt. / S. Avdasheva, Yu Sgshachev // Problems of Economics. 2009. – No 6. – S.99-105.

In particular, the case when some scientists in the corporate governance system include the traditional functions of regular management (planning, organisation, motivation and control), organisational change management, and regulate the relationship between business owners and top managers.

Tracing the evolution of the concept of corporate governance in the industry in Kazakhstan and abroad, we can conclude that the classical understanding of corporate governance as a process of interactions between shareholders and managers became narrow and exhausted itself. The main goal of the modern paradigm of corporate governance transition to a model of stakeholder review of the boundaries of the corporation as a coalition of interest groups, each of which seeks to increase the well-being and implement specific economic interests.

One of the main goals are to protect corporate governance and balance the interests of all key stakeholders. First of all this is done through the introduction of mandatory requirements for the management of the organisation through the model regulations. One example of such requirements is that the internal audit function is subordinate only to the board, not the executive body[226].

In Kazakhstan, the company trying to solve business problems through administrative measures, that is, an order prohibits businesses to raise prices[227]. These Soviet action leads to a deficiency of goods and services, lack of motivation and opportunities to invest in the assets and business development, which in turn results in deterioration of the equipment and permanent subsidies. In the West, socially important spheres of trying to make competitive and at the same time begin to regulate not the price, and management in the enterprise, in order to accommodate and protect the interests of all major stakeholders. What is required in this case: the legal regulation of not prices, and corporate governance[228].

Upon recognition of the state registration of securities issue as invalid by the court, JSC is now given the opportunity for a certain period to register a new issue of shares or to take a decision on its reorganisation or liquidation. In general, the changes have affected the Civil Code (General Part), the Criminal Code, the Code of Administrative Offences, the laws "On Licensing", "On Banks and

[226] The Law of the Republic of Kazakhstan "On Joint Stock Companies" dated 13 May, 2003 No415. Article 61. Available at: http://adilet.zan.kz/eng/docs/Z030000415_ Accessed on 1/11/2018.

[227] Article 15 of the Regulation on the Agency for Regulation of Natural Monopolies, approved by Government Resolution of 12 December 2007. Available at https://www.wto.org/english/thewto_e/acc_e/kaz_e/WTACCKAZ18_LEG_3.pdf Accessed on 1/03/2018

[228] Karapetyan, D. Corporate Governance: basic concepts and results of research practices / Karapetyan, D., M. Grachev // Management of the company. – 2004. – No 1- p.245Information about the authors Proceedings of the International Conference on Corporate Governance "Corporate governance and the investment climate in Kazakhstan", 20-21 October 2005, Almaty, Kazakhstan.

Banking Activity", "On pensions", "On Limited and Additional Liability", "Insurance activity", "On Joint Stock Companies" and "On the Securities Market".

In Kazakhstan, access to international capital markets have major listed companies and their subsidiaries. Therefore, the joint-stock companies that have adopted corporate governance standards in Kazakhstan are scarce. Now a significant part of local companies finances its investment program through syndicated loans and equity, which is due to the reluctance of companies to disclose the ownership structure. Importance of corporate governance in financial institutions that provide services to the general public, primarily due to the challenges banks provide better management and transparency, the stability of their activity, introduction of risk management systems, to protect the rights and interests of investors[229].

In Kazakhstan conditions contradiction in corporate relations traditionally most acute. As a result of the mass privatisation in the Republic of Kazakhstan has developed a peculiar structure of the capital stock companies, based on the distribution of small blocks of shares among a large circle of small shareholders, as well as on the presence of relationship between major shareholders and the management of such companies. Therefore, quite often there is a paradoxical situation where major shareholders issuers are interested not so much in improving the profitability of the company, as in the preservation of their unique relationship with the companies (e.g., monitoring of financial flows and export-import operations).

In this regard, the basic principle of state policy on corporate securities market should be to improve the regulatory role of the state, which should provide:

• protect investors from the risks of the stock market;
• Create conditions to attract capital into the country;
• Establishment of stable rules, which will operate the market;
• Enforcement of these rules by all participants in the securities market.

With the globalisation of modern economy one of the most pressing problems of large industrial business was the problem of corporate governance. The term "corporate governance" is used in a variety of interpretations. As it has been discussed different approaches to the nature of the lack of a comprehensive definition. Accordingly, the most appropriate corporate governance can be considered systemically, meaning by this term primarily a system of interaction of corporate governance, cost management company and its sustainable development, a set of principles for constructing an optimal structure interaction with all key stakeholders in accordance with the mission to provide the most

[229] Report of the Chairman of the FSA RK Zhamishev BB "The state of corporate governance in Kazakhstan", p. 1.

favourable redistribution of concentrated the corporation resources and reduce risks to the company's owners.

Kazakhstan's experience and world practice shows that the maximum economic efficiency, sustainable economic growth and improving the welfare of the nation, freedom is achieved when private capital only where market competition ensures the implementation of the interests of owners and the interests of society. In this case, it is the system of corporate governance in a constantly changing environment and the globalisation of the world economy makes it possible to ensure the development of strategic decision-making and control of the changes taking place, contributes to the development of corporate strategies based on sustainable competitive advantages.

4.3 Evolution of the Kazakhstani Corporate Governance Framework

Corporate governance - is to build a system of relations between the management, shareholders and board of directors. The interaction of these groups gives rise to conflicts in the area of corporate governance, which leads to an imbalance of the rights and interests. The basic idea of the Corporate Governance Code - to ensure the ethical behaviour of all business. The Code is a supporting document for all joint-stock companies, the purpose of its use is to protect the interests of shareholders. Law "On Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on securities market and joint-stock companies" dated July 8, 2005 at the legislative level introduced the concept of "corporate governance code".

The current Kazakh Corporate Governance Code (the "Code") was developed in February 2005 by a working group led by the Financial Institutions Association in Kazakhstan, the Kazakhstan Stock Exchange and the Kazakh Supervisory Authority and was revised in 2007. The Code is voluntary and applies to Kazakhstan listed companies, which are recommended to incorporate the provisions of the Code in their own codes and by laws. While the majority of companies formally incorporate the Code in their corporate documents, in practice the implementation of the Code's principles remains weak[230].

It appears that corporate governance framework in Kazakhstan does not provide clear guidance to the corporate bodies on how to manage companies effectively. The 2007 European Bank for Reconstruction and Development (EBRD), Corporate governance Sector Assessment found several

[230] Corporate governance in Transition Economies: Kazakhstan Country Report. Prepared by G.P. Cigna, Y. Kobel and A. Sigheartau. With the assistance of N. Advisors. European Bank for Reconstruction and Development. December, 2017.

deficiencies in Kazakhstan's corporate governance framework, in particular disclosure and transparency. The corporate governance practices were found to lack in particular in speed of disclosure and institutional environment.

The need to develop corporate governance has reached the Republic of Kazakhstan. The corporate governance concept is relatively new to Kazakhstani law. The degree of understanding by economic participants of legal and regulatory requirements on corporate governance has not been fully tested. There are no specific regulations on cooperation between regulators/authorities either. A developed system of cooperation is rather based on a clear division of authority. Kazakhstani law establishes only four relevant regulators:

1) the regulator for the financial market and financial organisations which regulates the banks and securities market;

2) the regulator for currency transactions;

3) the competition authority; and

4) the natural monopolies authority. Furthermore, pursuant to amendments adopted recently, financial services have been excluded from the competence of the competition authority. Thus, there would be only an insignificant requirement, if any, for cooperation between the financial market regulator, the competition authority and the currency control or natural monopoly authorities, since all regulatory functions in respect of the financial market entities are consolidated in one regulator.

Chairman of the Financial Service Authority (FSA) Zhamishev B.B. said: "Despite the improvement in the investment climate, local companies do not have enough of the corporate culture. To create such a system it is necessary to solve a number of issues, from theoretical standards of corporate governance to move their practical application. The quality of corporate governance has become an important investment criterion. Investments come in "clear" of the company, the rate of return is stable and predictable, and the company's activities are transparent"[231].

Association of Financiers of Kazakhstan plays an important role in the development of corporate governance in the Republic of Kazakhstan. It was designed by the Corporate Governance Code based on international experience and the principles of the OECD, which was adopted by the Board of issuers (21 February, 2005). Code is the basic document intended for businesses and companies in

[231] Financial Conduct Authority website. Available at: https://www.fca.org.uk accessed 12 Jan 2018.

the financial and real sectors, the example of which local companies can create their own corporate governance codes.

Practical application of corporate governance is considered by the Agency as one of the main objectives in creating an enabling environment for economic growth and development of the stock market. Norms of the Code provide for the formation of an environment in which to be executed responsibility for the decisions, both on the part of investors, and by the issuers.

In Kazakhstan, there are over two thousands joint-stock companies. Most of them - a relatively small companies that are not and do not plan to be public. Not all joint-stock companies shares are placed openly. For many corporations such organisational - legal form is required by law to carry out their activities (brokerage, registrar, insurance companies, etc.). However, in respect of the joint stock companies operate the same rules as for large companies. Independent directors can not be found for all joint-stock companies. Since it is primarily individuals who do not represent the interests of particular groups of shareholders, are not affected by any participants of corporate relations, is it outside directors meeting certain criteria of independence. Their main task is to protect the rights of all shareholders, as well as an objective assessment of society and decision-making, contributing to its further development[232].

Joint stock companies are organised under a one-tier system. Although the CEO is the only executive director allowed to be a board member, he/she is not permitted to chair both the board and committees. The law seems to be excessively prescriptive in requiring all joint stock companies (of any size and business activity, listed or not) to have independent directors and committees (however they are not necessarily board committees, as they might include outsiders). The law does not refer to key functions that should be performed by the board, such as oversight of the management, budget approval and risk management. The fact that the general shareholders' meeting can overturn any board decisions is a major shortcoming. Gender diversity on boards is very limited.

Companies do not seem to be required by law to disclose non-financial information in their annual report. Financial information is in line with International Financial Reporting Standards (IFRS), and almost all largest listed companies seem to publish their financial statements in line with IFRS[233].

[232] У.А. Абаев. К вопросу о современном состоянии корпоративного управления. Доклады Нац. Академии наук РК, 2013-N2. с.116-121. (In Russian) [U.A. Abaiev. To the question of the current state of corporate governance. Reports of National Academy of Sciences of Kazakhstan, 2003-N2. p.116-121.

[233] Corporate governance in Transition Economies: Kazakhstan Country Report. Prepared by G.P. Cigna, Y. Kobel and A. Sigheartau. With the assistance of N. Advisors. European Bank for Reconstruction and Development. December, 2017.

The internal control framework seems to be developing. Companies are recommended to create an internal audit function, while for banks this is a legal requirement. Companies are also required to have external audit and an internal audit committee headed by an independent director. However, there are still issues to be tackled. Internal audit practices need improvements, and it is not clear if internal audit – where it exists – is independent and reporting to the board or internal audit committee. It is doubtful as to whether it is necessary to require all companies to have an internal audit committee, but if the law requires so, the implementation of this requirement should be monitored as it is key to ensure a proper internal control framework.

Basic shareholder rights seem to be adequately regulated by law and major corporate changes require qualified majority at the general shareholders' meeting.

The institutional framework supporting good corporate governance needs improvement. It seems that much effort is made when it comes to legislation, but more attention should be paid to monitoring. The Corporate Governance Code, approved in 2005 and reviewed in 2007, lacks proper implementation mechanism and seems to be outdated. Listed companies are required to adopt and disclose their own codes, which shall be shaped upon the stock exchange's model; however, only half of the largest listed companies disclose complying with such obligation. Inconsistencies between different laws and regulations are reported. Indicators by international organisations clearly point out how corruption is a perceived concern.

The rule of "not less than one third of the members of the board of directors must be independent directors" inefficient, and this rule is broken. This rule should be applied only in respect of public companies, in which the presence of independent directors is imperative. In addition, the definition of "independent director" must include the wording "is not representative of the State or public servants" because this is consistent with international practice and contributes to greater independence of the institution.[234]

It is essential that the independent directors have participated in all meetings of the Board of Directors. To do this, at the legislative level can reflect that the quorum for a meeting of the board of directors determined by the charter, and can not be less than half of the members of the Board of Directors, where mandatory for public companies should be represented by independent directors. International experience shows that the more the board of directors are independent directors, the success of the company.

[234] Филатов А., Красикова И. Зачем компании КУ?// Журнал Управление компаний.2015.N2(45) (In Russian). [A. Filatov. WHy companies need corporate governance?// Journal of company control, 2015. No 2, Vol 45.]

In order to enhance the transparency of the issuers of securities adopted in July 2005, the rules of state registration of shares and bonds provide for the right of the authorised body post on its official web-site: - the share prospectus, as well as reports on the results of their placement; - The bond issue prospectuses and reports on the results of placement and redemption of bonds.

As a result of scientific and technical progress, many local companies have their own web-sites. Dissemination of information through them is an effective (operational, without territorial restrictions, around the clock). In connection with this, one must enter a prerequisite for public companies - having own official web-site, which will be distributed through all the essential news about the company.

Also the company on the official corporate web-site you can disclose information about dividends for a certain period of time after the decision to pay dividends. The shareholders will be specifically know the source of information from which they can monitor information about the shares, dividends, etc., and society will not be burdened with the obligation to notify each shareholder. This provision shall also be attached to the legislative level.

The introduction of corporate governance - a long-term process. Much remains to be done to good corporate governance in the field of awareness shareholders of their rights, responsibilities, and also for training directors in order to control the company carries out a more transparent and efficient manner.

Corporate governance is important for companies that want to increase their market value. It should be noted that compliance with standards of corporate governance is first necessary to companies wishing to become public for successful entry into other markets. Practice shows that investors have more confidence in a "transparent" companies with a clear decision-making system, coherent dividend policy that respects the rights of minority shareholders[235]. In Kazakhstan, access to international capital markets have major listed companies and their subsidiaries. Therefore, the joint-stock companies that have adopted corporate governance standards in Kazakhstan are scarce. Now a significant part of local companies finances its investment program through syndicated loans and equity, which is due to the reluctance of companies to disclose the ownership structure. Importance of corporate governance in financial institutions that provide services to the general public, primarily due to the challenges banks provide better management and transparency, the stability of their activity, introduction of risk management systems, to protect the rights and interests of investors.[236]

[235] Hommelhoff, Peter. Corporate and business law in the European Union. p.595.

[236] Особенности регулирования системы вознаграждения топ-менеджеров компаний в Европейском Союзе и Казахстане. Лукин И. Science and life of Kazakhstan. N5(40), 2016. (In Russian) [I. Lukin. Regulation of the remuneration of companies' top managers system in the European Union and Kazakhstan. Journal of Science and life of Kazakhstan. N5(40), 2016.]

As a result of the above standards of corporate governance in the company law firm performance will be transparent, which will affect their financial and investment appeal, that, in the end, will increase shareholder value.

Thus, the quality of corporate governance - not less important factor than the current performance of companies. Without improving the quality of corporate governance is impossible to achieve sustainable economic growth. The problem of protecting the rights of minority shareholders and the introduction of the code of corporate governance is not only corporate, but also the national character, and on the extent to which it will be solved, will depend on the development of the stock and financial markets in general.

According to the Law of the Republic of Kazakhstan No. 474-II "On state regulation and supervision of the financial market and finance organisations", dated July 4, 2003, the Agency sets standards for activities of finance organisations and provides incentives for improving the corporate governance of finance organisations.

According to Article 7 of the above Law and points 1 and 4 of the Regulations on the Finance Supervision Agency, approved by the Edict of the President of the Republic of Kazakhstan No. 1270, dated December 31, 2003, the Agency is a state body directly subordinate to and accountable to the President of the Republic of Kazakhstan. It is funded by the National Bank of the Republic of Kazakhstan. Article 15 provides that the Agency is independent in its activities. State bodies are not entitled to interfere with its activities, with certain exceptions provided for by Kazakhstan law.

4.4 Corporate governance in Kazakhstan's organisations (Kazakhstan Corporate Governance model)

Corporate Governance - is the management of organisational and legal registration of businesses, streamlining the organisational structure, the construction of inter-firm relationships within the company and in accordance with the objectives. The system management of the organisation's corporate culture plays an important role, as a strategic tool to orient the team to achieve their goals. Since the internal characteristics of the corporate culture is difficult measurable, an important issue and the urgent need is to create techniques that allow to identify the main parameters of the current state of corporate culture in the company and the possible directions of change.

Improvement and development of corporate governance mechanisms - processes vital, especially large business structures. Formation of corporate governance, of course, preceded by a long evolutionary path of the corporate form of business activity and the emergence of various theories of corporate governance that incorporate many elements of organisational management and model the

possible developments of the company to the level of a multi-big business with the institutional structure of production and management.

Association of Financiers of Kazakhstan plays an important role in the development of corporate governance in the Republic of Kazakhstan. It was designed by the Corporate Governance Code based on international experience and the principles of the OECD, which was adopted by the Board of issuers February 21, 2005. Code is the basic document intended for businesses and companies in the financial and real sectors, the example of which local companies can create their own corporate governance codes.

Speaking about the relevance of corporate governance, it is gratifying to note that today the question of implementation or the introduction of modern principles of corporate governance is not as acute in front of domestic companies, as it was a few years ago. Most companies that question for yourself is already solved favourably. Today, all major companies understand that it is important and necessary.

Corporate governance encompasses relationships and promotes the search for a balance of interests between management, board of directors and the general meeting of shareholders, governs the relationship between shareholders and provides a balance of different groups, as well as regulates the relations between the shareholders, the company and stakeholders.

Corporate governance is also a complex relationship between the individual and collective actors, each of which has its own objectives, which coincide and do not coincide with each other.

The main groups of carriers goals of the organisation are:

• The owners of the company;

• The company itself;

• Top Management;

• Staff.

Indeed, each country has its own national model of corporate governance, based on the existing basic models with various features that take into account the socio-cultural, economic, historical features of a particular country. As already mentioned, there are a lot of different models of corporate governance. Therefore, some concepts may be more appropriate and relevant to some countries than others, or more relevant to one country at different times depending on the development stage experienced by that country. They vary from country to country. Each country produces its own special model of corporate governance. All depends on the features that the system of corporate governance is in a particular country.

Based on the management style there are variety of forms of Corporate Governance that can be divided into groups, tending to two opposite models: American (exterior) model and German (interior) model.

The (Anglo) American model.

American (outsider) model is the management model joint-stock companies based on the high level of impact outsiders in relation to joint-stock company and in mechanism of controlling over company. In other words, the participants of model are managing directors, directors, shareholders, government structures, the exchanges, consulting firms.

The Anglo-American model is typical for the US, UK, Australia, Canada, New Zealand. The interest of shareholders are represented by a large number of separate small investors who are depending on management of corporation. The role of stock market is increasing, through it the control over the corporation managing. The model requires mandatory approval of shareholders, elections the board of directors and appointment of auditors, implementation changes in the charter of the company and in assets.

The most of the corporations are using to finance the capital market without involving the institutional or individual investors. According to the legislation, the banks are prohibited to own shares of industrial companies and are limited to have relations with financial institutions. This measure was implemented after the crisis of 1930s.

The main feature of the model is only the shareholders can influence in the strategic decision-making process. The managers and employees act as their agents by receiving the certain rights on corporate governance such as:

- possibility to vote by proxy cards (the shareholders are authorised to vote on behalf the Chairman of the Board);
- a clear legal regulation of corporation activities, the rights and responsibilities of managers, directors and shareholders.

The model is oriented to increase the value of the corporation and its profitability for short-term periods. Therefore, it requires a high flexibility of the managing system that allows company to adapt quickly the external environment, realising effectively innovative and risk projects.

The process of corporate governance is run by the unitary-board of directors that consists of twelve members and the general president who takes all decisions and consider member of the council.

The Anglo-American governance system has the Board of Directors, consisting of independent board members and strong institutional investor activists which. in principle, can be important monitoring and disciplinary mechanisms[237]. Therefore, most American business community, including many economists. seem to be of the opinion that the Anglo-American governance system is preferable. However, the Enron scandal is evidence that the Anglo-American corporate governance systems characterised by strong m ket controls are not inherently superior to monitor the management board.

The German model.

The German (insider) model is the governance joint-stock companies based mainly on use of internal methods. The model is typical for Central European and the Nordic countries. It is based on the principles of social interactions: all interested members (shareholders, managers, employees, banks, non-governmental organisations) are able to participate in decision-making process. The model is characterised weakly focus on governance in orientation for the stock markets and shareholders' value, as the result the company controls its competitiveness and performance.

The Board of Directors in the European and Japanese governance system representing the inter-locking interests of various groups, which may have informational advantages and serve as important monitoring and disciplinary mechanisms.

The share capital is largely concentrated and stored in the mutual possession of a few large entities like banks and corporations in Germany. The financial institutions control up to 70% of shares in Japan in order to minimise a role of individual investors and external shareholders[238].

Banks perform functions of monitoring and control through the representatives in the boards of directors and organise issue of securities, manage by proxy shares. It is a German model.

Many shareholders buy shares through banks due to being depositaries they will have a right to vote at meetings by proxy. Based on materials of corporation the banks send offers and recommendations

[237] Bickler, J. *What we know and what we don't know about corporate governance*. (Business Economics, 2003 Vol. 38). pp 69-73.

[238] Shinada Naoki, *Stock Ownership and Corporate Performance in Japan: Corporate governance by institutional investors*, p.6

to shareholders, and if the shareholders do not respond any actions, the banks conduct the vote by their discretion.

There are two opposite sides of the models of American and German. Between them, there are variety of national characteristic options with a primary domination. The development of specific corporate governance models in the framework national economy depend on three factors: (1) mechanism of protection of shareholders; (2) function and tasks of the board of directors; (3) level of disclosing the information[239].

The terms of implementation of American corporate governance model. The American corporate governance model is linked directly to the peculiarities of the national joint-stock property, which are: (1) level the highest of spraying capital in American corporations, as a result, as a rule, no one of shareholders group does not claim for special representative on the board of directors; (2) level the highest of liquidity of shares, the existence of stock markets that allows shareholders sell shares easily and quickly, and the investors can buy shares.

The key forms of market control are numerous mergers, acquisitions and buyouts of companies in order to provide effectively control through markets to management activities in American markets.

The terms of using of German corporate governance model. The factors of German model that consist of opposite of American model factors. Such factors are: (1) concentration of capital stock at different institutional investors and comparative degree of its spread by private investors; (2) comparative weak development of the stock market.

The main differences. The main differences are considered the models between the American and German corporate governances are as follows: (1) There is interest of shareholders in American model, mainly the interests of private shareholders are spread from each other, and thereby they are in dependence on management of corporations. In this context, the role of market increases as counterbalance through the control over the management joint-stock companies; (2) the German model the shareholders represent a set of fairly large blocks of shares holders, and they can be united in order to conduct their common interests, on basis of it they have control over the management of the company. In this situation, the role of market is reduced as the exterior controller or the corporation controls its competitiveness and its affairs[240].

[239] Jun Zhao, Comparative study of U.S. and German corporate governance: suggestions on the relationship between independent directors and the supervisory board of listed companies in China, p.45
[240] Jun Zhao, Comparative study of U.S. and German corporate governance: suggestions on the relationship between independent directors and the supervisory board of listed companies in China, p. 47

Moreover, there are various functions of the Board of Directors. In American model – the Board of Directors as the Board of Managements that manages all affairs of the company and in charge for shareholders and supervisory bodies.

The German model, there is strict separation functions of management and control. There is the Board of Supervisors in the Board of Directors this body implements all affairs of the company. Its control functions are linked directly with the ability to change quickly the current corporate management if its activities fail to meet the interests of shareholders. Participation in the Boards of Supervisors provides not only interests of the shareholders, but also interests of corporation such as relevant to its affairs. As a result of the interest of the company is privileged.

Our Own Kazakhstani Model

The analysis of international experience shows that Kazakhstan uses mixed modelling of Anglo-American and German. The Anglo-American and the German model of corporate governance are two opposing systems, between which there is a lot of options with a primary dominance of one or the other system and reflecting national specific features of the country. The development of a specific model of corporate governance within the national economy depends mainly on three factors:

- mechanisms for the protection of shareholders' rights;
- functions and tasks of the Board of Directors;
- level of disclosure.

Important factors that influence the formation of the Kazakh model of corporate governance are the following:

- the structure of shareholders in companies;
- the specific of the financial system in general, as a mechanism of transforming savings into investment (types and distribution of financial contracts; the state of financial markets; types of financial institutions; the role of banks;
- shares of sources of funding of companies;
- macroeconomic and economic policy in the country;
- the political system (there is research that draws direct parallels between the political system "voters-parliament-government" and the corporate governance model "shareholders-board of directors-managers");

- the history of development and modern peculiarities of the legal system and culture;
- traditional (historical) national ideology;
- the established practice of business relations;
- the traditions and level of government involvement in the economy and its role in regulating the legal system.

In respect of these corporations operate the same rules as for large companies. The presence of "independent director" is mandatory. However, the independent directors can not be found for all joint-stock companies. Since it is primarily individuals who do not represent the interests of particular groups of shareholders, are not affected by any participants of corporate relations, i.e. it outside directors meeting certain criteria of independence. Their main task is to protect the rights of all shareholders, as well as an objective assessment of society and decision-making, contributing to its further development.

It should be noted that the company, which in its activity does not violate any current legislation can not automatically be considered a company with good corporate governance. Compliance with the law is a necessary but not sufficient element. In addition, these companies will sooner or later turn from law-abiding companies in the violators if they do not make an effort to further improve the corporate governance system. Here, everything is interconnected. Therefore confine compliance with legal requirements is not possible, it is only an intermediate stage, which must either bring to the next stage, or roll back to the previous state.

Ideally, a company with a good corporate governance framework should be established in its control system all the institutions best practices, such as: Independent Director; Committees of the Board of Directors; The permit system and the prevention of corporate conflicts; A proper system of internal control and risk management; Really working internal audit service; Corporate Secretary; A system of disclosure of conflicts of interest, etc.

Effectiveness of the company with good corporate governance and enhanced by improving the reporting and monitoring of both managers and board members. Regular monitoring of the activities of managers and board members - useful and very important element in any company - a well-established system of corporate governance will contribute, except the internal control and internal audit service, as well as properly organised system of disclosure in the company.

On the effectiveness of the company with good corporate governance can not but affect and strict standards and rules in each division. Establish such rules contributes to the fact that the whole structure of the organisation, each individual unit in the company with embedded and actively apply the principles and institutions of corporate governance best practices, is under systematic

comprehensive monitoring and control. A system of this monitoring and control - an indispensable tool for improving corporate governance practices for domestic companies. And, most importantly, control, monitoring and reporting of the presence of failures and shortcomings in the work going on is not necessarily "top-down" as is commonly believed. Its uniqueness lies in the fact that almost every employee involved in this work as well as the directors and senior management.

The introduction of corporate governance - a long-term process. Much remains to be done to good corporate governance in the field of awareness shareholders of their rights, responsibilities, and also for training directors in order to control the company carries out a more transparent and efficient manner.

Choosing the basic model of corporate governance in Kazakhstan, can hardly be considered reasonable categorical in favour of a particular model. At least at this stage. The above management practices in domestic companies shows that a two-tier continental model of corporate governance can not and should not be at this stage of development the only possible. It is impossible to impose the company now. After all, previous experience in this regard is almost there. A current practice shows that in many companies the board of directors and the board operate in a single board of directors, similar to what exists in one linked system.

Thus, the quality of corporate governance - a factor not less important. Without improving the quality of corporate governance is impossible to achieve sustainable economic growth.

While defining the boundaries of corporate management, i.e. separating functions of corporate governance from managing company activities, let us consider the existing three-tier management hierarchy in Kazakh companies using the example of the Premier Asset Management company.

There are individuals who pursue their own aims within companies: shareholders, hired top managers accountable to owners (management) and hired workers.

Relations between medium and low levels of the hierarchy make up the very essence of management of a firm's activities – functions of professional specialists in running business operations. In other words, management is concentrated on mechanisms of running business.

At the same time, the category of corporate governance is far wider. Firstly, this is relation between top and medium levels of the hierarchy - running a company by hired managers in the interests of owners. This means that the owners delegate the right to run the firm as a property to managers for the term of a contract.

Secondly, in a wider sense corporate governance mechanisms reflect relations of many economic players whose interest is related to a wide range of aspects of a company's functions (shareholders, the board of director, managers, creditors, staff members, suppliers, buyers, government officials and

local authorities). The overlap of functions of corporate governance and management takes place only while drafting a company's development strategy.

Most companies have now adopted a code of corporate governance, dividend policy, the statute on the board of directors, and endorsed the organisational structure that clearly defined duties of top managers and heads of department, organised the work of the board of directors and regulating mechanisms of passing decisions. There are some politicians who define specific functional aspects: personnel policy; motivation policy; risk management policy; information technology management policy and so on. The company regularly holds meetings of the board of directors and the personnel and remuneration committee, and the audit and finance committees.

The company's observance of the main principles of the proper corporate governance has started to play a greater role in adopting decisions on attracting investment. Interest in international standards of corporate governance has now grown.

At present, many local companies by law have to draft and adopt codes of corporate governance. However, many of them do this just to tick the boxes – to submit a formal report or to get into the Kazakh Stock Exchange's listing. As a rule, they copy the code of corporate governance from a more developed company or Western company, coarsely adapting it to Kazakh reality. It is superfluous to talk about the real adoption principles of corporate governance specified in similar documents that are being borrowed.

For the proper development of a company, above all, it is necessary to improve the managerial education both of owners and top and medium-level managers. We are now observing that this process is developing and it aims to hire professional top managers and attract professional advisers to building a management system. This process is already developing in Kazakhstan, although with problems and controversy.

This and other problems can be solved only if the corporate governance system is built properly, in a way that envisages the rational distribution of rights and obligations between parties involved. The main elements of this system include the transparency of the structure of property and the organisation of a company, shareholders' involvement in its management, the efficient protection of minority shareholders, and ensuring high-quality and reliable business information for all shareholders.

The creation of favourable conditions for investment and increasing focus on attraction of foreign direct investment in Kazakhstan is considered as one of the crucial issues that are continuously discussed and supported in government level. Therefore, it is important to consider a number of regulations adopted by the Kazakh government in order to have a close look at the implications of the adopted regulations.

In summary, there are several reasons for exploring more German model. In the framework of specific management, the German model is characterised as an effectiveness in control, stabilities in interior and exterior relations and the less of percentage of bankruptcy and conflicts. It is presumed for long-term developments. Therefore, the German model is suitable for local practice. In addition, the model is consists of several similarities for emerging joint stock companies.

In the framework of specific management, the German model is characterised as an effectiveness in control, stabilities in interior and exterior relations and the less of percentage of bankruptcy and conflicts. It is presumed for long-term developments. Therefore, the German model is suitable for local practice. Based on the analysis the framework of models: firstly, there are two models of corporate governance. The implementation the models are based on the factors and structures of the models. The models lay on the fundamental basses of corporate governance. Secondly, there are no general model of corporate governance. The models in the specific countries are not meant identifiably. There are specific parts neither public governance nor corporate governance. Finally, structuring the national or local model of corporate governances, the countries try to combine with values and traditions.

4.5 Recent developments in the investment climate

Kazakhstan faces a number of strategic challenges, many of which have been emphasised by the economic and financial crisis:

The crisis has highlighted Kazakhstan's excessive dependence on primary industries and commodity exports. It is necessary to diversify the economy towards value-added industries, provided this diversification is based on economic rationale. With oil production expected to increase significantly in the coming years and with oil prices rising due to a gradual global economic recovery, the underlying economic tendencies – real exchange rate appreciation and human and financial resources flowing to the hydrocarbon sector – will make economic diversification even more challenging.

The domestic financial sector has proved less developed and on a weaker foundation than previously thought. It is therefore of vital importance to reform the financial sector and to ensure that it emerges from the crisis with a sustainable business and funding model, which can provide sustainable and reliable financial intermediation and lending a lasting source of strength for the real economy.

To put sustainable development on a firm footing, the remaining transition gaps in the country's infrastructure, including shortages and imbalances in power and energy, and transport bottlenecks, need to be filled.

An overarching policy challenge for the Government is to ensure that its efforts to address the impact of the crisis and the country's medium term transition challenges do not result in undue and lasting interference in the economy and erosion of market principles. In the private sector, fair competition on a level playing field needs to be preserved and in some cases improved, as economic incentives are redesigned.

The following legislation affects foreign investment in Kazakhstan: 1) Entrepreneurial Code (2015); 2) the Civil Code; 3) the Tax Code; 4) the 2003 Customs Code and the Customs Code of the Customs Union (in force since July 2010); 5) the Law on Currency Regulation and Currency Control; and 6) the Law on Government Procurement. There were many changes in investment legislation in 2015. In particular, the Entrepreneurial Code has been adopted. The new Code codifies provisions of legislative acts including:

- Law on Investments;
- Law on Private entrepreneurship;
- Law on the State support of industrial-innovative activity and many others.

These laws provide for non-expropriation, currency convertibility, guarantees of legal stability, transparent government procurement, and incentives for priority sectors. Inconsistent implementation of these laws and regulations at all levels of the government, combined with a tendency for courts to favour the government, create significant obstacles to doing business in Kazakhstan.

So, Kazakhstan has a special law on foreign investment, a special agency for the promotion of investments: Agency of the Republic of Kazakhstan for Investment (ARKI) and a Foreign Investors' Council (FIC) under the President of Kazakhstan. Furthermore, Kazakhstan has signed treaties on the promotion of mutual investment with over 20 countries, is a member of the Multilateral Agency for the guarantee of Investments, the International Association for Development, the International Centre on Regulation of Investment Disputes.

Republic of Kazakhstan adopted the Law of the Republic of Kazakhstan "On Foreign Investment" (30 December, 1994). This Law defines such important statements as guarantees for foreign investments, creation and liquidation of enterprises with foreign participation, registration and activity of branches and representatives of foreign juridical persons, types and conditions of activity of enterprises with foreign participation. Also, priority spheres are defined. By law, ARKI has the right to grant different concessions to investors (both domestic and foreign), including tax-breaks and in kind bonuses. The agency issues licenses to subsoil users, i.e. oil and mining companies developing subsoil resources.

Investment legislation establishes broad legal and economic framework for encouragement of investments, provides protection of investors' rights and details for state support of investments and

sets procedure for settlement of disputes.

Under the Entrepreneurial Code any individual or legal entity (foreign or Kazakh) who invests in Kazakhstan can be classified as an investor. As a rule, investors have right to invest in any objects and types of entrepreneurial activity. However, there are some restrictions for investing in certain types of activity or areas due to national security.

The Entrepreneurial Code protects rights and interests of investors. Investors have the right for compensation of damages caused by (i) issuance of acts by state authorities, which do not comply with laws, as well as (ii) by illegal acts (omissions) of state officials.

Kazakhstan guarantees stability of investment contracts, except for:

1) changes mutually agreed by investor and state bodies;

2) changes in the legislation, including international treaties, related to procedure and terms of import, production and sale of excisable goods;

3) changes in laws related to national security, public policy, and public health and morality.

The Foreign Investors Council (FIC) was created in 1998 by a decision of President N.Nazarbaev and strongly supported by the European Bank for Research and Development. It was founded in order to create a forum where representatives of the foreign investment community could discuss problems with and make suggestions directly to the president and top officials, including the prime minister, the governor of the central bank and key ministers. The membership of the Council was designed to represent different sectors and different countries of Foreign Direct Investment (FDI) origin. FIC is divided into four working groups (on legal matters, taxation, the enhancement of Kazakhstan's image and operations), which meet regularly and develop discussion papers for FIC meetings.

Foreign direct investment (FDI) in Kazakhstan has remained one of the most important issues throughout all the years of independence. At the current stage of its development Kazakhstan does not have enough national savings, so, to promote sustainable growth, it needs to attract external savings in the form of FDI, portfolio investments and loans.

In addition to many obvious advantages of FDI, such as bringing in new technologies, supporting local suppliers and subcontractors, creating jobs and training local personnel, developing export capabilities in new market segments, etc., there is one major need for Kazakhstan: capital investment.

The willingness of the President, the government and Agency of the Republic of Kazakhstan for Investment (ARKI) to promote foreign investment is widely acknowledged. Nevertheless, the relationship and the cooperation with regional and district authorities remains an important issue.

Although Kazakhstan is a unitary system state where the President nominates provincial governors, the latter still exert considerable power, and this should be taken into consideration by investors in the planning stage.

The importance of the district level results from several circumstances. First, all companies file their tax forms locally and thus address the district tax inspection. Second, the local customs office is involved when an investor imports equipment into the country. Third, problems with the local administration or an employment dispute could be taken to a district court.

Unfortunately, there is a lack of understanding of the importance of foreign investors for the country on the district level and sometimes local authorities try to solve their problems at the expense of foreigners. Kazakhstan remains a country that is attractive mostly to large investors. They are dominant in Kazakhstan for several reasons. As most FDI takes place in commodity-related industries, this requires a sizeable investment. As these industries are capital - intensive, the bigger investors have an advantage. They have long-term strategies, which are the only correct kind of strategy in industries where the payback period can be as long as several years. There is also an element of strategic positioning. For large companies establishing themselves in Kazakhstan this is a part of their global game against competitors. Kazakhstan has a gap to fill between large FDI-related projects (usually over $100 million USD) and the small projects of both foreign and local investors. Most local investors are also very small, for instance, investment into food producers. The projects are around $2-5 million USD and payback periods are short (6-12 months). Another advantage that in this sector people sell for cash. Textiles, for instance, would require a larger investment and a longer payback period due to a slower turnover. At present, this sector is too large for local investors and not interesting enough for foreign investors.

The promotion of small and medium–sized businesses depends on further development of the banking system and capital market as well as on improvement of the investment climate in Kazakhstan. International financial crisis has retarded rates of economic growth and forced Kazakhstan to undertake more severe measures to keep stable macro-economic indices. At the last conference of the International Monetary Fund (IMF) and World Bank (WB), the president of the IMF proposed that investors should bear all risks connected with the unstable economic and political situation in a country. It is unclear what impact such a possible decision will have on investors in Kazakhstan. Kazakhstan has been fairly successful in attracting FDI compared with other CIS countries.

The structure of FDI has changed in that inflows of authorised capital further declined (3% of total FDI), while reinvested profits increased (26% of total FDI). The share of other credits remained nearly unchanged (71%). In amount of investment to Kazakhstan, USA is the leading country (29%)

followed by South Korea (18%) and Great Britain (13%)[241]. To date, Japan and the Persian Gulf Arabic countries have demonstrated noticeable business step-up in this respect.

A high shares of the USA and UK are mainly a result of their strong involvement in the Kazakh oil and gas sectors, though US investors are present in energy generation, food processing (including tobacco) and mining, too.

Since gaining independence, Kazakhstan has adopted a series of reforms to liberalise its economy and facilitate foreign investment. The decade of 1999-2009 witnessed FDI multiplying ten-fold, which enabled to boost oil and gas production. Between 2005 and 2015, the country attracted USD 215 billion worth of FDI. Kazakhstan is widely considered to have the best investment climate in the region, and several international companies have established regional headquarters there. Overall, the government has incrementally improved the business climate for foreign investors and they plan to establish a national company, "Qazaq Invest," that would facilitate the activities of foreign investors in Kazakhstan In 2018, Kazakhstan ranked 36th out of 189 in the Doing Business Report of the World Bank, same as the previous year[242].

The oil and mining sectors are still the most attractive for investors since they concentrate more than half of the FDI. During the last decade, the country, known as the "locomotive" of post-Soviet Central Asia, has tripled its oil production. However, FDI flows to the oil industry are in jeopardy as global oil prices fell sharply in 2015. In addition, FDI flows to the manufacturing sector are steadily increasing.[243]

The positive aspect of this development is that even in Kazakhstan's worst period FDI kept flowing in. Three groups of main factors, all of them external, affect the Kazakh economy: commodity prices (mostly oil and metals), the economic and political situation in Russia and the general sentiment of investors about emerging markets. In 1998 all these factors combined against Kazakhstan. That year was extremely important in proving that there is a core group of well-established investors, who remain in Kazakhstan and continue to invest. Thus, there is an almost guaranteed amount of investment of about $1 billion USD a year coming from these large established investors, fulfilling their investment programs.

[241] Iu.G.Basin and O.I. Chentsova. "The legal treatment of foreign investment under Kazakh legislation. Review of Central and East European Law 2015 No2, 197-208.

[242] Doing Business 2018. A World Bank Group Flagship Report. http://www.doingbusiness.org/~/media/WBG/DoingBusiness/Documents/Annual-Reports/English/DB2018-Full-Report.pdf?lien_externe_oui=Continue

[243] Kazakhstan: Foreign Investment. https://en.portal.santandertrade.com/establish-overseas/kazakhstan/investing

Historically, Kazakhstan has been more of a mining country than an oil producer. Its accumulated metals potential may be even greater than its oil and gas potential. Kazakhstan possesses practically all base and precious metals. As different metals have different cycles, being able to produce a number of products provides for much greater diversification within the sector. Several Kazakhstan metals are among the cheapest in the world. Transportation costs are also much lower for refined metals than for oil and gas, and there is no need to build a separate infrastructure such as pipelines. The attraction of one or several major investors in the mining sector could have a very beneficial effect for the country, but this sector has failed to attract big investors because of worsened perception of the overall investment climate in Kazakhstan in this sector as a result of incorrect governmental policy.

Thus, currently the most important objectives in the field of FDI are improving the investment climate and getting investment in mining, non-commodity industries and medium-sized projects, both domestic and foreign, which is necessary to diversify the economy, to protect it against low oil prices and to increase FDI to a level that would secure real growth.

Kazakhstan agreed (June 2009) and established (July 2010) a customs union with Russia and Belarus and joined the World Trade Organisation (30 November 2015, became the 162nd member of the organisation). The move was opposed by the European Union and the United States. However the economic advantages of the customs union for Kazakhstan were clearly set out by President Nazarbayev, the expected increase in the trade volume, improvement of the investment climate within the customs union, free movement of labor, capital and goods in the common customs space and better access to outside markets for domestic producers. Following the establishment, the three countries launched the next stage of economic integration – towards a common economic space – in January 2012[244]. This stage envisages the creation of a common economic space within the Eurasian Economic Community. The stated ultimate goal of the community is free movement of goods, capital and people, as well as harmonisation of macroeconomic and structural policies. The Eurasian Economic Commission, a newly established supranational body of the community, is expected to gradually take over a number of responsibilities from the national authorities in areas such as competition policy, technical regulations and environmental standards. Key decisions will be taken by the Council of country representatives based on the "one country, one vote" principle. Thus far there is not much evidence that the integration process under the Russia-Kazakhstan-Belarus Customs Union has increased trade between the Customs Union countries, but larger benefits are likely to come from gradually liberalising service sectors and market access within the economic union. Bilateral WTO accession talks were expected to be concluded soon after but they are still on-going.

[244] Madalina Sisu Vicari. The Eurasian Economic Union - approaching the economic integration in the post-Soviet space by EU-emulated elements. Revue Interventions economiques: Papers in Political Economy. 55/2016.

The remaining discussions focus on support for agriculture, export duties on natural resources and local content requirements in the hydrocarbon industry.

In past years large efforts were made to improve the investment environment in Kazakhstan. However, the existing legal and formal infrastructure is not sufficient for growth of FDI. In particular, further improvements in legislative process and court activities, observance of contractual conditions, regulation of investment disputes, methods of tax agreement application, VAT taxation, and issues related to import of foreign labor are all needed. The government carries out task-oriented work in this respect: the FDI Program has been approved, the Interdepartmental Foreign Investment Committee is in place, and simplified procedures for investment applications are being developed. Moreover, heavy constraints weaken Kazakhstan's economic potential. These are: its landlocked status, its obsolete economic structures and also an economy which is still not diversified enough. The oil windfall has impeded the structural reforms. However, corruption is a negative factor, since Kazakhstan is ranked 145th out of 180 according to Transparency International.[245]

Corporate behaviour

We recognise the quick formation of professional top-managers. Entrepreneurs who run their own business often hire managers because their knowledge of management is inadequate. According to the survey of the Russian journal Expert the main traits of successful managers are spotless reputation, ability to deal with a team, responsibility, and vision of prospects. These characteristics are the same for new Kazakhstan managers.

The main current problem of professional managers' growth lies in the lack of trust from owners. The government, be unable to support and defend ownership, destabilises the situation. At the same time, Kazakhstani managers measure their success based on their status among state officials.

In the West, it is easy to evaluate the performance of top managers. The main indicator is company profit. In Kazakhstan, no one knows about the true revenue of top management. There are reasons for this. On the one hand, the legalisation of the capital via production is very risky in Kazakhstan. On the other hand, there are a limited number of managers on whom the company can rely.

It is difficult to estimate the real activity of top managers due to the absence of the effective instruments. The strongest mechanisms should be market stock price; some experts consider international standards as the best tools; while others insist on taking into account the tax system and

[245] Kazakhstan: Foreign Investment. https://en.portal.santandertrade.com/establish-overseas/kazakhstan/investing

other policies.

4.6 Institutional Corporate Governance Framework.

Kazakhstan's legal environment continues to remain complex and challenging despite notable reforms to its legal system. Over the last few years there have been significant improvements in crucial areas such as securities legislation, concessions, derivative transactions, competition, insolvency and anti-money laundering legislation. Notwithstanding such improvements, Kazakh commercial laws still fall short in certain respects of standards that are generally acceptable internationally. In company law, the major shortcomings are found in the legislation on "disclosure and transparency" and on "ensuring the basis for an effective corporate governance framework".

Kazakhstan has adopted a policy of promoting Public-Private Partnership (PPP), as a result it has undertaken notable efforts to reform concession enabling legislation, in particular, by making amendments in 2016 (last edition 8/04/2016) to the 2006 Concessions Law No. 167-III (the "Concession Law", 7/07/2006).

The Insolvency Law appears to be relatively weak in addressing reorganisation processes, liquidation processes and the treatment of estate assets. The means of enforcement of security rights provided by the law seem adequate on the books, yet in practice, enforcement is reported to be problematic due to deficiencies of the court system, uncertainty regarding the enforcement mechanisms, incidents of non-compliance of the government with enforcement rules and decisions, difficulties in locating and ensuring control of the pledged assets and possible application of exchange control rules to repatriation of enforcement proceeds.

Despite progress towards the establishment of a free market-oriented economy, the challenge facing Kazakhstan in 2009 and beyond is still to further enhance the experience, competence and independence of courts, prosecutors and market regulators, tackle corruption, upgrade its commercial laws and make those laws fully effective through a strengthening of the court system and the rule of law.

The European Bank for Reconstruction and Development (EBRD) has developed latest assessments of legal transition in Kazakhstan (March 2014), with a focus on selected areas relevant to investment activities. These relate to investment in infrastructure and energy (concessions and PPPs, energy regulation and energy efficiency, public procurement, and telecommunications) as well as to private-

sector support (corporate governance, insolvency, judicial capacity and secured transactions)[246]. According to the report, Kazakhstan's legal environment continues to remain complex and challenging despite significant reforms. Further steps are needed to strengthen the legal framework for investment and well-functioning markets. Over the last few years there have been significant improvements in crucial areas such as securities legislation, concessions, competition, anti - money laundering, insolvency, and establishing legal entities. Notwithstanding these improvements, Kazakh commercial laws still fall short of internationally accepted standards in some respects. The concession law could be improved by expanding the security package available to lenders. The corporate governance framework, including disclosure to shareholders, could be strengthened. Further improvement of the legal, institutional and regulatory telecoms framework will be a critical ingredient to ensure effective future development of the market and the delivery of a choice of affordable services of sufficient quality. Limitations on using sophisticated methods of taking security over movable assets and inexistence of a centralised register of pledges restrict the access to credit in Kazakhstan by limiting the legal certainty and business flexibility of transactions. Areas of uncertainty in the bankruptcy law remain and further reforms are underway aimed at strengthening debtor and creditor rights. Even though the basic regulatory framework for renewable energy sources has been created in Kazakhstan, further amendments are needed to encourage development of renewable energy projects. Kazakhstan's public procurement laws need a comprehensive review and upgrade to meet modern standards. The anti-money laundering legal framework has many areas that need to be improved to ensure the country's efforts to curb money laundering and financing are effective. Kazakhstan continues to move forward in developing legislation that will assist it in its transition towards a market economy. However, implementation and shortcomings in the judiciary and the enforcement of court judgments remain a serious problem.

Joint Stock Company

A Joint Stock Company is a legal entity that issues shares (securities) to raise funds for its activities. There is no limitation on the number of shareholders. Shares of JSC are freely transferable.

Shareholders of JSC are not liable for JSC's obligations and bear the risk of losses connected with the operations of JSC to the extent of the value of their shares. There are, however, certain exceptions to this rule.

JSC is established by resolution of general meeting of its founders or by decision of a single founder.

[246] Commercial laws of Kazakhstan: An assessment by the EBRD. March 2014.

The process of establishment starts with execution/adoption of a foundation agreement (if there is more than one founder). The foundation agreement must contain some mandatory provisions; however, it is valid only up to the day of registration of share issue. Charter is the only constituent document of JSC after registration of share issue and it defines its name, address, competence of internal bodies, procedure for reorganization and liquidation and other provisions.

The shares of JSC are securities and therefore JSC and its shares are subject to securities market regulation in addition to general legislation applicable to LLP. Shareholders of a newly registered JSC must pay the initial charter capital within 30 days from registration of the JSC. The minimum charter capital is equal to 50 000 MCIs, approximately USD 312 400. Contributions to the charter capital can be made either in monetary form or in kind. However, the value of any contribution in kind must be determined by a licensed appraiser. Specific legislation provides different requirements for minimum charter capital for banks, insurance companies and private investment funds, which have to be established in the form of JSC.

JSC has the following bodies:

- superior body – general meeting of shareholders;

- management body – board of directors;

- executive body (individual or collective); and

- other bodies set out by the law and (or) the company's charter, e.g. an audit

committee.

The general meeting has the exclusive power to amend and approve the company's charter. It also appoints the board of directors which in turn appoints the executive body and the audit committee, and exercises any other exclusive powers reserved to it under the law and (or) the charter.

The board of directors supervises the executive body of the JSC and has an exclusive right to authorize certain transactions.

The executive body, which can be represented either by collegial body or by an individual executive officer, is responsible for the day-to-day management of the company.

The audit committee (or external auditor) monitors the company's activities. Members of the audit committee cannot simultaneously act as the members of the management or executive body.

The convening of a general meeting of shareholders is compulsory, unless all voting shares in JSC belong to a single shareholder. The general meeting of shareholders must take place at least once a

year. Certain decisions may require more than a simple majority vote of the shareholders present. Extraordinary meetings may be called by the board of directors, a major shareholder (i.e. any shareholder with 10% or more of the voting shares) or a liquidation committee in case of a voluntary liquidation of JSC. The general meeting of shareholders must approve the annual financial statements.

The issue of shares in JSC must conform to Kazakhstan securities legislation and must be registered with the National Bank of Kazakhstan (NBK).

There are two types of shares: ordinary shares (voting shares) and preferred shares, although the latter may not exceed 25% of the total number of placed shares of JSC. Subject to the provisions of the securities legislation, shares are issued in book entry form. The company may also issue other securities, and the issuance procedure, conditions, etc. should comply with the legislation on securities.

The capital of JSC may be increased by placement of its declared shares.

Shareholders are entitled to receive dividends and title on the company's property in case of its liquidation. A holder of an ordinary share has the right to vote on any issue, which is considered at the general meeting of shareholders.

Preferred shares give the shareholders priority rights to receive dividends in the amount determined by the charter and also, as determined by law, to receive outstanding dividends before holders of ordinary shares in the event of liquidation. A holder of a preferred share has no right to participate in the management of JSC except for certain cases prescribed by article 13.4 of the Law on Joint-Stock Companies.

Dividends may be paid in monetary form or in the form of securities, but dividends on preferred shares can be paid in monetary form only. Payment of dividends by securities is allowed provided that such payment is made via "declared" shares and issued debentures with written consent of the shareholder. Distribution of dividends on ordinary shares may be made only after adoption of the resolution by the general meeting of shareholders.

The law recognizes the concept of a "golden" share. The founders may introduce only one "golden" share in a JSC, which does not form part of the capital and whose holder does not receive dividends. The holder of the "golden" share participates in the management of JSC through the right of veto on decisions (stipulated in the charter) to be made by general meetings, the board of directors and the executive body.

In 2007, Kazakhstan introduced a new additional type of JSC, i.e. the public company. The public company is a company that meets certain requirements aimed at securing its public nature (e.g. the

shares must be placed with an unlimited circle of investors; not less than 30% of common shares should be owned by shareholders, with each of them owning not more than 5% of the shares).

Stock market of the Kazakhstan

The Kazakhstan securities legislation includes the Law "On the Securities Market", "Law on Transactions in the Securities Market", "Company Law", other laws governing legal relationships related to securities issuance and circulation, the statutes of the RK President and the government, as well as normative legislative acts of the RK governmental agencies issued in accordance with the legislation of the Republic of Kazakhstan.

The main executive bodies in the infrastructure of the Securities Market (SM) are the KASE, National Securities Commission (NCS), and Central Depository. The Kazakhstan stock market is presented mainly by the operations on the Kazakhstan Stock Exchange. It was founded in July 1996 in order to assist in the capitalisation of the country's industries and in the various privatisation programs. KASE is responsible for providing a trading floor, organising trades of financial instruments, quotation of financial instruments and conducting listing of the companies.

The activity of KASE is regulated by the presidential decree On the Securities Market and the Stock Exchange (1997) and the regulations of the National Securities Commission. National Securities Commission is in charge of developing rules, law drafts and acts, licensing the professional participants and registering state and corporate securities. Resolution of the Board of the Agency of the Republic of Kazakhstan for Regulation and Supervision of the Financial Market and Financial Institutions N73 dated March 30, 2007 "Concerning Requirements to Issuers and to Their Securities Approved for Circulation on the Stock Exchange, as well as to Certain Categories Listed on the Stock Exchange." ("KASE Listing Requirements")

Transactions with financial instruments on the organised securities' market of Kazakhstan are carried out at KASE. KASE is the only Kazakhstan stock exchange.

KASE is regulated by the following legislation:

- The Civil code;
- Law on Joint-Stock Companies;
- Law on the Securities' Market;
- Law on Investment funds;

- Regulation of the activities of the organiser trading with securities and other financial instruments and other Regulations.

KASE is divided into six major sectors: foreign currency, shares, corporate bonds, government bonds, repo operations and derivatives.

Kazakhstan legal entities are allowed to place their shares on foreign stock exchanges. However, prior to a foreign listing, 20% of the shares to be placed must be offered on KASE on the same terms. Consent from the NBK is required for a foreign listing.

KASE's official list is divided into two categories: "A" (highest level of listing) and "B". For shares to be included in KASE's category "A" and category "B" official listing, a Kazakhstan-resident issuer must satisfy certain requirements. One of such requirements is to have a corporate governance code, approved by the issuer's general meeting of shareholders and containing provisions of the Corporate Governance Code approved by the Council of Issuers on February 21, 2005. The same requirement applies to issuers of bonds that are being issued as part of a bond program.

Article 84.5 of the Securities Market Law provides that when the board of directors of a stock exchange makes decisions on listings, de-listings or changes of listing category, the members of the board are not entitled to vote if they are representatives of: 1) an issuer whose securities are to be included in the stock exchange's listing, or are to be excluded from such listing, or are to be transferred into a different category on the basis of the above decision ("an interested issuer"); 2) subsidiaries or dependent JSCs of the interested issuer; 3) entities with respect to which the interested issuer is a subsidiary or a dependent JSC; 4) entities that are, together with the interested issuer, subsidiaries or dependent JSCs of another company.

4.7 The Corporate Governance of State-Owned Enterprises

The number of state-owned enterprises (SOE's) is growing in the global economy and States yield dominant or significant influence on at least 22 of the world's 100 largest corporations[247]. SOEs represent a large part of the economy also in Kazakhstan, with the SOE sector dominated by a few national holding companies aggregating SOEs included in different sectors (banking, agriculture, industry). National Welfare Fund Samruk-Kazyna, which holds most of the country's industrial

[247] Christiansen, H. and Kim Y., *State-invested enterprises in the Global marketplace: Implications for a Level Playing Field*, (OECD CG working papers, 2014 No. 14, OECD Publishing, Paris).

assets, is one of the largest investors in the economy. It manages shares of over 400 companies in the oil, gas, energy, mining, transportation and information sectors[248]. In co-operation with the OECD, the fund carried out extensive work to improve its CGF in recent years.

In most countries, including Asia, a substantial part of the companies are still family owned. The founder/family of the companies plays a central role in governance. In these companies ownership is not dispersed. In their study, Porta found that the most common form of ownership around the world is family-owned or state - owned which do have controlling power over the company[249].

The state-owned enterprises are dominant in Kazakhstan since such enterprises are folly owned by the Government and provide the people with all the necessary and unnecessary wants. Such needs for example the electricity, water and subsidised food. Accordingly, it has been argued that to attain sound corporate governance system in any country, the government must show it willingness to reform the economy by adopting or reforming the corporate governance system in the state-owned enterprises especially where the SOEs are dominant as in the case of Kazakhstan.

The establishment of state-owned enterprises could be attributed to several reasons or motivations. Moreover, it has been argued that the reasons behind establishing state-owned enterprises may differ from country to country. These differences could be because the state administration or the government reflects the cultural environment in its country, so the pattern to achieve such objective is also different[250]. In other words, state - owned enterprises are not similar in all countries because it's structure whether from legal, financial or administration perspectives depends on each country's culture to ensure that they are protecting national interests.

Since independence, Kazakhstan has implemented a number of broadly based reforms in an effort to move from a planned economy to a market economy, and to attract foreign investment. These reforms include: demonopolisation; privatisation; debt restructuring; banking reform; lifting profitability controls; price liberalisation; establishing a securities and exchange commission; trade liberalisation; enacting laws on investment; setting up an adequate Government procurement process; customs reform; and tax reform.

Though Kazakhstan has privatised thousands of enterprises, many large important enterprises remain

[248] OECD (2012), OECD Investment Policy Reviews: Kazakhstan, OECD Publishing, Paris; Samruk-Kazyna (2016), Available at http://sk.kz/ Accessed on 13/03/2018.

[249] La Porta, R., Lopez-de-Silanes, F., Shleifer, A. and Vishnu, R. (1999) "Corporate Ownership around the world". Journal of Finance. Vol.54. pp. 471-517.

[250] Belkaoui, A., Accounting in the Developing Countries, London: Quorum Books, 1994, at p 171.

under state ownership. Though few in number, these large enterprises dominate the economy. The state is still the sole owner of 333 of these enterprises, and they account for about a third of the Gross domestic product (GDP)[251]. Many of these large enterprises have been transferred by the State Property Committee to "trust management" in which existing managers or the regional administrators have control over the enterprises. Regardless, these enterprises are still under state ownership, and trust management should not be a permanent solution.[252]

There are certain particularities with respect to corporate governance rules for state- owned companies[253].

According to the Resolution of the Government of the Republic of Kazakhstan No. 363 "On establishment of specialised councils on the issues of state corporate governance at the Government of the Republic of Kazakhstan", dated May 7, 2007, specialised councils having the status of advisory bodies are to be established. Such councils are to provide recommendations with respect to activities of the following state-owned entities: Samruk holding, Kazyna Fund, KazAgro holding, Samgau holding and social entrepreneurial corporations. Apart from giving recommendations on governance issues, the councils are to assess the activities of the above state-owned entities.

Accordingly, the state-owned entity can be defined as follows: "enterprises where the state has significant control, through full, majority, or significant minority ownership"[254].

Moreover, the state-owned enterprise has also been defined as a legal corporate entity that the government owns the whole or part of, and it is operating as a separate business organisation with the aim to be a profitable organisation or at least break even. Based on Kazakhstani Law it can be defined that the state-owned enterprises are entities executing an economic project pursuant to the public policy of the state and the socio-economic development plan. However, there is no single definition for the state-owned enterprise in the Kazakhstani Laws; therefore, it has been suggested that the state-owned enterprise in Kazakhstan is an enterprise that is wholly owned by the state.

Due to the argument that there is no single code or guideline for the best practice of corporate governance in state-owned enterprises, the OECD has developed principles of corporate governance

[251]Investors and stakeholders, Samruk-Kazyna official website. Available at http://sk.kz/en/press-centre/news/10639/?sphrase_id=2443 Accessed on 23/03/2018.

[252] http://www.worldbank.kz/text/esw1_engt.html Economic and Sector Work - Kazakhstan: Joint

Private Sector Assessment.

[253] Article 34 of the JSC Law

[254] OECD Guiedlines for Corporate Governance of State-Owned Enterprises, at 11.

for state-owned enterprises, and these principles are playing a significant role in this context. Accordingly, the OECD recognised that the weakness of governance in state-owned enterprises is due to several reasons[255]: Corporate governance is exercised by a chain of agents without identifiable principals; Insufficient market incentives and disciplines; No threat of take-over and replacement of incumbent management; Shareholder exit is not possible; Monitoring of performance by the state equity-holder is weak, mainly due to the lack of economic motivation; Lack of a credible threat of bankruptcy; Accounting and disclosure generally do not meet private sector standards; The non-commercial objectives of state-owned enterprises are considered a source of inefficiency. Consequently, and because of the importance of the corporate governance issue in state-owned enterprises due to the fact that they constitute a major share in many countries' economies. The OECD has launched corporate governance guidelines for enterprises owned by the government in order to improve the corporate governance best practice in the government corporations[256]: Ensuring an effective legal and regulatory framework for state-owned enterprises; Separation between state ownership function and other state functions; The government should ensure a legal framework that allows the creditors to claim against the state-owned enterprises and bring an insolvency case against it; The state acting as an owner; Equitable treatment of shareholders; Relations with stakeholders; Transparency and disclosure; The responsibilities of the boards of state-owned enterprises.

Accordingly, the state-owned enterprises should have a separate legal form, as they should be incorporated under the country`s Companies Law despite the government is the only owner or the controller[257]. The important of the separate legal form for the state-owned enterprises has been justifies by Dr. Suleimenov as: "to free the enterprise from rules and regulations of the government that may prevent flexibility and reduce operating efficiency, and to achieve some sort of separation of the activities of the government as both a rule of the country and as owner of economic units[258].

Samruk - Kalyna JSC is entrusted with government investment in holding Kazakhstani companies. Furthermore, the few state - owned enterprises in Kazakhstan play a very important role in the economy of the country and participate significantly in the annual state fiscal budget. The main types of large corporations in Kazakhstan are:

1. National and state-owned companies (15): "KazTransOil"; RGP "Kazakhstan TemirJoly"; JSC

[255] OECD, 1998, Corporate Governance, State-Owned Enterprises and Privatization, Organization for Economic Co-operation and Development (OECD).

[256] OECD Guidelines on Corporate Governance of State-Owned Enterprises- 2005, at p 3.

[257] Belkaoui, A., 1994, Accounting in the Developing Countries, London: Quorum Books. At p: 169.

[258] Suleimenov, M.K. Legal regulation of foreign investment. Almaty, 2006. p.143.

"Kazakhtelecom"; JSC "Halyk Savings Bank of Kazakhstan", etc.;

2. Joint-stock company established by the state and privatised on individual projects (40): CBO Corporation "Kazakhmys"; JSC "Kazzinc", etc.;

3. Private corporations formed by the methods of self-organization of the market (about 10): OAO "Kazkommertsbank"; JSC "Neftekhimbank", etc.;

4. The Kazakhstan branch of TNK (about 45): JSC Corporation "Kazakhmys" (Samsung); JSC "Coca Cola Almaty Bottlers" (Coca Cola, etc.)[259].

Kazakhstan is a rentier state, because it depends solely upon an external source, which is revenue derived from the sale of oil. Last few year, the government was encouraged to reduce the dependence upon oil revenue due to the rise and fall of the price of oil. And privatisation of public entities was the main solution for the Kazakhstani government to achieve its goals. The purpose of privatising the state's owned enterprises is to minimise the government's role in such enterprises on the one hand, and, on the other hand, to unleash the private sector to participate in the national economy and to create a competitive sphere.

By law, and in practice, foreign investors can participate in privatisation projects. The Government of the Republic of Kazakhstan has amended the list of Samruk-Kazyna JSC . assets to be privatised in 2016-2020. The priority list for privatisation includes 65 subsidiaries of large national companies operating in the energy, mining, transportation, and service sectors. Samruk-Kazyna JSC . conducts the "People's Initial Public Offerings (People's IPO)", which allows citizens and institutional investors to buy up to 10% of the stock of national companies. Additionally, the Government continues to sell small municipal enterprises through electronic auctions. To reflect these changes the corresponding resolution of the Government of the Republic of Kazakhstan dated December 30, 2015 was amended[260].

Including the changes introduced as part of the Comprehensive Privatisation Plan for 2016-2020, 215 Samruk-Kazyna assets are planned to be privatised. To date, the Fund has sold 124 of these companies. The remaining assets are scheduled to be sold by the end of 2018, except the Fund's six largest companies, Air Astana, Kazatomprom, Samruk-Energy, KazMunayGas, Kazpost and

[259] Top 20 Kazakhstan Companies by Market Capitalisation. 11 October, 2011. Available at: http://topforeignstocks.com/2011/10/11/top-20-kazakhstan-companies-by-market-capitalization/ (Accessed on 20 March 2017)

[260] Samruk-Kazyna JSC . report. (2015). Available at: http://37.150.215.136/en/press-centre/news/3529/ (Accessed on 20 March 2017)

Kazakhstan Temir Zholy, which are set to be privatised through IPOs, provisionally by 2020, given favourable macroeconomic and market situation.

Chairman of the Management Board, Member of the Board of Directors of Samruk-Kazyna JSC: "I believe in the power of private initiative and I know that the private sector should prevail in the economy", - said Umirzak Shukeyev, Chairman of the Management Board of Samruk-Kazyna JSC[261].

Baljeet Kaur Grewal, Managing Director for Strategy and Portfolio Investment of Samruk-Kazyna JSC, commented: "Our large-scale transformation programme is aimed at implementing significant structural and qualitative changes at both Fund and company levels in order to increase our efficiency and make us more competitive on the global market. The fund is already beginning to reap the benefits of the transformation, and not only in a financial sense. We are changing our strategic model, moving from the position of portfolio managers to a much more strategic active investor role. This will allow us to focus our efforts on maximising the value of our assets in advance of the planned privatisation."

Yerzhan Tutkushev, Co-Managing Director for the Development of New Industries, spoke about the investment and partnership opportunities presented by the privatisation programme: "Our privatisation programme offers plenty of opportunities for both local and international investors. IPOs, directs sale to strategic investors and long-term partnerships are all part of the national strategy to attract more investment and management expertise to the economy of Kazakhstan. But aside from that, the programme reflects the intentions of our sole shareholder — the government — to reduce the level of state presence in the country's economy".

In sum, it could be argued that a clear legal framework for state-owned enterprises is necessary to achieve their objectives and to allow the directors of such enterprises to perform their activities as much effectively as possible. Government of Kazakhstan need new legislation regulating the state-owned enterprises in Kazakhstan because they are missing a clear integrated legal framework.

4.8 Privatisation of state-owned enterprises in Kazakhstan

Republic of Kazakhstan representing an exponent of the five Central Asian states is a country where sweeping structural reforms proceed in socio-economic sphere towards a capitalist economic system. In the beginning stage of transition, Kazakhstan nevertheless was a follower of some Former Soviet Union (FSU) countries including Russia and the Kyrgyz republic due to hesitation in implementing several important measures. However, after the Kazakhstani government and IMF came to an agreement on macro stabilising policy package in the end of 1993, the country had rapidly accelerated

[261] Umirzak Shukeyev spoke about privatization of assets of Samruk-Kazyna JSC. Oficial website of Samruk-Kazyna. Available at: http://sk.kz/en/press-centre/news/1206/?sphrase_id=2443 accessed on 20 November 2018.

deregulation of economic activity and privatisation of state-owned firms. By virtue of great efforts made under the authoritarian leadership of President N. Nazarbayev during 1994-98, Kazakhstan now bears comparison with other reforming countries with regards to the degree of decentralisation of economic system.

It is obvious that deregulation of price, trade and foreign exchange is a necessary, but not a sufficient requirement for crafting a market-oriented society. As to activate decentralised economic system, a competitive industrial organisation has to be combined with freed economic circumstances. In addition, mutual relations between the government and business entities ought to be coordinated to complement this institutional coordination simultaneously. It is no doubt that there is a virtual unanimity for the proposition that the privatisation of state property gives a momentum for generating significant changes in industrial organisation, corporate governance and government-business relationship of the post-socialist countries. Therefore, the article attempts to view these three aspects seriatim with tracing privatisation policy and its main consequences in Kazakhstan in order to examine whether or not this country has establish desirable economic structure.

Around the world, governments are important owners of commercial enterprises and assets. How well governments manage these assets has a great impact on the substantial values these enterprises represent and thus on a country's public finances. Better performance of these enterprises is a positive factor for economic growth and competitiveness. In addition, state-owned enterprises often supply fundamental services such as water, electricity and transportation that private companies and all citizens depend upon for their competitiveness and welfare.

Kazakhstan government is therefore trying to improve the governance of their state-owned enterprises. There is an upcoming interest to improve the value creation and not destroy often important investments made by state-owned enterprises.

One of the main trends of the economic and social reforms conducted in Kazakhstan is formation of effective market relations in the economy. The main source of the creation of a competitive private sector is privatisation of the state property and reduction of the state control over the economy.

To begin with, privatisation has produced much more limited results as a driver of restructuring as initially expected. While small and medium size enterprises have almost all been privatised, a high proportion of economic activity still remains in state hands, in most Eurasian countries. The state owns or effectively controls major utilities, and many of the largest firms. This contrasts quite sharply with the three Baltic states as well as in Russia.

Eurasian countries have adopted a wide variety of privatisation methods. Ukraine has mainly used voucher privatisation and transfers to insiders; only very recently it has been trying to attract foreign investors to some of its biggest enterprises. Other countries have already introduced tender privatisation and have, as a result benefited from more substantial foreign investment, as has energy-rich Kazakhstan.

In Kazakhstan, the 330 largest enterprises producing more than 1/3 of the GDP are still under state control. The situation of large state-owned corporations in Eurasia does not seem to suggest that prolonged state ownership might lead to better outcomes for the companies or for society as a whole.

In Kazakhstan, the processes of privatisation started at the end of 1991, virtually immediately after gaining of independence. In Kazakhstan, citizens were required to invest their vouchers through these funds. In practice, voucher funds have not lived up to their assigned role as corporate governance principals. They were often captured by managers or other politically well connected parties. In some cases, they co-operated with insiders to strip assets off companies and then disappear with the proceeds.

Currently the Government of the Republic of Kazakhstan has amended the list of Samruk-Kazyna JSC assets to be privatised in 2016-2020. The updated list includes four subsidiaries of Kazakhstan Engineering JSC: Kirov Machine-Building Plant JSC; Semipalatinsk Machine-Building Plant JSC; Tynys JSC; and Kazakhstan Aviation Industry LLP, as well as Energia Semirechya LLP, 51% of which belongs to Samruk-Energy JSC. To reflect these changes the corresponding resolution of the Government of the Republic of Kazakhstan dated December 30, 2015 was amended. Every privatisation program was developed for the period of several years, and had to include the following: Tasks and goals of the state policy in the sphere of privatisation for the current period; Definition of the objects included in the program; Methods and means of privatisation of the state property; Forecast of privatisation revenues; Forecast of the volume of investments related to privatisation; A list of the groups of objects exempt from privatisation due to the reasons of defence, state security and social development; Questions related to the environmental protection and public health, as well as retaining state monopoly in some sectors; Procedures of evaluation of the state property being privatised.

“Samruk-Kazyna JSC and the Government of the Republic of Kazakhstan remain committed to the country’s privatisation programme. The Privatisation Project Office is constantly assessing additional suitable privatisation targets, in order to encourage the private sector to take on a leading role in the country’s economy where appropriate. In light of this, the Fund has suggested adding four Kazakhstan Engineering subsidiaries and one asset belonging to Samruk-Energy to the list of the companies to

be privatised. The decision to remove seven assets from the privatisation programme was motivated by the need to maintain state participation in the companies of strategic or socio-economic importance, or in certain cases because privatisation was no longer considered viable."

Including the changes introduced as part of the Comprehensive Privatisation Plan for 2016-2020, 215 Samruk-Kazyna JSC assets are planned to be privatised. To date, the Fund has sold 124 of these companies. The remaining assets are scheduled to be sold by the end of 2018, except the Fund's six largest companies, Air Astana, Kazatomprom, Samruk-Energy, KazMunayGas, Kazpost and Kazakhstan Temir Zholy, which are set to be privatised through IPOs, provisionally by 2020, given favourable macroeconomic and market situation.

The experience of the first stage of privatisation (1991-1992) was characterised by implementation of two privatisation programs. On this stage the legal background for privatisation and attraction of investments was created, as well as the relevant organisational infrastructure. The main accent was made on the "small" privatisation of trade objects, catering and consumer services. Small and medium-sized enterprises were sold to their employees. Large enterprises were commercialised and after that up to 75% of their shares were sold to employees at a reduced price. The remaining shares were intended to be sold on the coupon auctions later. Positive effect of the "small" privatisation manifested itself in the implementation of market relations in trade and services and in the creation of competitive environment.

At the same time, the process of privatisation was burdened by the sins of bureaucracy and subjectivism. Plans of privatisation were created by local administrations without taking into account the real situation of enterprises. Then these plans were made more concrete for separate regions and sectors in the form of a certain set of indices. Their achievement was supervised by the administrative organs of lower level, who prepared quarterly reports. It should be said that decisions on the value of each enterprise, way of payment, ownership structure and amount of shares passed to employees were very subjective. In reality, a privatisation commission, as a rule, approved the propositions developed by employees and managers.

The second stage in the development of corporate governance in the Republic of Kazakhstan (1992-1995) is characterised by the realisation of two privatisation programs from: 1992-1993 and 1994-1995. The main tasks of the second stage were carrying out of mass privatisation and reorganisation of large and medium-sized enterprises in industry, transportation and construction. It is a little bit of a paradox that the government made a special accent on the fact that the quality of privatisation is more important than its speed while starting the mass privatisation.

In Kazakhstan has shown the limitations of ownership conversion tools developed with a focus on collectivist beginning that it was inevitable time. Adopted in March 1993. "National program of

privatisation of state property in the Republic of Kazakhstan for 1993-1995" to determine the direction and sequence of the transformation of state property.

On this stage, the mass (coupon) privatisation has been implemented. Every citizen was provided with coupons and the opportunity to get shares of privatised enterprises in ex- change for them. The goals of the mass privatisation were not achieved fully: investment funds haven't started to work effectively; there was not enough investment demand for the privatised objects from the population; managers of attractive and profitable enterprises had been trying to buy out the coupons from the population before the coupon auctions started to be held.

During this period, transformed into joint stock companies about 2,000 enterprises.

The third stage in the development of corporate governance in the Republic of Kazakhstan (from 1996 to 1999) of cash privatisation. Until the end of 1998, it was privatised in 2615 joint-stock companies and economic partnerships. This represented 51.8% of the total number of established joint-stock companies and economic partnerships.

Corporate governance has been built on the basis of well-established and effective regulations in finance, securities, management, labor relations, contractual obligations, contractual activities, organisational structures, marketing.

In 2000, the Concept of state property management and privatisation, the implementation of which adopted three programs to improve the efficiency of state property management and privatisation.

In order to strengthen state control over strategic sectors of the economy in 2003, the Law of the Republic of Kazakhstan "On state property monitoring in the economic sectors of strategic importance."

During the period from 1991 to the present time been privatised more than 39 thousand objects of state property. The three-stage privatisation implemented after collapse of Soviet Union could dramatically changed the ownership structure of industrial sector for the benefit of private investors and entrepreneurs. Some private investment companies as well as foreign capitals became major stockholders and/or managers of many privatised firms. It is noteworthy that some of them have laid the foundation of so-called industrial-financial groups, which began to make inroads into so far impregnable monopoly markets dominated by sectional state holding companies. Thereupon, the significant diversification of industrial organisation and corporate governance was incarnated and to some extent the intensification of managerial discretion has also proceeded. Notwithstanding such positive achievements in the industry, new mechanisms of governance did not work out due to some unsolved problems including increasing inter-enterprise arrears and underdevelopment of financial sector, both of which are vital for new institutional investors. As a consequence, the government remains most important stakeholder for even privatised firms and retains great influence in industrial

decentralisation. Hence a reorganisation of the government-business relations is recognised as a key element to predict whether Kazakhstan will promote indispensable conditions for competition in industry further. Indeed, in this connection the central government actually has taken some drastic measures to restructure its management system to adjust systemic transformation process. By way of illustration, the government executed extensive integration of its organs and introduced strict regulation regime against an arbitrary intervention by state agencies and officials into private business activities and so forth. However, the effort for creating more neutralised relationship between the state and business is seriously spoiled by an informal mechanism institutionalised on the top level of the state. The most powerful seven business groups virtually represent most of gigantic enterprises in Kazakhstan and enjoy exclusive apportioning of economic interests by occupying primary positions in the cabinet of ministers and government offices. The scale of their political activities is difficult to gauge. Albeit this fact, it is without doubt that they are so influential on decision-making process of the government that there is no warranty to secure a fair competition in this country even in case if privatisation policy will make a significant progress from now on.

Summarising all aforementioned aspects, the direction of SOEs in Kazakhstan is often appointed at the political level and these companies have extensive links to the public sector, including access to public funding from state-owned banks as well as credit facilities. State-owned enterprises also have an advantageous position in terms of licensing. This entails various risks, such as undue political interference in decision-making which may be in conflict with the best interests of the enterprise and the general public[262]. Consequently, the OECD called for sufficient accountability and transparency in these companies and emphasised the importance of external monitoring of their operations.

A Code of corporate governance for state-owned enterprises is reportedly under development, and would include considerations of the guidance provided in the OECD Guidelines on corporate governance of State-owned Enterprises, the OECD Principles of corporate governance and the provisions of the Code of corporate governance.

Based on the above, it can be recommended that;

- the Kazakhstani government should make strenuous efforts to rectify the weakness of the institutional coordination for promoting a market economy now and otherwise in the near future, the country will lose its ascendancy of economic system over other Central Asian states. In a sense, Kazakhstan may have to negotiate more steep and dangerous path of systemic transformation than before.

[262] OECD (2015), Guidelines on CG of State-owned Enterprises, Paris.

- Following the example of Samruk-Kazyna, other SOEs in Kazakhstan should also be encouraged to update their governance practices and to strengthen the rules and procedures of transparency and accountability;
- the authorities should be vigilant to promote a level-playing field in the cases of competition between SOEs and private enterprises;
- The government should consider publishing an annual aggregate report covering the activities of all SOEs, as recommended by the OECD Guidelines on CG of State-Owned Enterprises.

Corporate governance in the private sector

The Law on JSC is the principal legal source of CG in Kazakhstan. According to the Law, the board of a company is obliged to act according to the principles of transparency and openness, and in the best interests of the company and its shareholders. All public companies should adopt a CG code, and disclose it on their website. The Law gives a definition of a public company to which this requirement applies; however, it is unclear how many companies in Kazakhstan fit under the definition. The Law also describes the company's code as follows: "the company's corporate management code - the document approved by the general shareholders meeting of the company which regulates relations arising in the process of the company, between bodies of the company, the company and concerned persons"[263].

In addition to the JSC Law, the Law on Accounting and Financial Reports also sets out certain requirements for corporate reporting, and requires companies to prepare annual financial statements in compliance with International Financial Reporting Standards. Issues related to environment and society are disclosed only on a voluntary basis. In the 2012 Kazakhstan Investment Policy Review, the OECD pointed out that the differences between reporting methodologies and the use of various indicators makes it challenging to compare information provided by the companies.[264]

In some areas, the Code offers less guidance for companies than what is recommended by the OECD standards of CG. The OECD Principles of CG highlight the necessity for a company to take into account the rights and interests of all stakeholders. In contrast, Kazakhstan's Code puts emphasis on the board's responsibilities with regards to the shareholders only. It calls for the board to act in the best interests of its shareholders and to aim at increasing the market value of the company.

[263] EBRD (2011), Kazakhstan Law on JSC

[264] OECD (2012), OECD Investment Policy Reviews: Kazakhstan, OECD Publishing, Paris.

Moreover, the Code does not sufficiently highlight the board's responsibility in creating and overseeing an environment of business integrity. In comparison, the OECD Principles of CG emphasise that the company's board should be in charge of guiding the company's strategic direction, including setting clear standards for integrity and accountability throughout the whole company. The board should be responsible for continuous review of the company's internal operations and monitor its accountability, that is, implement and oversee the internal control and compliance frameworks so as to detect and address misconduct[265].

Business integrity-related legislation in Kazakhstan is in certain cases still insufficient, particularly in terms of the guidance it offers for corporate compliance with standards (either voluntary or mandatory). The 2014 OECD report Responsible Business Conduct in Kazakhstan points out that one of the main challenges for the country's private sector regarding business integrity is in the practical implementation of standards (both national and international). The gap between business integrity standards and their practical implementation can partly be explained by the lack of knowledge of such standards and tools, as well as by insufficient guidance on how to use them[266].

Recommendations for reform:

- Kazakhstan could consider updating the Code of CG. The OECD Principles of CG could be used as reference and particular focus could be drawn on the board's responsibilities related to business integrity.
- An assessment could be carried out on the effectiveness of Kazakhstan's legal framework relative to, in particular, the responsibilities and power of the board. Kazakhstan could consider providing them with a stronger mandate for supervision of the company, including monitoring of its accountability and for setting clear standards of integrity.
- In line with OECD standards, Kazakhstan should consider strengthening the guidance offered to companies and making compliance with the Code of CG mandatory, under a comply or explain mechanism.
- In addition, Kazakhstan should promote convergence of reporting methodologies and indicators in order to facilitate comparison and discourage non-transparent practices which can increase the risk of corporate misconduct.

[265] OECD (2015), CG and business integrity: a stocktaking of corporate practices, Paris.

[266] OECD (2014), Responsible Business Conduct in Kazakhstan, OECD Publishing, Paris; Artemyev A. et al. (2012), Corporate social responsibility in Kazakhstan: from liability to strategic Investment, SIGLA Brief.

4.9 Kazakhstani Corporate Governance Code

As a new concept for the Kazakhstani business environment, corporate governance professionals are concerned with better performance and development of the companies. This concern creates to apply international corporate governance standards in order to improve the financial environment for the companies. In addition, applying international corporate governance standards is consistent with the principles of globalization, global competition and the openness of the economic. Applying the Kazakhstani CGC will show that the local market is implementing the requirements and the criteria‘s of transparency and accountability to protect the investors and traders. Moreover, Kazakhstani CGC will show that the Kazakhstani companies have the ability to deal with the worldwide corporations and markets. Accordingly, this will increase and enhance the confidence in the national economy. As a result, this is an indicator for the foreign investors and corporations to attract and motivate them to invest in the local market. Kazakhstani companies‘ obligations are constrained under the regulations to align with the business companies and corporate governance such as the Corporate Governance Code (CGC) and Company Law (CL).

The Cadbury Report (1992) and OECD Principles of Corporate Governance (2004) played an important role in the developing of corporate governance codes globally. Various countries have followed the Cadbury Report by introducing different codes for the best practices of corporate governance. These codes tried to implement Cadbury Report by providing variety of recommendations such as board structure and ownership structure.

Kazakhstan has adopted and followed the international corporate governance codes by introducing their own corporate governance code in 2005. These codes include many recommendations in line with international best practice. The code was draws upon to the OECD principles of corporate governance and the guidance were issued by the Financial Committee to enhance the banking organizations of corporate governance. In particular, the recommendations of the code were heavily informed by those of the OECD principles.

The guide was issued in view of the development of the national economy, and in line with the efforts of the JSC to develop the national capital market. The major areas of enforcement include rules of corporate governance for shareholding companies that are listed in the KASE. It contains an established and clear framework that regulates the relations between the companies and management. These codes define their duties, rights and responsibilities. These rules are based mainly on the Companies Law, Corporate Law and the international principles (e.g. OECD principles). Furthermore, the important role of the National Bank cannot be ignored in promoting the role of corporate governance of financial and non-financial institutions in Kazakhstan as one of the key players. The National Bank of Kazakhstan had issued the bank Director‘s Handbook of Corporate Governance in 2014. Moreover, the National Bank prepared the corporate governance code which

helped in implementing the international corporate governance practices inside the Kazakhstani banks.

Safe financial environment is the framework for good development corporate governance. Different laws related to corporate governance have been issued and implemented (e.g. JSC Law, Company Law, Insurance Law, Banking Law, Commercial Law, Law of Privatisation and Law of Investment Promotion). These laws spotlight the issues that are related to corporate governance, which are:

- The financial disclosure and the company‘s legal personality are independent to their shareholder.
- These laws help in governing the conditions, procedures and the actions that may appear, such as transfer properties or acquisitions (e.g. the right for transfer of company and individual ownership, possession and mortgages).
- To pursue the legal structure of the companies and confirm that these companies have the following assemblies; audit committee, board of directors and general shareholders.

The Kazakhstani CCG published in 2005 by the JSC covers the following areas:

- Definitions of key terminology.
- The board‘s structure and responsibilities.
- Shareholder general meetings.
- Shareholders‘ rights.
- Guidelines for financial disclosures.
- Accountability and auditing.
- Ownership structure.

The Disclosure Department in the JSC is the responsible department for applying and implementing the previous rules inside all the companies‘ applications to strength their performance in order to enhance and improve the national economy and the investment environment (JSC, 2005). Furthermore, in order to encourage foreign investors to invest in Kazakhstan, Kazakhstan has signed several promotion and reciprocal of investments agreements with the following countries: the UK, France, the US, Germany, Italy, Malaysia, Romania, Tunisia, Turkey, Algeria, Yemen, Bulgaria, Austria, China, Spain, Syria, Poland, Kuwait and Singapore (Ministry of Finance website). Naturally such extensive international agreements require a sound legal framework and some degree of regulation from the government. Therefore, if the companies operate their business without efficient

mechanisms of corporate governance, they might lose the advantage from attracting foreign investors and they probably will face challenges and difficulties to enter to the international market.

In summary, firstly, Kazakhstani firms are trading in different industries, which generally affects corporate governance due to different practices between industries resulting from differences in capital structure, complexity of operations, ownership levels and business type. This study therefore includes the industry effect in order to find the impact of the industrial sector on firm performance. Secondly, Kazakhstan started economic and financial reforms and adopted legislation to motivate and initiative accountability and transparency in the country, in order to build a safe financial environment for the local and foreign investors. In this sense, the study will investigate these changes and improvements of legislation by using annual dummy variables to investigate this effect on firm performance. It is expected that the development of the financial environment might improve the firm performance in Kazakhstan.

Thirdly, the board of directors is the apex of hierarchical corporate control systems, and its primary role is to monitor the management by agents on behalf of principals (shareholders); it was elected by shareholders. In Kazakhstan, ownership is typically concentrated among large shareholders such as families and companies, which clearly can affect management decisions. Any attempts to introduce good corporate governance principles might be hampered by the inflexibility of organisations, the limited autonomy of managers, and the lack of managerial objectivity to monitor firm activities and to achieve objectives. For example, if the company has family ownership it is more likely that the CEO is also chairman. Therefore, an efficient board can improve corporate governance by reducing the agency costs and solve the conflicts between the management and shareholders. In Kazakhstan, the legislative perspective advocates that the size of the board should reflect a sufficient balance of skills and experience, ranging from five to thirteen members. In addition, to reduce the ability of the CEO to act against the interests of the shareholders, the Kazakhstani CGC (2006) advises separation of the chairman and CEO roles, and advocates that at least one-third of the board should comprise NEDs. In order to exert a monitoring on managers‘ decisions in the interest of shareholders; thus the study explores the effect of the board of directors.

Furthermore, the prevalence of concentrated ownership in Kazakhstan indicates that most firms are dominated by large shareholders, such as families and institutional investors. Implications of this include that large shareholders might create power bases based on their voting rights, manipulating firm policies to control managers‘ actions for their own interests, thus increasing the agency problem and undermining firm performance. On the other hand, large shareholders can be expected to monitor management decisions more closely due to their increased stake in the firm, which would reduce the agency problem and improve firm performance. Both of these alternatives are possible, thus the study

investigates the impact of the concentrated ownership and owner identity (i.e. the nature of the owners) on firm performance.

Finally, Kazakhstan started economic and financial reforms to improve the accountability and transparency in the financial environment to increase and enhance the confidence in the national economy. Suleimanov states that different laws related to corporate governance have been issued and implemented (e.g. Securities Law, Company Law, Insurance Law, Banking Law, Law of Competition, Commercial Law, Law of Privatisation and Law of Investment Promotion). This has resulted in increasing the foreign investors to the local market. Kazakhstani is in the top of Central Asian countries in terms of attracting foreign investment. In this regard the study will investigate the impact of the foreign ownership on the performance of the Kazakhstani companies.

Thus, the study reviewed the theoretical framework and the empirical literature about corporate governance mechanisms, then the study reviewed the Kazakhstani background in order to modify if necessary some of the measures to answer the study questions. The next chapter will explain the source of the data and the way the variables how they have been construed.

4.10 Summary.

This chapter has examined the current practices of and improvements to the Kazakhstani corporate governance framework, investment climate in the country and corporate governance of state-owned enterprises. This chapter has looked further into the evolution of the Kazakhstani corporate governance framework, and has also focused on a variety of factors that have enhanced the corporate governance framework including the necessity to improve the position of economic and stock market as well as the necessity to enact modern pieces of legislation, which would support the corporate sector.

Corporate governance has reached a new level of importance within capital markets all over the world. Several reforms have increased its awareness and have led to improvements in infrastructure and legal systems. But there is still a lot of effort to make to create a sustainable system of corporate governance. The financial crisis has shown that a lot of countries have to rethink their strategy and policy in order to be less vulnerable. It is no longer enough to only think about the maximisation of economic value. The need of a long-run sustainability is getting bigger and, at the same time, creates a new factor of risk. Corporations have to consider the wealth of more than just one type of shareholders and have to take all possible outcomes of their action into account. The simple shareholder value concept is out of date and does not represent the objective of a modern company any more. It became inevitable to take the interest of other stakeholders into account when making

decisions. The awareness of the right to be treated fairly has opened the mind of shareholders and led to a revolution in shareholder protection. Mechanisms to respond to the corporate responsibilities have to be created. Corporate governance is not only about dealing with the relationship between ownership and management anymore, it became crucial to defend one's position in the economic environment. It became part of the company's strategy, using it to reduce risk, improve its reputation and attract investors. Especially for emerging economies it is a good method to improve the conditions for starting to trade internationally.

The problem of modern corporate governance arises with the development of global stock markets and the globalisation of economic processes, due to the transition from the "capitalist private property owners" to "capitalism hired professional managers." Separation of activities and responsibilities, executive and control the distribution of functions between shareholders and management, enterprise-wide search for equilibrium are expressed in the Corporate Governance Code. Currently, in most of the developed world are corporate governance codes developed at the initiative of non-governmental professional associations and widely accepted in the business community on a voluntary basis.
The institutional framework supporting good corporate governance needs improvement. International audit, law and rating firms are present in Kazakhstan and all together undoubtedly provide some contribution to enhancing corporate governance. Also Samruk-Kazyna seems to be committed to the cause of good governance in State Owned Enterprises. However, the corporate governance code (2005) lake proper implementation mechanism and definition of corporate governance and needs to be updated.

Chapter 5: Corporate Disclosure and Transparency in the Kazakhstani Capital Market

5.1 Introduction

Transparency and disclosure (T&D) are essential elements of a robust corporate governance framework as they provide the base for informed decision making by shareholders, stakeholders and potential investors in relation to capital allocation, corporate transactions and financial performance monitoring. The importance of transparency has been widely recognised by academics, lawyers and market regulators, resulting in numerous rules and regulations being introduced over time to ensure timely and reliable disclosure of financial information, creating standards to which companies must adhere.

Corporate governance in today's global environment has become more complex and dynamic in recent years due to increased regulatory requirements and greater scrutiny, creating increased responsibilities for board of directors to comply with rigorous governance standards and also to cope with increasing demand from shareholders and other stakeholders for T&D. Considerable attention has been focused on the corporate disclosure requirements and transparency since the financial crisis.

It has generally been agreed that the main failure leading to the financial crisis stemmed directly from the lack of financial disclosure and inadequate governance practices. Thus, corporations are now under pressure to provide timely, consistent and accurate information to shareholders and the public regarding financial performance, liabilities, control and ownership, and corporate governance issues. This is critical if investors are to be able to make informed judgments on the risks and rewards of any investment. On the other hand, the greater the extent of T&D, the greater the level of confidence in the operation of markets, and the greater is the access to capital financing. Due to the growing awareness of investors' rights, corporations should focus their efforts to elevate their T&D and overall level of corporate governance standards for the benefits of all their stakeholders.

Corporate governance principles worldwide advocate the disclosure and transparency of corporate information and annual reports, which is deemed necessary and advantageous for investors and all market contributors. As a matter of fact, the implementation of disclosure and transparency principles was indeed urgent to achieve a satisfactory corporate governance framework[267].

This chapter has been specifically proposed to gain a proper understanding of current disclosure and transparency practices in the Kazakhstani Corporate governance system. Its research undertaken to answer vital questions about the implementation of disclosure and transparency in the Kazakhstani context. First, it provides a general overview on disclosure and transparency. Secondly, it examines the significance of disclosure and transparency company annual reports. Finally, it analyses the disclosure and transparency prerequisites in annual reports.

5.2 General view of disclosure and transparency

In current corporate governance literature, disclosure and transparency concerns play a vital role in the evolution of corporate governance. Disclosure and transparency are defined as a method by which information about the present settings, decisions and activities is made available, detectable and comprehensible. Disclosure and transparency are salient features within international corporate governance frameworks. In this respect, they should be the major endeavour of any corporate governance framework[268]. In addition, the law of Corporate governance should focus on disclosure and transparency as well as establishing perfect corporate governance framework[269]. The OECD principles of corporate governance state that:

"The corporate governance framework should promote transparent and efficient markets, be consistent with the rule of law and clearly articulate the division of responsibilities among different supervisory, regulatory and enforcement authorities"[270].

In any establishment, good corporate governance starts with the owners and percolates down through the board and different management levels to the employees. No matter what the ownership is, there is a need for transparency and accountability in its relationship with other stakeholders. In this context, all rules that define the governance responsibilities, incentives and sanctions facing the board, management and staff must be well articulated. Board members must be held accountable and liable for their decisions and actions that have impact on the interests of other stakeholders.

[267] OECD Guidelines on Corporate Governance of State-Owned Enterprises. 2015 edition. OECD Publishing, Paris
[268] Hommelhoff, Peter. Corporate and business law in the European Union. p595.
[269] Corporate Governance Code of "Samruk-Kazyna" JSC
[270] OECD Principles. http://www.oecd.org/corporate/principles-corporate-governance.htm

Transparency means openness. A free, efficient, and globally competitive market depends on openness. Investors must have confidence in the market and in the information provided by and about the companies in which they invest. If a company does not provide that level of confidence, investors will cease to participate in it. Examples of this openness are disclosing publicly (1) details of operations and financial conditions, (2) how the board makes key decisions, including those affecting executive compensation, strategic planning, the nomination of directors, the appointment and assessment of management and (3) the backgrounds of director nominees, including any economic links to the company. In addition, companies must inform the public or relevant parties as to whether they comply with the Codes of Best Practice and explain the reasoning for any variations. In line with this, Boards should have the ability to effectively monitor management performance, and investors should have the ability to effectively monitor the Boards.

The importance of transparency has been widely recognised by academics, lawyers and market regulators, resulting in numerous rules and regulations being introduced over time to ensure timely and reliable disclosure of financial information, creating standards to which companies must adhere. Corporate governance in today's global environment has become more complex and dynamic in recent years due to increased regulatory requirements and greater scrutiny, creating increased responsibilities for board of directors to comply with rigorous governance standards and also coping with increasing demand for T&D. Considerable attention has been focused on the corporate T&D since the Asian financial crisis. It has generally been agreed that the main failure leading to the financial crisis stemmed directly from the lack of financial disclosure and inadequate governance practices such as the supervision and accountability of directors. As a result, there has also been an increase in the number and complexity of accounting standards and other regulatory requirements for disclosure around the world to protect the investing public. Thus, corporations must provide adequate, accurate, and timely information to shareholders and the public regarding financial performance, liabilities, ownership, and corporate governance issues. This is critical if investors are to be able to make informed judgments on the risks and rewards of any investment (OECD, 1998).

Corporate governance concerns the control of a corporation, vested in the board of directors who play a crucial coordinating role to balance the interests of various stakeholders (both internal and external) and achieve sustainable profits. In general, corporate governance highlights the important principles of oversight and control over the executive management's performance and strategic directions; and their accountability to the shareholders. A code of ethics, which clarifies and stipulates adherence to some of more abstract ideals of trust and accountability, is essential for good corporate governance. The board and management should endeavor to uphold and nurture accountability, transparency, fairness, and integrity in all aspects of the company operations.

Corporate transparency describes the extent to which a corporation's actions are observable by outsiders. Transparency is one of the key steps to corporate governance and ensures that management will not engage in improper or unlawful behaviour since their conduct can be and will be scrutinised. To achieve transparency, a company should adopt accurate accounting methods, make full and prompt disclosure of company information and make disclosure of conflict of interests of the directors or controlling shareholders, etc. A key element of 'good' governance is 'transparency', which incorporates a system of checks and balances among the board of directors, management, auditors and other stakeholders. According to the principles of corporate governance of the Sarbanes-Oxley Act, 2002, organisations should clarify and make publicly known the roles and responsibilities of board and management to provide stakeholders with a level of accountability[271]. Accountability ensures that managers utilise the company's resources in the most efficient and desirable manner as well as for the most appropriate goals without improper regard for personal interests. The UK Cadbury report stresses that making the accountability work is the responsibility of both the board and management. Management is accountable to the board, which in turn is accountable to shareholders. They should also implement procedures to independently verify and safeguard the integrity of the company's financial reporting and provide the quality of information to all stakeholders of the company. Disclosure of material matters concerning the organisation should be timely and balanced to ensure that all investors have access to clear, factual information. All in all, T&D enhance the control and behaviour that support effective accountability for performance outcomes. An entity is more likely to achieve better result when corporate governance practices of T&D are given prominence within the organisation. Conversely, firms with poor corporate governance strategies are more likely to underperform in the long term.

The major goal of disclosure and transparency under any corporate governance system is to enable stakeholder groups, including the shareholders, to obtain appropriate information about the corporation's financial situation. Disclosure and transparency also aim to assist the relevant corporate decision makers and share investors to make fully informed decisions. In particular, the disclosure of financial information offers a variety of advantages; namely providing information about the corporation's presentation, preventing fraud and increasing the market's capability to monitor the actions of the management[272]. The disclosure of financial information is fundamental to all shareholders, as they are otherwise unable to exercise their rights without truthful disclosure and transparency, specifically, they need to exercise their right to decide whether to retain and purchase

[271] Sarbanes-Oxley Act, 2002. Public Law 107-204-July 30, 2002.

[272] The law and practice of CG by Mark Womersley. Vine Publications Ltd 2005.

their shares at an up-to-date juncture, in possession of the correct information about the corporation's financial situation[273].

Since, disclosure and transparency are fundamental components of corporate governance; they are clearly associated with the reform and quality of corporate governance. This is because corporate governance reform is linked to greater levels of disclosure resulting in lower asymmetric information and higher firm value[274].

Corporate disclosure and transparency have received great attention especially after the numerous corporate scandals and financial crisis in the business world[275]. This is because disclosure is an integral tool for firms to report their performance in order for investors to adequately evaluate it. The increase in corporate transparency happens when more and better-quality information is disclosed through various media, such as the companies' websites, annual reports, newspapers, etc[276]. There are two different kinds of corporate disclosure: mandatory/obligatory and voluntary. Voluntary disclosure consists of information voluntarily revealed by a company, and the extent of this type of disclosure is very important in enhancing overall transparency levels. In the same sense, Ronen and Yaari (2002) identified mechanisms that induce disclosure as either self-induced mechanisms or mandatory disclosure requirements. The self-induced refers to voluntarily pushing for more disclosure of information beyond those legally mandated[277].

Disclosure and transparency are ways of keeping corporate stakeholders more up-to-date with the way the company is run or governed in order for them to take more informed investment decisions . So, greater corporate disclosure; especially voluntary disclosure; implies the decline of information asymmetry between the various stakeholders.

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[273] Benefit Corporation law and governance: pursuing profit with purpose by Frederick H. Alexander. Barrett-Koehler Publishers, Inc USA 2017. p.280.

[274] Akhtaruddin, M., Hossain, M.A., Hossain, M. and Yao, L. (2009), "Corporate Governance and Voluntary Disclosure in Corporate Annual Reports of Malaysian Listed Firms," Journal of Applied Management Accounting Research (JAMAR), Vol. 7, No. 1, pp. 1-20.

[275] Huafang, X. and Jianguo, Y. (2007), "Ownership Structure, Board Composition and Corporate Voluntary Disclosure: Evidence from Listed Companies in China," Managerial Auditing Journal, Vol. 22, No. 6, pp.604-619.; Rouf, A. and Al Harun, A. (2011), "Ownership Structure and Voluntary Disclosure in Annual Reports of Bangladesh," Pak. J. Commer. Soc. Sci., Vol. 5, No. 1, pp. 129-139.

[276] Healy, P.M. and Palepu, K.G. (2001), "Information Asymmetry, Corporate Disclosure, and the Capital Markets: A Review of the Empirical Disclosure Literature," Journal of Accounting and Economics, Vol. 31, pp. 405-440.; Uyar, A., Kilic, M. and Bayyurt, N. (2013), "Association between Firm Characteristics and Corporate Voluntary Disclosure: Evidence from Turkish Listed Companies," Omnia Science, Intangible capital, Vol. 9, No. 4, pp. 1080-1112.

[277] Ronen, J. and Yaari, V. (2002), "Incentives for Voluntary Disclosure," Journal of Financial Markets, Vol. 5, pp. 349-390.

Adiloğlu, B. and Vuran, B. (2012), "The Relationship between the Financial Ratios and Transparency Levels of Financial Information Disclosures within the Scope of Corporate Governance: Evidence from Turkey," The Journal of Applied Business Research, Vol. 28, No. 4, pp. 543-554.

True or complete transparency is rare or even impossible. So, transparency doesn't necessarily mean full disclosure[278]. There will always be a certain degree of information gap between different parties; usually management and investors; even in countries with the most efficient capital markets[279]. The aim is to maximise the free flow of information as best as possible. Information flow simply means getting relevant information to the right people at the right time for the right reason.

Corporate transparency has been defined by many academicians. Simon (2006), for example, defined information transparency as: "the convergence of information streams and their delivery to interested parties (stakeholders) at the time of perceived information need."[280] Transparency was also defined by Adiloğlu and Vuran (2012) as having companies act in an open and transparent manner in order to enable stakeholders to have any information required to be able to defend and maximise their interests[281]. Bushman et al. (2004) defined corporate transparency as the ease of accessibility of firm-related information regarding publicly-listed companies by those outside the company[282].

Holtz (2008) defined transparency into a more detailed manner. He emphasised the importance of six factors in the organisation and the degree to which they are shared with all stakeholders. The six factors are: the company's leaders; employees; values; culture; results of business practices; business strategy. Leaders and employees of transparent companies should be: accessible at all times; honest; willing to help whenever possible. Transparent companies should also put great emphasis on ethical behaviour and the fair treatment of all stakeholders. The results of all business practices - whether successes or failures - should be truly communicated by a transparent company. Lastly, a company's business strategy should be clearly defined in order to help investors make important investment decisions; and in order to avoid any gap between the company's strategy and investors' expectations. The greater the degree to which an organisation shares the previous six factors with all of its stakeholders, the more transparent it is[283]. Also, in order for collaboration to occur between any involved parties; they must have confidence that what they agreed upon will actually take place. This

[278] Holtz, S. (2008), "A Clear Case for Transparency," Communication World, Vol.25, Issue 6, pp. 16-20.
[279] Healy, P.M. and Palepu, K.G. (2001), "Information Asymmetry, Corporate Disclosure, and the Capital Markets: A Review of the Empirical Disclosure Literature," Journal of Accounting and Economics, Vol. 31, pp. 405-440.
[280] Simon, C. (2006), "Corporate Information Transparency: The Synthesis of Internal and External Information Streams," Journal of Management Development, Vol. 10, No. 10, pp. 1030.
[281] Adiloğlu, B. and Vuran, B. (2012), "The Relationship between the Financial Ratios and Transparency Levels of Financial Information Disclosures within the Scope of Corporate Governance: Evidence from Turkey," The Journal of Applied Business Research, Vol. 28, No. 4, pp. 543-554.
[282] Bushman, R.M., Piotroski, J.D. and Smith, A.J. (2004), "What Determines Corporate Transparency?" Journal of Accounting Research, Vol. 42, No. 2, pp. 207-252.
[283] Holtz, S. (2008), "A Clear Case for Transparency," Communication World, Vol.25, Issue 6, pp. 16-20.

trust will be built and developed through the integrity of the organisation's disclosed information and the extent of transparency it magnifies[284].

To sum all this up, transparency can be defined as the timely disclosure of adequate information regarding the company's financial, operational and governance aspects. A transparent corporate environment provides any interested party with the required information that will assist them in making rational investment decisions[285].

There are many signals that show the extent of the organisation's willingness to be more transparent. For instance, the ease at which corporate decision-makers are able to receive internal and external information necessary to make sound business decisions, the greater the company's level of information transparency[286].

Bushman et al. (2004) assessed corporate disclosure and transparency by classifying information mechanisms into three categories. The first category consists of corporate reporting of both voluntary and mandatory periodic disclosure. The second is the private information acquisition and communication; which happens directly by reporting to financial analysts or indirectly by providing institutional investors or insiders with information. The last category is information dissemination through the media[287]. So, until all organisations start recognising the importance of transparency, communicators should try their best to be more transparent and to voluntarily disclose as much as possible[288].

There is a problem with corporate disclosure and transparency, especially in emerging markets. Patel et al. (2002) concluded that emerging markets in Asia and South Africa show a much higher disclosure and transparency compared with emerging markets in Eastern Europe, Latin America, and the Middle East[289]. This makes researching ways that enhance corporate transparency and disclosure in Kazakhstan crucial.

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[284] Jahansoozi, J. (2006), "Organization-stakeholder Relationships: Exploring Trust and Transparency," Journal of Management Development, Vol. 25, No. 10, pp.942-955.
[285] Ahmed, S.S.H. and Ahmed, R.S.H. (2013), "The Relationship between Corporate Governance and Transparency & Disclosures in State Owned Enterprises (SOEs): Literature Review," International Journal of Business and Management Studies, Vol. 5, No. 2, pp. 251-260.
[286] Simon, C. (2006), "Corporate Information Transparency: The Synthesis of Internal and External Information Streams," Journal of Management Development, Vol. 10, No. 10, pp. 1029-1031.
[287] Bushman, R.M., Piotroski, J.D. and Smith, A.J. (2004), "What Determines Corporate Transparency?" Journal of Accounting Research, Vol. 42, No. 2, pp. 207-252.
[288] Holtz, S. (2008), "A Clear Case for Transparency," Communication World, Vol.25, Issue 6, pp. 16-20.
[289] Patel, S.A., Balic, A. and Bwakira, L. (2002), "Measuring Transparency and Disclosure at Firm-Level in Emerging Markets," Emerging Markets Review, No. 3, pp. 325-337.

With regard to the Kazakhstani case, Financial Institutions' Association of Kazakhstan has taken disclosure and transparency into account. The Association has linked Chapter 7 of the Code on Corporate governance to disclosure and transparency, this is binding to all listed corporations. Chapter 7 of the Corporate governance Code requires that:

"Disclosure of information on the Company's activities shall contribute in participation in the share capital of new shareholders and facilitate positive solution of investors.

In addition, to what is required in the Listed Rules in connection with the content of the report of the board of directors, which is appended to the annual financial statements of the company, such report shall include specific disclosure requirements"[290].

Moreover, disclosure and transparency requirements are included in Chapter 9 JSC the Law of the RK dated 13 May, 2003 No 415. On the whole, the disclosure and transparency requirements found under the Corporate governance Code and the Listed Rules derive from the current rules of the Stock Exchange[291].

Similarly, the UK corporate governance code has acknowledged that the disclosure and transparency requests are incorporated into three pieces, of legislation; namely, the FSA Disclosure and Transparency Rules, FSA Listing Rules and the UK corporate governance code [292]. Reference of the UK corporate governance code to these regulations resembles the Kazakhstani corporate governance code (Chapter 7) to the Kazakhstani Listing Rules regarding the disclosure and transparency requirements, which are not stated under the corporate governance code. In particular, the UK corporate governance code has revealed a variety of disclosure and transparency requirements related to many institutions inside the corporation. These requirements can be found under the Kazakhstani corporate governance code and the Listing Rules, but with slight variation in accordance with the advancement of each country's capital market.

The corporate governance code also suggests that a corporation's articles of association should state the board's supervisory rules regarding the corporation's disclosure and transparency policy. For example, the board is responsible for ensuring the corporation's implementation of any policies

[290] Corporate Governance Code on 21 February 2005 and by the Council of the Association of Financiers on 31 March 2005. The Code was revised in July 2007.
[291] Карагусов Ф.С. О расширении государственного контроля по некоторым аспектам корпоративного управления в казахстанских банках. В сб. Государство и гражданское право: Материалы международной научно-практической конференции, посвященной памяти и 85-летию со дня рождения д.ю.н., профессора Ю.Г.Басина (в рамках ежегодных цивилистических чтений). Алматы, 29-30 мая 2008 г./ Отв. ред. М.К.Сулейменов. – Алматы: НИИ частного права КазГЮУ, 2008. С. 394-401. (In Russian) [F. Karagusov.] Expansion of state control in corporate governance of Kazakhstan banks. Book of State and civil law: Articles of the international scientific-practical conference dedicated to the memory and the 85th anniversary of the birth of Doctor of Law, Professor Yu.G. Basin. Almaty, 29-30 May, 2008/ ed. by M. Suleimenov. p. 394-401.
[292] UK Corporate Governance Code, Financial Reporting Council, pp. 27-32.

concerning divulging obvious information to all stakeholder groups[293]. This is supported by evidence that the board members and top executives are first responsible for humanising and monitoring the corporation's policies, including disclosure and transparency[294].

5.3 Significance of disclosure and transparency in the Board's Annual Review

This study explores the extent and levels of corporate disclosures in the annual reports of the listed companies on KASE in Kazakhstan, a growing emerging country. The disclosure of financial information in annual reports is a key area of accounting research and, more specifically, corporate disclosure has received a great attention to the academicians and several research is done both in developed[295] and developing countries, however, a very few attention is done in Central Asia in general and Kazakhstan in particular[296]. The annual report is a significant element in the overall disclosure process, because it is the most widely disseminated source of information on publicly held corporations.

Disclosure refers to providing information which enables stakeholders to evaluate future performance of a company. Disclosing information reduces information asymmetry between firms and stakeholders. It plays a role in closing the information gap between the two parties, thus permitting stakeholders to make healthier decisions about companies.

The available literature has suggested many ways in which a firm or its management can benefit from enhanced disclosure. Moreover, while information disclosure is socially desirable, the tradeoff between its benefits and costs may lead to partial or no disclosure and one thereupon should decide whether the disclosure should be voluntary or mandatory. In addition, the economic and accounting literature has asserted that, in the view of informational asymmetry, (costless) disclose of private information brings general gains in economic efficiency.

There are several motivations for the present study. Although there is a growing body of research on disclosure practices of firms, many of the studies have been conducted in developed countries. F. Karagusov point out the scarcity of studies that have investigated disclosure of corporate information in developing countries, this observation also holds true for Kazakhstan which is an important developing country in CIS region with its rapidly growing economy. In addition, the subject has not

[293] Corporate governance Code 2015
[294] Joseph Marcello, "Government and the common good", Journal of Business Ethics 89 (2009); 11.
[295] Aljifri, K. (2008). Annual report disclosure in a developing country: The case of the UEA. *Advances in Accounting*, 24, 93−100.
[296]Corporate Governance in Transition Economies: Kazakhstan country report. EBRD. December, 2017.

been studied as much as other areas of information disclosure, such as social, environmental, and intellectual capital. Furthermore, sufficient knowledge is lacking with respect to the factors that influence disclosure[297].

Credible disclosure and transparency is a symptom of good Corporate governance and it is vital for allocation of scarce resources. With credible disclosure, existing and potential investors may be able to distinguish between good and bad corporate decisions at an average level. Adverse selection avoidance, disclosure and transparency should therefore lower the firm's cost of capital, as investors become sceptical.

The firm's decision to voluntarily disclose information depends on its conjectures about the beliefs held by competitors and investors. The study of A. Pacces concluded that if the firm can make credible disclosures about its value to uninformed investors, in equilibrium the firm will disclose all of its information regardless of how good or bad are the news[298]. Many recent studies have hypothesised that firms' voluntary disclosure choices are aimed at controlling the interest conflicts among shareholders, debt holders, and management[299]. It is meant that the extent of these interest conflicts, hence the incentives behind voluntary disclosure choices vary with certain firm characteristics.

A corporation's board of directors bears direct responsibility for creating a culture of transparency. Truly independent boards establish policies that ensure and reward transparency. They diligently monitor implementation, decisively intervene to ensure completeness, ensure that facts are not obscured and that conflicts of interest are eliminated.
Senior management's responsibility is to create the programs and processes to see that these policies are properly executed. In best practice corporations, top leaders are diligently committed to a culture of transparency. Not given to edicts from the top or just mechanical processes of auditing, accountability permeates the corporation and real commitments are made for collaboration and sharing information.
Leaders create programs and processes that institutionalise transparency and make it an essential function and trait of the corporation.
When top management has done its part, individual actions of employees make a transparent culture real. Those in the trenches are often most aware of how the corporation is really functioning at the operational level, and as such, they bear equal responsibility for organisational transparency. No corporation in the world can claim victory when it comes to transparency. Like safety and quality

[297] Карагусов Ф. О понятии Корпоративного права. Юрист N8, 2010. [Karagusov, F. About Corporate Law. Uyrist N8, 2010.] (in Russian)
[298] Rethinking CG. The law and economics of control powers. Alessia M. Pacces. London, 2012. p.470.
[299] Barry, C., and Brown, S. (1985). Differential information and security market equilibrium. *Journal of Financial and Quantitative Analysis 20*, 407-422.

programs, transparency is a journey, not a destination. Transparency requires constant refinements in response to new market requirements and increasing organisational competencies.

Building a culture of transparency is a fundamental first step to achieving trust. Open and honest communications support the decision to trust. Lack of communication and transparency creates suspicion. Transparency happens only when an institution creates a culture of candor and respect, stakeholders feel free to speak the truth to the board and management. If the executives are willing to listen to opposing points of view and promise to consider the merits of others' arguments, they pave the way for a culture of transparency. Broadly defined, transparency refers to the degree to which information flows freely within an organisation, among managers and employees, and outward to stakeholders. Bennis and O'Toole (2009) offer seven steps for developing a culture of transparency in the organisation:

1. Tell the truth
2. Encourage people to speak truth to power
3. Reward contrarians
4. Practice having unpleasant conversations
5. Diversify information sources
6. Admit mistakes
7. Build organisational support for transparency

Many organisations today are genuinely committed to transparency, openness and candor. Transparency exists when information is assembled and made readily available to other parties and creates an informed and communicative environment conductive to greater cooperation among all parties in the organisation. How effectively information flows through an organisation is directly related to its culture? A board of directors of the organisation bears direct responsibility for cultivating a culture of accountability and transparency. Truly independent boards must establish policies that ensure and reward transparency. They diligently monitor implementation, decisively intervene to ensure completeness, ensure that facts are not obscured and that conflicts of interest are eliminated. On the other hand, management's responsibility is to create the programs and processes to see that these policies are properly executed. In best practice organisations, top leaders are diligently committed to a culture of transparency. Not given to directives from the top or just mechanical processes of auditing, accountability permeates the organisation and real commitments are made for collaboration and sharing information.

There is internal transparency and external transparency: users or customers – both difficult to achieve and both critical to success. Internal transparency puts the right information together with the right

person at the right time. External transparency demonstrates communication of values to the company's customers and consumers.

Nowadays, most countries are upgrading their laws and regulations to include compliance with good CG and T&D standards and companies are voluntarily having their corporate governance and T&D practices rated, to signal their quality and to improve their current practices. There are five pillars of T&D which comprise:

- Truthfulness – information disclosed must provide accurate description of circumstances.
- Completeness – information disclosed must be sufficient to enable investors to make informed decisions. Information must include both financial and non-financial matters.
- Materiality of information – information disclosed must be material to influence investment decisions.
- Timeliness–information disclosed must be timely to enable investors to react as quickly as possible.
- Accessibility – information disclosed must be easily accessible and available to investors at low cost.

Disclosure of reliable, timely information contributes to liquid and efficient markets by enabling investors to make investment decisions based on all of the available information that would be material to their decisions. As a result, investors are demanding better reporting and greater transparency. They are demanding more information, and they are shouting louder than ever before.

Corporate governance systems are used by a company to promote fairness, complete and accurate financial reporting and accountability. T&D are critical elements of a robust corporate governance framework as they provide the basis for informed decision making by shareholders, stakeholders and investors regarding capital allocation, corporate transactions, and financial performance monitoring. Hence, T&D not only serves to investors but helps regulators in maintaining market confidence and system stability. T&D are integral to corporate governance as higher transparency and better disclosure reduce the information asymmetry between a company's management and financial stakeholders, mitigating the agency problem in corporate governance.

Companies often make voluntary disclosures that go beyond minimum disclosure requirements in response to the market demand. A strong disclosure regime that promotes genuine transparency is pivotal for market-based monitoring of companies and central to shareholders' ability to exercise

their ownership rights on an informed basis. Empirical experience in countries with large and active equity markets shows that disclosure can be a powerful tool for influencing the behaviour of companies and protecting investors. A strong disclosure regime can help attract capital and maintain confidence in the capital markets. Conversely, weak disclosure and non-transparent practices can contribute to unethical behaviour and a loss of market integrity at great cost, not just to the company and its shareholders, but also to the economy as a whole. Shareholders and potential investors require access to regular, reliable, and comparable information in sufficient detail for them to assess the stewardship of management and make informed decisions about the valuation, ownership and voting of shares. Insufficient or unclear information may hamper the ability of the markets to function, increase the cost of capital, and result in poor allocation of resources.

Corporate transparency is also important in case of multinational companies that operate through a network of related subsidiaries, affiliates, joint ventures and other holdings incorporated in diverse jurisdictions including some secrecy jurisdictions. Without transparency, many of these entities remain hidden from public view and scrutiny. Thus, it may be likely that material corporate holdings go unreported and investors do not have a clear and comprehensive picture of the Group's operations, revenues, profits and taxation. However, disclosure requirements are not expected to place unreasonable administrative or cost burdens on companies. Nor are companies expected to disclose information that may endanger their competitive position unless disclosure is necessary to enhance the investment decision and to avoid misleading the investors. In order to determine what information should be disclosed at a minimum, many countries apply the concept of materiality. Material information can be defined as information whose omission or misstatement could influence the economic decision taken by users of information.

Enron published its audited annual report to the public transparently so that it could be examined and evaluated by the public. However, at the same time, Enron provided false and misleading financial statements which lead the shareholders (and the public) to undertake misinformed decision making[300]. Therefore, it is essential that transparency is acted upon with hones and integrity. Perfect transparency, according to Bicksler, "is the absence of any important corporate financial informational asymmetries between the security owners and the corporate executive management"[301].

There is an important strand of the financial accounting literature that investigates the relation between disclosure and cost of equity capital. The basic idea is that higher levels of disclosure

[300] Zandstra, G. 2002. "Enron, Board governance and moral failings". Corporate governance. Vol. 2. pp. 16-19.

[301] Buckler, J.. "What we know and what we don't know about corporate governance". (2003) Business Economics. Vol.38. pp.69-73.

contribute to a reduction in information asymmetry between managers and investors and, consequently, cause a reduction in the idiosyncratic component of cost of equity capital. However, results of these investigations have not been conclusive. Some authors argue that the absence of statistical and economically significant associations between disclosure and cost of capital can be the result of measurement problems because both variables are not directly observed and proxies need to be used.

Specifically, several studies justify that higher quality financial disclosures are positively associated with general market liquidity, institutional ownership, analyst forecast accuracy and analyst following, and are negatively associated with the ex ante cost of equity capital and agency costs[302].

Other benefit from improving disclosure is that providing better information firms try to reduce potential investors' estimation risk regarding the parameters of a security's future return or payoff distribution. It is assumed that investors attribute more systematic risk to an asset with low information than to an asset with high information.

The significance of corporate disclosure practices has been of growing interest both in theory and in practice. Today informational transparency of the company is an integral part of good corporate governance that reduces the information asymmetry between agents and principals. Therefore, it is interesting to measure the quality and quantity of transparency in Kazakhstan companies through voluntary and mandatory disclosure of information on the corporate website and corporate reports. The relevance of this approach is evidenced by the presence of a large number of empirical studies on the issues of disclosure and transparency effects on the cost of equity capital.

Most research on disclosure quality and cost of equity capital relations has been conducted in developed countries whereas empirical studies from Kazakhstan are very scarce. This research is the first to perform a comprehensive investigation of the relation between disclosure and cost of capital for firms immersed in poor governance and institutional regimes.

Companies do not seem to be required by law to disclose non-financial information in their annual report. Disclosure on the activities of the board and committees is limited. However, most of the ten largest companies provide a fair amount of information on their website or on the stock exchange (KASE) website, including the board members' names and qualifications, constitutional documents, information on their share capital and important announcements.

[302] Baginski, S. P., and Wahlen, J. M. (2003) Residual Income Risk, Intrinsic Values, and Share Prices. *The Accounting Review: January 2003, Vol. 78*, No. 1, pp. 327-351.

Financial information is in line with International Financial Reporting Standards (IFRS), and almost all largest listed companies have published their financial statements in line with IFRS.

Companies are required to have external audit and to disclose external auditor's name, and companies seem to comply with these requirements. The only issue of concern is the provision of non-auditing services, which is not regulated by law and might undermine the auditor's independence.

Listed companies do not disclose their compliance with the Corporate Governance Code, and only half of the largest listed companies disclose their corporate governance code – which is a legal requirement. It does not appear that there is much monitoring being carried out by the exchange and the regulator on the quality of non-financial disclosure.

5.4 Measuring disclosure and transparency for Kazakhstani firms

Sufficient transparency is at the forefront of investors' agenda and is often a necessary condition for investment in a company. Better information promotes stakeholders' confidence in your company, not only attracting investors but also promoting your business' image with customers and regulators.

Local business practice and traditions may influence how much information your company discloses to the public. Despite having regulatory frameworks that are comparable to other emerging markets, existing OECD corporate governance practice is perceived as not promoting sufficient transparency.

According to OECD paper, only 15 percent of companies in the Kazakhstan publishes a corporate governance report. However, among listed companies, the culture of full disclosure and transparency is developing. Listed companies are subject to enhanced disclosure obligations in order to ensure the efficient and fair functioning of capital markets.

Financial and business information disclosure is crucial in order to attract capital. While there might be some moderate loss of competitiveness by making it easier on your competitors to find out about your company's position, your willingness to disclose signals strength to both lenders and the market, including your competitors. Furthermore, it is rare to find competitive information of high value disclosed in annual accounts. Disclosure of corporate governance information will not harm your competitive position, but rather it improves your company's reputation with investors and other stakeholders, which eventually lowers your cost of capital.

Good corporate governance at the firm level is essential for the development of capital markets because disclosure and transparency reduce the information asymmetry between insiders and

outsiders. Full information allows general investors to assess corporate performance and capital funds then move to areas of highest economic return. In transition economies capital markets are generally under developed. Insiders are a potent political force and resist efforts to improve disclosure and transparency. Thus, investors seek alternative, often foreign, opportunities. This then limits economic growth in the domestic economy[303].

In Kazakhstan capital markets development has proceeded step by step. The Kazakhstan Stock Exchange was founded in November of 1993, initially as a currency exchange, and now has 61 active members trading corporate and government securities, repos, foreign currencies and futures contracts. Markets, however, are thin (lack breadth, depth and liquidity) and with few exceptions have not attracted much interest from foreign investors. The global financial crisis and its impact upon individual firms have also clearly reduced foreign investor interest. Further, domestic investors, pension companies in particular, still have relatively few solid investment options. The re-privatisation of pension companies, bringing them into the state pension fund, will also reduce participation in the markets.

One of the stock exchanges of the world, actively used by Kazakhstani corporations, the London Stock Exchange, offers its customers enter the corporate governance split listing on 5 basic components: Board of Directors; Risk management, The system of internal control; Internal audit; The policy of social responsibility.

The functioning of KASE does not seem to be an issue. Rather, we suggest that it is the characteristics of the firm issuing the financial instruments that is the cause of the low levels of activity and lack of liquidity in the stock market. These same characteristics may also affect firm performance, profitability and total return (dividends plus share price appreciation). And, critically, for the privatisation program, the "People's IPO", announced two years ago to be successful, potential investors must be fully informed about the management and performance of the firm.

Typically to measure the degree of transparency and disclosure, researchers examine all information reported by the firm both on the company web site and in annual and quarterly reports. This information is used to calculate an index or "score" based on specific firm attributes[304]. For example, D. Kemme uses six attributes (state shares, ownership concentration, board independence, duality,

[303] Strategic Plan for the Development of the Republic of Kazakhstan till 2020 February, 2011 Draft of Decree, approved by the President.
[304] Truman, Edwin M. (2010) Sovereign Wealth Funds: Threat or Salvation? (Washington, D.C.: Peterson Institute for International Economics, 2010).

i.e., the President and the Chair of the Board is the same person, whether the firm has three critical committees, audit, nominations and compensation, and overseas listings) for firms in Kazakhstan[305].

Pastoukhova, et al use 110 attributes grouped into six broad categories: ownership structure, shareholder rights financial information, operational information, board and management information and board and management remuneration. They examine a small sample of 30 firms in Kazakhstan to calculate the S&P "Corporate Transparency Index". They use the same approach for a larger sample of 113 firms. They calculate a total score and scores for the six individual components. This score, which ranges from 1-100, then serves as a measure of the quality of information disclosed to potential investors. It should also be correlated with firm performance and provide a signal as to whether the firm could be successfully privatised if not already private[306].

5.5 Kazakhstan State Owned Enterprises

The prevailing state ownership model in Kazakhstan can be considered "centralised with exceptions". While some SOEs remain under the purview of their respective line ministries, a non-trivial number is overseen by one of three central holding companies. For the purpose of this report, all of the information concerns practices undertaken by one of those holding companies, JSC Samruk Kazyna. Samruk Kazyna was established in 2008 is 100% owned by the Government of Kazakhstan. It manages investments of state capital in 545 portfolio companies, which are active in oil and gas, transportation and communication, the atomic industry, mining, electricity production and the chemicals industry.

Disclosure requirements placed on SOEs in Kazakhstan are established via the Law on Accounting and Financial Reporting, applicable to all "organisations" (i.e. all separate legal entities, including companies), with exceptions for certain financial companies or organisations. The Law on Accounting and Financial Reporting notably requires all entities under its scope of applicability to prepare annual financial reports and make them available no later than 30 April of the year following the accounting year. Companies themselves are responsible for determining the content and form of financial reports. In addition to these general disclosure requirements applicable to all organisations,

[305] Kemme, David M. (2011) "Sovereign Wealth Funds and the National Fund(s) of Kazakhstan," Working Paper, Final Report for US State Department Title VIII Grant administered by the University of Delaware. Available at: https://umdrive.memphis.edu/g-fcbe/www/docs/faculty/Kemme%20NFs%20of%20KZ%20Edited%2012-15-2011.pdf

[306] Pastoukhova, Elena, Oleg Shvyrkov, Ekaterina Kudyukina and Anton Onishchuk (2009) Transparency and Disclosure by Kazakhstani Companies 2009: A Low Start a Great Promise. Standard & Poor's Governance Services, October 14, 2009.

the companies in Samruk Kazyna's portfolio are also called upon to respect optional disclosure standards set forth in Samruk Kazyna's Corporate Governance Code, applicable to all portfolio companies that are at least majority-owned by the holding company and that have the legal form of joint stock company or limited liability partnership[307]. The Code was approved on 15 April 2015 by Decree No. 239 of the Government of the Republic of Kazakhstan. It notably encourages SOEs to "disclose information about all important aspects of their activities, including financial performance, operational results and the structure of ownership and governance (management)". SOEs with exchange-traded bonds or shares are encouraged by the Code to respect higher standards of disclosure (e.g. "best practice" financial reporting and higher frequency of disclosure). SOEs with the legal form of joint stock companies are subject to the information disclosure requirements set forth in the Law on Joint Stock Companies, which inter alia requires reporting on the issuance of shares. In practice, all joint stock companies in Samruk Kazyna's portfolio report on board composition in their annual reports.

Assessing the quality and credibility of SOE disclosure goes beyond the scope of this report, but in practice SOEs in Kazakhstan reportedly keep their accounts in accordance with international financial reporting standards and submit annual financial statements to an external auditor. The explanatory notes to the Corporate Governance Code applicable to Samruk Kazyna's portfolio companies offer guidance for ensuring the independence of external auditors, including with respect to rotation of

[307] Samruk Kazyna (2015), "Corporate Governance Code of the Sovereign Wealth Fund 'Samruk Kazyna' JSC" (unofficial translation undertaken by PricewaterhouseCoopers Kazakhstan in March 2016).
Chapter 7 of Samruk Kazyna's Corporate Governance Code (Samruk Kazyna, 2015), which is reproduced below, sets forth the state's expectations concerning the disclosure practices undertaken by both Samruk Kazyna and its portfolio companies.
1. To respect the interests of their Stakeholders, the Fund and the Organisations should promptly and fairly disclose information about all important aspects of their activities, including financial performance, operational results and the structure of ownership and governance (management).
2. The Fund and the Organisations must promptly disclose information in accordance with legislation of the Republic of Kazakhstan and their internal documents. The Fund and the Organisations should approve internal documents outlining the principles of and approaches to information disclosure and protection, and the information to be disclosed to the Stakeholders. The Fund and the Organisations determine the procedures for classifying information, the rules for its storage and use and the list of persons who may be granted access to commercially sensitive or officially secret information. The Fund and the Organisations should take measures to protect this information.
3. The Fund, Companies and Organisations whose shares or bonds are traded on a stock exchange should promptly publish on their corporate websites audited annual IFRS financial statements and IFRS financial statements for the first three months, six months and nine months of the reporting period. These entities are recommended to disclose information about their financial condition in addition to the IFRS financial statements.
4. The Fund and the Organisations should arrange audits of their annual financial statements by appointing an independent and qualified auditor to provide (as a third party) the Stakeholders with an objective opinion on the reliability and accuracy of the financial statements and their compliance with IFRS. The requirement to have annual financial statements audited only applies if it is set forth in legislation of the Republic of Kazakhstan and/or in internal documents.
5. The Fund, Companies and Organisations whose shares or bonds are traded on a stock exchange should prepare their Annual Reports in compliance with the provisions of the Code and best practice on information disclosure. Annual Reports shall be approved by the respective Boards of Directors.
6. The corporate website should be well structured, easy to navigate and should contain information that is necessary for Stakeholders to understand the activities of the Fund and the Organisations.

audit staff and avoiding conflicts of interest. The Code explicitly states that SOEs are only required to subject annual financial statements to an external audit if provided for in other legislation or internal documents of the company. The Law on Joint Stock Companies allows SOEs with such a legal form to establish an internal audit function, but this is not mandatory. The Corporate Governance Code of Samruk Kazyna, with which (as mentioned previously) compliance is optional, encourages the establishment of an internal audit function to evaluate the effectiveness of entities' risk management, internal control and corporate governance practices.

The companies in Samruk Kazyna's portfolio are furthermore required to undergo regular audits by the Accounts Committee for Control over Execution of the State Budget, which is essentially a state comptroller responsible for conducting state audits on the use and impact of state funds. The Committee is represented in Samruk Kazyna's board of directors through a permanent member with voting rights. It undertakes an assessment of the impact of the Fund's portfolio entities on national economic or sectoral development. The results of this state audit are communicated to Samruk Kazyna's board of directors as well as the Accounts Committee for Control over Execution of the State Budget.

5.6 Summary

Given the enormous volatility in the international capital markets which can give rise to uncertainty, the demand and need for adequate transparency, disclosure and suitable corporate financial reporting is essential to investors who can make better decisions on a more timely and informed basis. Escalating present capital market volatility is pushing for further demand on sound corporate governance practices and the demand for improved financial reporting and broader levels of transparency to lessen the fear and panic of investors. The stock exchanges around the world become increasingly conscious of their roles as self-regulatory institutions and explore the possibility of using the listing requirements as a tool for raising the standard of corporate governance. The issue of good corporate governance is an imperative for ensuing successful corporate performance. A commitment to good corporate governance in terms of well-defined shareholder rights, high levels of T&D and responsible board of directors, etc. will make a company both attractive to investors and more chance to achieve good performance. The corporate governance principles emphasise an effective board, prudent internal control, transparency and accountability to its shareholders. A high standard of GCG practices and procedures are essential for effective management to enhancing shareholders' value. Building GCG is a shared responsibility among all stakeholders, each of whom may exert pressure to move forward a corporation.

In short, greater transparency in disclosures is essential for effective financial reporting and supervision. By adopting greater financial transparency, companies provide the necessary information for investors to monitor their governance process and behaviour. Management needs to avoid excessive disclosures which could impair competitiveness. Increasing transparency will be important key to future success of corporate governance. Only with transparency will it be possible to defer frauds, embezzlement and financial scandals and foster efficiency in allocation of resources decisions. More importantly, T&D allow firms to compete on the basis of their best offerings and to differentiate themselves from firms which do not practice good governance.

We should be cautious regarding the quality of information disclosed by the companies because the information provided in financial reports may not be that quality like it seems so. For this reason, it is the job of auditors to detect the mistakes, carefully check the quality of information disclosure and make sure that it is reliable. Small firms provide less information than large ones, which supply more information about their independence standards, audit committees, their management supervision systems and whistle-blowing procedures. However, compared to small firms, large ones do not appear to give superior information about their environment. These results obviously raise questions that lie at the heart of most financial scandals as, in the end, firms' size matters less than respecting good governance, the latter being probably the main criterion to improve financial stability.

Much work should be done to improve the quality of financial information. In order to make financial evaluations reliable, valid and comparable, the uniform internationally accepted standards must be utiliSed. Although disclosure requirements have increased over the years, prescriptive disclosure has not eliminated the differences in the quality and extent of disclosure offered by companies; significant variation across companies is still observed.

Chapter 6: Barriers and Enablers Affecting the Implementation of Good Corporate Governance

6.1 Bariers and Enablers

6.2 Corruption in Kazakhstan and the quality of governance

6.1 Bariers and Enablers

Many problems have affected corporate governance practice in developing countries, including weak law enforcement, abuse of shareholders' rights, lack of responsibilities of the boards of directors, weakness of the regulatory framework, lack of enforcement and monitoring systems, and lack of transparency and disclosure. Suleimanov investigates the effects of several factors on corporate governance, including: political, legal, regulatory and enforcement frameworks; social and cultural factors; economic environment; accounting and auditing framework; corruption and business ethics; and governmental and political climates[308]. Further, Karagusov examines the reasons for the failure of corporate governance, including a lack of incentives, poor external monitoring systems, weak internal control and ineffective top leadership[309].

According to Suxanov, who investigate relationships between the Russian culture and the degree of implementation of the principles of corporate governance in Russia, the traditional culture is one of the obstacles to the improvement of corporate governance in Russia[310]. Likewise, Alimova and Elebaev report that the national culture is one of the barriers hindering the effective implementation of corporate governance in emerging markets[311]. The study shows that the cultural and religious characteristics of societies affect honesty and trust, which are the key elements of an effective

[308] P . Varul. "The Place of Corporate Law within a Legal System". Civil Law and Corporate Relations : Materials of the International Scientific and Practical Conference … Almaty , 13–14 May 2013. M . Suleimenov ed. Almaty, 2013 (736 p.), p. 108.

[309] Карагусов Ф. О понятии Корпоративного права. Юрист N8, 2010. [Karagusov, F. About Corporate Law. Uyrist N8, 2010.] (in Russian)

[310] Е.А. Суханов. Проблемы кодификации законодательства о юридических лицах. – Кодификация российского частного права 2015. П.В. Крашенинников. Москва: Статут, 2015, 447 с. (in Russian). Ye . Sukhanov. Problems of codification of legislation concerning legal entities. Codification of Russian private law 2015. P. Krasheninnikov ed. Moscow: Statut, 2015, p.56

[311] Алимова и Элебайев. Корпоративное управление: теория, методология и практика. Учебное пособие.

governance framework. They also state that the cultural and religious characteristics of societies should be considered in Kazakhstan.

There are some factors related to corporate governance practice, namely: legal and political influences, social and cultural influences, economic influences, technological influences, and environmental factors. In their study on corporate governance practices among Kazakhstani companies, the management view is that the costs associated with good corporate governance practice outweigh the benefits. Moreover, the improvement of the level of corporate governance disclosure based on information from 30 companies listed on the KASE. The paper finds that the disclosure level is as low as in other Central Asian countries due to a lack of education concerning the needs and benefits of corporate governance.

Cigna, Kobel and Sigheartau investigate the challenges to corporate governance reforms in the corporate governance in transition economies: Kazakhstan country report[312]. The study finds that governance is challenging in Kazakhstan because of a weak regulatory framework, high poverty, unemployment, collapse of moral values, low standard of education and institutionalised corruption. They report that the Central Asia region is still lagging behind in terms of the quality of education, and that corporate governance is less clearly understood in these countries compared to Western countries. Karaguzov conducts a survey on the state of corporate governance practices in Central Asia, finding that all countries have a code of governance based on the OECD Principles of Corporate Governance, the foundation of institutes of directors and international accounting standards, but that the enforcement of laws lacked efficiency[313]. The authors recommend that education must be increased and improved because the benefits of good corporate governance for developing countries are extensive.

Clearly, less developed countries have to adopt more effective corporate governance to solve these problems and enhance new practices to tackle the different features of corporate governance that exist in their developing economies. The following enablers should be adopted in developing countries to improve corporate governance: reduce the cost of the implementation of corporate governance through training and other means of support; develop incentive programs for compliance companies with principles of corporate governance; learn from the experiences of other developing countries relating to corporate governance practice; develop a capital market in the country; participate in

[312] Cigna, Kobel and Sigheartau *Corporate governance in transition economies Kazakhstan country report*. (December 2017 EBRD).

[313] Карагусов Ф. О понятии Корпоративного права. Юрист N8, 2010. [Karagusov, F. About Corporate Law. Uyrist N8, 2010.] (in Russian)

international events, conferences, meetings and committees dealing with corporate governance; conduct research relating to corporate governance; and initiate regional corporate governance partnership programs with international organisations.

Shershenevich G. recommend adopting the International Accounting Standards to develop accounting practices and the profession and improve the quality of financial reporting[314]. In addition, the authors suggest creating an effective accounting education system to update regulations and policies surrounding the accounting systems and to establish accounting development centres. Ayandele and Emmanuel suggest that the practice of good corporate governance in developing countries be based on learning from the experiences of other countries[315]. The OECD examines the role of stock exchanges in promoting good corporate governance outcomes in 2009, finding that the development of stock exchanges plays an important role in establishing effective corporate governance frameworks among listed companies (OECD, 2012).

According to Harabi (2007), possible ways to enhance corporate governance include the establishment of institutes of directors for training, the dissemination of best practices and the issuance of guidelines about the size of the board, the constitution of committees, and other useful practices. Raising awareness of, and commitment to, the value of good corporate governance practices among stakeholders, as well as a functional and responsible board of directors, the active role of internal and external auditors, and adequate and comprehensive information disclosure and transparency, could enhance the implementation of corporate governance.

6.2 Corruption in Kazakhstan and the quality of governance

In Kazakhstan uncover of numerous corruption scandals involving government officials has become almost a normal feature of life. Behind the high-profile acts of waging a battle against corruption, however, is a serious and systemic phenomenon. The most endemic form of corruption is the various transfers of funds in the state structures and national companies which remain opaque and thus unaccounted for. There are questions about the volumes and spending of revenues earned from natural

[314] Г.Ф. Шершеневич. Учебник торгового права / по изданию 1914 г. / Вступительная статья Е.А. Суханова. Москва: Фирма ‘СПАРК’, 1994. с. 104–166 (in Russian). G. Shershenevich. Textbook on commercial law / according to edition of 1914 /. Introductory article by Ye. Sukhanov. Moscow: SPARK, 1994, pp. 104–166

[315] O’Donovan G., “A Board culture of Corporate Governance (2003) 6(2) Corporate Governance International Journal

resources, and there is no independent monitoring and control of the flow of funds in national oil and gas companies. The main actors involved in the shadow economy are state officials and informal pressure groups, who distribute resources among themselves, and accumulate wealth by way of legalizing informal incomes or obtaining official business using connections. While important decision making is carried out among the close circles of the elite, formal institutions remain weak and ineffective.

The emphasis here is on the quality of governance that determines the effective functioning and reproduction of political, economic, social and other institutions. However, such institutions do not exist in Kazakhstan. Instead, what is referred to as Kazakhstani "political institutions" are nothing of the sort. Some experts refer to this phenomenon as "hasty institutionalisation".

…the fundamental modern "social institutions"…did not form independently. They were implanted by way of various social techniques and exist not as institutions in the intrinsic sense of the word (that is, a certain method for the regulation of already existing models of social behaviour), but as organisations. the system of institutions does not fit into the system of organisations[316].

It can be assumed that the political system in Kazakhstan is of a hybrid type, where formal and non-functional democratic institutions exist in parallel with the preservation of political monopoly by the governing elite. There are parties, but no party system. There is a parliament, but no independent representative branches of the government. There are courts, but no lawful state. There are citizens and, formally, a "third sector" but no civil society. Informal pressure groups play a dominant role. In his book *Clans, Authoritarian Rulers, and Parliaments in Central Asia*, American political scientist S. Frederick Starr rightfully calls these groups "brokers of the government"[317].

These brokers often operate in the shadows, outside the sphere of public control, and often possess powerful levers for the distribution of financial and administrative resources, which creates conditions ripe for corruption. The main form of communication is through informal contacts. Mediators in this type of communication are people who have the know-how and the know-how (i.e., knowing exactly the person who may help). In the political situation in Kazakhstan we can see a dangerous tendency in which these informal participants in the political process, who mainly operate behind the political scene, increase their antisocial activities in the illegal sector. In this regard, there we can also agree with the viewpoint that the weaker the function of the party system, the stronger

[316] A. Khader, Corporate governance (1st ed. Dar Alfikr Aljamiey, 2012) p. 2-3

[317] *Clans, Authoritarian Rulers, and Parliaments in Central Asia 2006*

the influence of pressure groups. Also, conversely, if parties were to implement their duties effectively, they would be capable of reducing the influence of such groups to a minimum.

Because the political structure in Kazakhstan bears the obvious scars of the post-totalitarian system, its main characteristic is the atrophy of its "entrances" in terms of the acceptance of external impulses and information from lower levels. Kazakhstan lacks an institution of gatekeepers in the face of political parties, active unions, and NGs that are located at the centre of the process of articulation and aggregation of social interests and express the different interests of subjects in the civil society. This is due to the lack of a structured and mature civil society that has equitable relations with the developed "entrances from within", whereby the process of making political decisions is considerably affected by players inside the system, whose actions are narrowly corporate and clannish in nature. However, a mature civil society is precisely the reliable mechanism that prevents the state from creeping towards authoritarianism and totalitarianism by protecting citizens from misconduct by the government and large businesses. In this way, it can be assumed that transitional states, including Kazakhstan, are characterized by proto - civil, rather than civil, societies.

Without a strong civil society, a competitive state apparatus cannot exist. This is also confirmed by data from the World Bank, which identified six principal constituents of corporate management and evaluated each of them on a four-level scale from +2 to -2.[318] What stands out immediately is that some of the first elements of effective corporate management in the state are precisely civil participation and accountability, as well as the presence of a lawful state. These elements constitute an important part of the functioning of any civil society. As a result of this study, Kazakhstan received the following scores several years ago: voice and accountability; political stability and absence of violence; governance effectiveness; regulatory quality; rule of law; control of corruption.

According to the World Economic Forum (WEF), in 2011 Kazakhstan dropped five positions in the world competitiveness rating. Some of the reasons for this were the high level of monopoly in the national economy and the unrelenting pressure of corruption on business. It is interesting to note that, according to WEF experts, in the past three years Kazakhstan occupied the 56th place in the economic freedom rating in the same year, with its total score dropping from 7.04 to 6.97. Kazakhstan also received low scores for its biased judicial system and weak property right guarantees.

Roman Bogdanov, Chairman of the Committee in Support of the President's Program for Fighting Corruption, indirectly confirmed this by affirming that the roots of corruption crime lie in "…the weakness of the civil sector, whose members must immediately react to any possibilities for violation

[318] World Bank: World Governance Indicators: 1996-2006.

of the constitutional rights of the citizens". The enforcement of rights by members of the civil sector is obstructed by the lack of state support for the realization of socially significant projects and the strong dependence of those members of the civil sector on politics carried by sponsors and donors. According to Bogdanov, the second reason for the ineffectiveness of efforts against corruption is the weak reaction of law enforcement organs to publications in mass media. Regardless of the fact that, by law, any announcements in the press about possible bribetakers must be subjected to serious investigation, in practice this rarely happens. One more reason is that "…the law enforcement practice of using the State Official's Code of Honour is not developed, in other words, it is simply ignored. Fourth, Kazakhstan lacks a mechanism for criminal prosecution of judges who have made unlawful judgments"[319]

However, the main threat to the quality of governance is that the artificial institutionalization leads to another "time-bomb," namely, the twisting of the executive vertical hierarchy.

[319] Amina Jalilova. Kruglyi stol "Korruptsiya v RK: beopasnost' v opasnosti". Source http://panoramakz.com/archiv/2011/30.htm

Chapter 7: Conclusion and recommendations

This chapter draws conclusions and submits recommendations from the discussion of the findings in relation to the research problem under investigation. In particular the conclusions and recommendations on the nature of relationship between corporate governance and economic growth in Kazakhstan will also be presented. The recommendations are based on the discussion and conclusion reached in this study. It is envisaged that recommendations from this study have both practical and theoretical implications for corporate governance.

As noted above there are several challenges which need to be addressed so as to improve corporate governance in Kazakhstan. The adoption of corporate governance principles by the country will be a giant step towards creating safeguards against corruption and mismanagement, promoting transparency in economic life and attracting more domestic and foreign investment. The development of capacity in firms, government and civil society to develop systems and effectively monitor compliance will be critical to achieving the goal of good corporate governance in Kazakhstan. In addition an effective program to combat corruption and bribery and is also capable of protecting shareholder value is an important requirement for the improvement of corporate governance in Kazakhstan. There has been limited published research on corporate governance in Kazakhstan and even less rigorous academic or empirical research. There is an urgent need to embark on meaningful analysis of corporate governance in Kazakhstan.

First chapter presented the background of and the arguments for carrying out this study. The motivation of this study stemmed from the fact that (1) poor corporate governance was claimed to be one of the causes that intensified the global economic crises experienced around the world including Kazakhstan. (2) there was a limited number of research that had been done on corporate governance theory, corporate governance framework and that corporate governance plays a significant role in the Kazakhstani economy and an attracting foreign investors (3) there was a need to provide some evidence through empirical research that can be used by policymakers and other parties to contemplate some issues and to make some improvement accordingly. In addition. this chapter discussed some issues of corporate governance across countries. the research questions. and the importance of the study.

Researcher tried to covered the concept, objectives, systems, and basic principles of corporate governance. The discussion of corporate governance concepts revealed that there is no universally accepted definition of corporate governance. In theory, there is still a heated debate between opponents shareholder and stakeholder value. Each argument has its advantages and weaknesses. Generally speaking, corporate governance can be defined as a system distributing the managing and supervising powers to different corporate organs and it covers the system regulating relationships

among all parties with interests in a business organisation, usually spelling out shareholders as a particularly important group. Moreover, this indicates that corporate governance is deemed to be an institution which regulates internal corporate arrangements and power distributions.

The importance of good corporate governance practices and rules shows a steady increase during the last years due to business scandals, which occurred all over the world. Managers and boards of companies have to be aware of the fact that such governance guidelines are inevitable for a stable and efficient growth and performance of a firm. It is not only the company itself which benefits from the implementation of sound governance codes, also possible investors and the public sector are interested in their development, as well as other stakeholders of the firm like banks, suppliers and employees.

Sound corporate governance is a critical element in helping these emerging markets meet their full economic potential. Good corporate governance, defined as the structures and processes by which companies and banks are directed and controlled, helps firms operate more efficiently, improves access to capital, mitigates risk, and safeguards against mismanagement. Good governance also facilitates appropriate consideration of other critical issues for enterprises, including environmental and social responsibility. It is the foundation for long-term business growth and sustainability, adding value for investors and contributing lasting dividends for economies.

Next chapter of this thesis has provided background to Kazakhstan and the Kazakhstani legal structure. This chapter attempted to answer the research question regarding how the Kazakhstani legal structure works. Particularly, the Basic Law of Governance and the country's executive, legislative and judicial authorities were examined respectfully and briefly.

Second section is focused on a brief analysis of development of Kazakhstan's legislation in relation to corporate forms for business entities since independence of Kazakhstan. The Civil Code of Kazakhstan establishes the most important provisions for regulation of organisational corporate forms for economic activities. These provisions include the legal definition of the concept of a legal entity, classifications of legal entities and their organisational forms, and general regulation applicable to each separate form of legal entities. All the detailed regulation of each of the allowed organisational forms of commercial legal entities is done on the level of separate legislative acts supported by lower-level regulations.

There are sufficient grounds to conclude that the Kazakhstani legislator acknowledges that:

1) a corporation shall be considered to be a legal entity established by its members participating in formation of the entity's assets and being entitled to participate in the process of managing the entity;

2) the core object of corporate relations includes rights and obligations in connection with foundation of a corporate organisation, formation of its assets, managing its affairs and its representation in the process of its economic activities, and protection of rights of its members and creditors; and

3) such corporate relations are predominantly regulated by civil law.

Nevertheless, since the company and corporate laws in Kazakhstan do not have its institutionalisation in accordance with the best patterns of developed jurisdictions, the need for their further development and improvement seems to be obvious. Certain directions for such development are of a similar nature to those existing in countries with a developed market economy, though others can be identified as Kazakhstan specific issues. The following position seems to have more perspective for implementation:

1) the concepts of a corporation and corporate relations shall be those of "business law", not of legislation of non-commercial organisations, and

2) legislation pertaining to business activities should be separated from laws regulating non-commercial activities. And it can be effective within the legal system of Kazakhstan.

Third chapter has examined the current practices of and improvements to the Kazakhstani corporate governance framework, investment climate in the country and corporate governance of state-owned enterprises. This chapter has looked further into the evolution of the Kazakhstani corporate governance framework, and has also focused on a variety of factors that have enhanced the corporate governance framework including the necessity to improve the position of economic and stock market as well as the necessity to enact modern pieces of legislation, which would support the corporate sector.

Corporate governance has reached a new level of importance within capital markets all over the world. Several reforms have increased its awareness and have led to improvements in infrastructure and legal systems. But there is still a lot of effort to make to create a sustainable system of corporate governance. The financial crisis has shown that a lot of countries have to rethink their strategy and policy in order to be less vulnerable. It is no longer enough to only think about the maximisation of economic value. The need of a long-run sustainability is getting bigger and, at the same time, creates a new factor of risk. Corporations have to consider the wealth of more than just one type of

shareholders and have to take all possible outcomes of their action into account. The simple shareholder value concept is out of date and does not represent the objective of a modern company any more. It became inevitable to take the interest of other stakeholders into account when making decisions. The awareness of the right to be treated fairly has opened the mind of shareholders and led to a revolution in shareholder protection. Mechanisms to respond to the corporate responsibilities have to be created. Corporate governance is not only about dealing with the relationship between ownership and management anymore, it became crucial to defend one's position in the economic environment. It became part of the company's strategy, using it to reduce risk, improve its reputation and attract investors. Especially for emerging economies it is a good method to improve the conditions for starting to trade internationally.

The problem of modern corporate governance arises with the development of global stock markets and the globalisation of economic processes, due to the transition from the "capitalist private property owners" to "capitalism hired professional managers." Separation of activities and responsibilities, executive and control the distribution of functions between shareholders and management, enterprise-wide search for equilibrium are expressed in the Corporate Governance Code. Currently, in most of the developed world are corporate governance codes developed at the initiative of non-governmental professional associations and widely accepted in the business community on a voluntary basis.

The institutional framework supporting good corporate governance needs improvement. International audit, law and rating firms are present in Kazakhstan and all together undoubtedly provide some contribution to enhancing corporate governance. Also Samruk-Kazyna seems to be committed to the cause of good governance in State Owned Enterprises. However, the corporate governance code (2005) lake proper implementation mechanism and definition of corporate governance and needs to be updated.

Given the enormous volatility in the international capital markets which can give rise to uncertainty, the demand and need for adequate transparency, disclosure and suitable corporate financial reporting is essential to investors who can make better decisions on a more timely and informed basis. Escalating present capital market volatility is pushing for further demand on sound corporate governance practices and the demand for improved financial reporting and broader levels of transparency to lessen the fear and panic of investors. The stock exchanges around the world become increasingly conscious of their roles as self-regulatory institutions and explore the possibility of using the listing requirements as a tool for raising the standard of corporate governance. The issue of good corporate governance is an imperative for ensuing successful corporate performance. A commitment to good corporate governance in terms of well-defined shareholder rights, high levels of T&D and responsible board of directors, etc. will make a company both attractive to investors and more chance to achieve good performance. The corporate governance principles emphasise an effective board,

prudent internal control, transparency and accountability to its shareholders. A high standard of GCG practices and procedures are essential for effective management to enhancing shareholders' value. Building GCG is a shared responsibility among all stakeholders, each of whom may exert pressure to move forward a corporation.

In short, greater transparency in disclosures is essential for effective financial reporting and supervision. By adopting greater financial transparency, companies provide the necessary information for investors to monitor their governance process and behaviour. Management needs to avoid excessive disclosures which could impair competitiveness. Increasing transparency will be important key to future success of corporate governance. Only with transparency will it be possible to defer frauds, embezzlement and financial scandals and foster efficiency in allocation of resources decisions. More importantly, T&D allow firms to compete on the basis of their best offerings and to differentiate themselves from firms which do not practice good governance.

We should be cautious regarding the quality of information disclosed by the companies because the information provided in financial reports may not be that quality like it seems so. For this reason, it is the job of auditors to detect the mistakes, carefully check the quality of information disclosure and make sure that it is reliable. Small firms provide less information than large ones, which supply more information about their independence standards, audit committees, their management supervision systems and whistle-blowing procedures. However, compared to small firms, large ones do not appear to give superior information about their environment. These results obviously raise questions that lie at the heart of most financial scandals as, in the end, firms' size matters less than respecting good governance, the latter being probably the main criterion to improve financial stability.

Much work should be done to improve the quality of financial information. In order to make financial evaluations reliable, valid and comparable, the uniform internationally accepted standards must be utiliSed. Although disclosure requirements have increased over the years, prescriptive disclosure has not eliminated the differences in the quality and extent of disclosure offered by companies; significant variation across companies is still observed.

Summarising all aforementioned aspects, the direction of SOEs in Kazakhstan is often appointed at the political level and these companies have extensive links to the public sector, including access to public funding from state-owned banks as well as credit facilities. State-owned enterprises also have an advantageous position in terms of licensing. This entails various risks, such as undue political interference in decision-making which may be in conflict with the best interests of the enterprise and community in general. Consequently, the OECD called for sufficient accountability and transparency in these companies and emphasised the importance of external monitoring of their operations.

The study also makes a contribution to practice given that there is growing recognition of the corporate governance as the driver for economic development. This study gives input for policy formulation and strategic decision making considering the existing limitations in current perspectives. The study provides an integrated framework of corporate governance that provides a basis to identify the functions and relationships between corporate governance, legal systems, financial developments, macroeconomic fundamentals and economic development. It also helps to identify and understand elements or practices which constitute good governance, strong legal system, good corporate governance, financial development and macroeconomic fundamentals. It enables companies and countries to evaluate their performance, identify their weaknesses and strengths and then formulate strategies, policy and practices to manage their corporate governance and economic development challenges. In essence the study suggests to policy makers and practitioners that low corporate governance and poor economic development observed in Kazakhstan can be solved through an integrated approach.

Recommendations

Based on the analysis and discussion of the empirical findings, this study makes the conclusion that: although there is an existence of insignificant relationship between corporate governance framework and economic growth, corporate governance is the underlying determinant for economic growth in Kazakhstan. As such, an integrated framework of corporate governance for enhancing economic growth developed in this study might be used to promote the development of corporate governance and cause economic growth in Kazakhstan.

Since corporate governance is necessary but sufficient to promote economic growth, this study recommends that Kazakhstan should consider an integrated framework of corporate governance framework for enhancing economic growth that identifies the best possible path that should be followed in order promote the development of corporate governance that supports economic growth. The framework that identifies the direction and causal relationship between aggregated corporate governance aggregated legal system, aggregated good governance, aggregated financial development and aggregated macroeconomic fundamental that can cause economic growth was developed. A Code of corporate governance for state-owned enterprises is reportedly under development, and would include considerations of the guidance provided in the OECD Guidelines on corporate governance of State-owned Enterprises, the OECD Principles of corporate governance and the provisions of the Code of corporate governance.Based on the above, it can be recommended that:

- the Kazakhstani government should make strenuous efforts to rectify the weakness of the institutional coordination for promoting a market economy now and otherwise in the near future, the country will lose its ascendancy of economic system over other Central Asian states. In a

sense, Kazakhstan may have to negotiate more steep and dangerous path of systemic transformation than before.

- Following the example of Samruk-Kazyna, other SOEs in Kazakhstan should also be encouraged to update their governance practices and to strengthen the rules and procedures of transparency and accountability;
- the authorities should be vigilant to promote a level-playing field in the cases of competition between SOEs and private enterprises;
- The government should consider publishing an annual aggregate report covering the activities of all SOEs, as recommended by the OECD Guidelines on CG of State-Owned Enterprises.
- The government should take into account international principles and standards of corporate governance in the process of improving the legal framework of Kazakhstan on corporate governance. Given the significance of the corporate sector and the need for integration of Kazakhstan into the global economy, the importance of harmonisation of Kazakhstan legislation on corporate governance with recognised world samples seems to us unquestionable. It should be noted, however, that implementation of corporate governance institutions of developed economies of the world by way of their blind copying usually does more harm than good. That is why in introduction of the principles of best practices, the national peculiarities of the system of corporate governance should be taken into account. We can only hope that this approach will be the basis for the proposed reform of Kazakhstan corporate governance framework.
- Companies should tighten the effectiveness of their internal governance without necessarily increasing the cost of implementing good corporate governance. Strict measures should be taken to ensure that directors disclose any interests where they may have material benefits, proper procedures should be followed to authorize any transaction and proper disclosure after the transaction should be followed. Disclosure and transparency ensure that shareholders have material information on time and companies should use different methods to disseminate information such as their websites, internet, newspapers or any other media. Along with these companies financial records should be published and have been prepared according to recognized international accounting standards. Various ways of upholding shareholder rights such as their rights to participate and access to information concerning material and key issues in the organization, voting rights and others should be created and maintained.
- Kazakhstan needs to strengthen their institutional environment factors indicated in the integrated framework and to develop an effective corporate governance framework that can contribute to economic growth.

- Good governance is a necessity that enables aggregated corporate governance to cause economic growth. This entails that strong good governance in terms of aspects as voice and accountability, political stability, government effectiveness, regulatory quality, control of corruption should be maintained by the government and the public sector in order to enhance investor confidence and support the development of corporate governance systems that leads to economic growth.
- There is need to promote the financial development and stability in order to ensure the development of effective corporate governance systems that contributes to economic growth.

Future research

The integrated framework for corporate governance for enhancing growth in Kazakhstan developed in this study could guide the development of strategy, policy and research tools for exploring the relationship between corporate governance and economic growth in the region. The framework allows comparative finance and economic researchers, policy makers to examine the relationship between corporate governance and economic growth in the country. Future studies may consider:

- Comparing the findings of this study to other Central Asian countries that are operating under different legal and regulatory frameworks in particular the remaining Asian community which are part of Asia but were not included in this study which only focused on corporate governance framework
- Future research may make a comparative analysis of legal aspects of corporate governance in Kazakhstan and Russian Federation.
- Future studies may use the proposed integrated of framework corporate governance for enhancing economic growth in Kazakhstan to further explore the relationship between corporate governance and economic growth using countries based on different categories such on the income level group and any other.
- Research in the future could make a comparative study of the role of corporate governance between countries of Central Asia.
- Lastly, future studies may consider empirically validating the integrated framework for corporate governance and its role in economic growth using data from other regional blocks such as European Union. European Union countries would provide interesting results because all the countries in that block follow a set of corporate governance principles from the OECD code. Findings from such studies would provide a spring board for the development of code of corporate governance that can be used to stimulate and sustain economic growth in Sub Saharan African countries according to their economic blocks.

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