



## **CORPORATE CONFLICT: PROBLEM OF MODERN UNDERSTANDING**

**Uzoqov Saidbek Diyor o'g'li**

Fourth-year student at Public Law Faculty in Tashkent State University of Law, Tashkent city, Uzbekistan

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<b>Received:</b> July 4 <sup>th</sup> 2023 <b>Accepted:</b> August 4 <sup>th</sup> 2023 <b>Published:</b> September 6 <sup>th</sup> 2023	In the article considers the various approaches to the concept of "corporate conflict". Particular attention is focused on the issue of the correlation of corporate conflict with related concepts. It is noted that a characteristic feature of corporate conflicts is becoming increasingly visible their multilevel feature, the presence of conflicts of interest within each group of different participants in corporate relations. In this regard, there is a wide range of diverse classification features of corporate conflict. With this in mind, modern economic realities aim at the necessity not only to streamline, but also to bring together the above economic-normative concepts, at the same time differentiating and clearly structuring them. The necessity for attention to these issues stems, in particular, from the growing popularity of mergers and acquisitions of various companies.

**Keywords:** Corporate conflict, corporate dispute, raiding, seizure, takeover, corporate blackmail.

Issues related to corporate conflicts are extremely important and relevant. And this does not require special justification - inattention to the problems of conflicts or their unsuccessful resolution can be fraught not only with the disorganization of corporations and disruption of their constructive development, but also, in the literal sense, with destructive consequences, which, in turn, negatively affects the domestic economy. At the same time, corporate conflicts are not always dysfunctional.

From the point of view of etymology, a "conflict" is a clash of parties, opinions, forces, a serious disagreement, a lack of agreement between two or more parties. As for the concept of "corporate conflict", it is not fixed by law. Because of this, representatives of the scientific community have been presenting their own vision of the definitive term for many years, while it does not fit into the clear framework of an unambiguous definition and interpretation.

In most doctrinal positions, the concept is interpreted as a clash between different branches of management, different levels of corporation employees, conflicts between the management bodies of the company and its shareholders, between the shareholders themselves, if this conflict affects the interests of the company [1; 2]. Other variations are also added, for example, the conflict between the investor (potential shareholder) and the company. So, a similar interpretation is given by the researcher E.I. Kovalenko. Citing her colleagues, she points out that some of them understand corporate conflict as "disagreements and disputes that arise between shareholders of a company, shareholders and management, an investor (potential shareholder) and

society" [3]. Some authors believe that corporate conflicts can be defined as "deliberate actions of participants in property relations, involving a struggle for power, property," etc. [4]. With a more detailed analogy with this approach, CC acts as a raider seizure, as well as another illegal or semi-legal form of activity related to the management of a corporation, which as a result leads to the alienation of property in favor of those who perform these actions.

In our opinion, researchers began to structure the concept more optimally, taking into account a number of changes in domestic civil legislation in recent years, through the prism of corporate relations and legislative consolidation of the concept of a corporation [2, p.131].

In unison with this, rather concisely, one of the modern monographs on corporate law in Russia gives an understanding of a corporate conflict as any conflict of interests and (or) violation of the rights of participants in corporate and related relations that arise from membership and management of a corporation [5]. Some authors, for example, O.V. Osipenko, being cautious about such categoricalness, believe that not all disagreements or disputes that are associated with the work of the company may indicate the presence of a conflict [6]. But in any case, it is noted that the basis of the corporate conflict is a conflict of interests and rights.

In general, the interpretation of this concept is characterized by the following. Differences in terminology and typology acquire a debatable sound when questions of the essence and correlation of certain types of conflicts, or when their identification with other phenomena is considered undisputed. In



many definitions recorded in the scientific literature, corporate conflicts are often correlated differently by different authors with other, more often related, concepts or types: they are either associated with them or delimited from them. There is a confusion of concepts, "cross" overlapping and, as a result, fuzziness, blurring of the essence of a corporate conflict. This is also noted by the researchers themselves, again, sometimes opposing each other. Thus, some of the authors emphasize that the terms "corporate wars", "raiding", "hostile takeovers", "corporate disputes" mentioned in the context of corporate conflicts are perceived by many as one and the same, although in fact they do not quite coincide even in terms of its semantics [7, .243]. One example of dissonant aspects of discrepancy between researchers of a number of concepts is the doctrinally different emphasis on the concepts of "corporate conflict" and "corporate dispute". A number of researchers are more in favor of distinguishing between the concepts of conflict and corporate dispute. However, in a number of cases, the authors bring these concepts closer, drawing a conclusion about two so-called stages of a conflict of interest, where a corporate conflict is a stage that shows the occurrence of a conflict of interests of subjects of corporate relations. A corporate dispute, in their opinion, is the second stage, when the dispute is resolved by specific legal means [7, .246]. Some authors do not define these concepts at all. So, A.P. Fokov, simply puts one of them in brackets next to the other [8, p.59].

In general, the opinion about the gradual "delimitation" of a number of similar categories with the modern concept of corporate conflict, as well as the mismatch of doctrinal understanding, in our opinion, are becoming more and more frequent. And this is quite understandable, since over time, taking into account external factors and the transformation of socio-economic and political conditions, and finally, the corporations themselves and corporate relations, corporate conflicts are also transformed and modified. In this regard, the question really sharpens: is it always permissible to put an identity sign between them and their separate species, as well as similar concepts? Should they be subject to differentiation, and to what extent? This question, it seems, is by no means idle, since a noticeable trend in the domestic economy has been an increase in the number of corporate conflicts in their various manifestations. Accordingly, preventive measures to prevent the emergence of conflict situations and overcome possible crisis consequences become effective only for a very specific, specific type of conflict. In many ways, this is the reason for the

need to identify the essence, features and interpretation of the corporate conflict and related phenomena.

An analysis of the legal literature allows us to state the fact that conflicts develop in many ways, enter new pivotal turns, and tend to change, relying on new mechanisms. Researchers point to the use of "conflict technologies" in the corporate environment, including those associated with the so-called long-term corporate siege of the enterprise by corporate blackmailers, to the increase in sophisticated greenmail schemes - corporate blackmail [9, p.98].

The modern corporate landscape is dominated by the old violent methods of racketeering, although it is not complete without them. Now, as O.V. Osipenko, "intellectualized, white-collar" blackmail prevails. If earlier the so-called "brothers" worked diligently, now the mechanisms of developers and controllers of the execution of raider schemes, according to the researcher, are set in motion by state corruption [5].

The former raider seizures in the modern corporate sphere, already in a new "guise", being supported by modern resources - state, administrative, power, using methods of political pressure and public discredit - extend to a much wider range of objects, developing their sophistication in legal and technical terms. The number of encroachments of "invaders" on the shares of the most "attractive" companies is increasing. Increasing cases of "squeeze" of shares, the displacement of owners. It is enough, without going into all the numerous details, to recall the confrontation between Rosneft and AFK-Sistema, etc. In addition, a characteristic feature of corporate conflicts is becoming more and more noticeable their multi-level feature, the presence of conflicts of interests within each group of different participants in corporate relations. Specialists deploy very voluminous specifications that reflect a wide range of various classification features of a corporate conflict: in them, individual authors include from 15 to 22 elements [10].

It would be believed that such a multi-level specification would not only make it possible to more fully determine the essential characteristics, but could also help in non-controversial situations in identifying or distinguishing between the concept of corporate conflict and other categories. In accordance with this, approaches to the definition of the concept are also changing, without losing the debatable intonations. Thus, more and more lawyers and economists disagree, for example, in their views on the general essence and content of the concepts of corporate conflict, hostile takeover, takeover, corporate blackmail and M&A. With regard to the latter, we note that the



presentation is especially ambiguous. Some authors classify hostile takeover, a relatively new socio-economic phenomenon for the Russian Federation, as a type of corporate conflict, others as a form of reorganization of legal entities. There is no consensus on the phenomenon of corporate blackmail, which is similar to a hostile takeover in terms of individual elements, but by no means identical to it [11].

The point, of course, is not a simple "inconsistency" in terminology. In our opinion, modern economic realities aim at the need not only to streamline, but also to bring together the above economic and normative concepts, at the same time differentiating and clearly structuring them. The need for attention to these issues stems, in particular, from the ever-increasing popularity of mergers and acquisitions of various companies. Thus, in Russia, according to statistics, in 2019 alone, 422 mergers and acquisitions were recorded with the participation of domestic companies, which is 26 percent more than in 2018. And the total value of transactions exceeded the previous figure by 31.8 percent [12]. Summing up, we emphasize that modern realities, new evolving economic phenomena and mechanisms in corporate relations encourage a somewhat different look at the nature of corporate conflict and its relationship with related categories, require regulatory clarification of controversial issues, adequate reflection of the conceptual apparatus and in the doctrine, and in the right. This is all the more relevant given the wide "scatter" in approaches to these concepts, the presence of debatable aspects, as well as changes in the field of corporate law that affect the sphere of corporate relations. At the same time, a corporate conflict should be considered, including through the prism of the economic essence of a corporation in modern conditions. Such a proposed legal adjustment should, in our opinion, lead to a reduction in difficulties in law enforcement practice.

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