The History Of Corporate Governance

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XÜLASƏ

Bu məqalə korporativ idarəetmənin tarixində-n bəhs edir. Bildiyimiz kimi, hər bir şirkətin, müəssisənin əsas məqsədi mənfəət əldə etmək və iqtisadi vəziyyətini yaxşılaşdırmaqdan ibarətdir. Korporativ idarəetmənin formaları və şirkətin iqtisadi fəaliyyətinin səmərəliliyi arasındakı qarşılıqlı əlaqəni nəzərə alsaq bu sahənin tədqiq olunmasının əhəmiyyəti daha da artır. Korporativ idarəetmə və onun formalarını daha düzgün tətbiq etmək üçün ilk növbədə onun tarixi və inkişaf mərhələləri, həmçinin yaxşı korporativ idarəetmə təcrübəsi tədqiq edilməlidir. Korporativ idarəetmə özü nisbətən yeni sahə sayılsa da, onun inkişaf tarixi olduqca qədimdir. Məqalə korporasiyalar, onların strukturu və korporativ idarəetmənin inkişaf tarixini təhlil edir.

Key words: corporate governance, share and shareholders, board of directors, agency, ownership and control

ABSTRACT

This article is about the history of corporate governance. The principal objective of a business enterprise is to make money, simply speaking and there is an interrelation between the forms of governance and economic performance of the organization. Notwithstanding the fact that corporate governance is a relatively new field of study, the history of it is quite old. In order to comprehensively understand this phenomenon and study corporate governance system good corporate governance practice, first of all, its history and development should be studied. The article analyzes the early history of corporations, their structure and development of good corporate governance practices.

The corporate governance, ensuring that a company is operating in a way that it achieves its objectives, the way through which companies are governed, conflicting interests of all stakeholders are balanced is the key element in improving economic efficiency and growth, enhancing investor confidence which in its turn contributes to the overall economic, social life of the countries. Taking the multiple important features and role of corporate governance into consideration, we should study it in a deep way not just by analyzing it in a theoretical or legislative context but also, by looking at its history. By learning and analyzing the background and various historical stages of development of corporate governance, we will gain a better understanding of its nature, how it emerged, its improvement, different concepts applied in different countries, best practices, major challenges, and etc., which in its turn will help to find solutions to contemporary problems, throwing light on present and future trends. Most importantly, the history reveals and helps us to understand the underlying idea, importance of corporate governance and why we should study it.

According to the Guhan Subramanian, Joseph Flom Professor of Law and Business at Harvard Law School, although corporate governance is a relatively new field of study, its roots can be traced back to the seminal work of Adolf Berle and Gardiner Means – “The Modern Corporation and Private Property” in the 1930s, but the field emerged only in the 1970s. Wells, associate professor at Temple University, by arguing the abovementioned fact says

that the intellectual roots of these ideas stretch back at least to the 1890s, and authors including Louis Brandeis, Walter Lippmann, and Thorsten Veblen grappled with them before World War I. He also states that it has been with us since the use of the corporate form created the possibility of conflict between investors and managers. (1)

By agreeing with the last view, as notwithstanding the fact that first companies, in the form of guilds, trade unions, partnerships and etc., had simple governance structure or was completely under the control of state, it is obvious that in each type of union there had conflicts or some disagreements, which in turn required solutions, efficient methods and mechanisms to be applied, we come to that conclusion that the history of corporate governance extends back at least to the formation of the East India Company, Levant Company and the other major chartered companies launched in the 16th and 17th centuries.

Corporations in general remained small institutions for the next 200 years or so to come. Most of them were chartered for specific purposes, such as banking. They could only exist for a limited time, were not allowed to make any political contributions, and could not own stocks in other companies. These limitations undoubtedly affected the governance or corporation itself. (2)

After the Renaissance and certainly by the time when the Dutch and English East India Companies were chartered in Europe, the concept of company was widely accepted and used.

Now let's look at the corporate governance structure of The East India Company. The Company began with 218 members and was governed by a Court of Directors referred as 'committees'. The governance structure consisted of the General Court or Court of Proprietors and the Court of Directors. Some specific features of The Court of Proprietors are followings:

- It was the supreme authority;
- It was consisted of members with voting rights;
- The qualification for members was investment in the amount of £200;
- Meetings were convened infrequently;
- It gave sanctions in order to raise funds;
- Election of the directors was in its authority.

The Court of Directors, consisted of the Governor, the Deputy Governor and 24 directors, was the executive body and was responsible for the running of the company, also for the financing of the Company's enterprises, directly accountable to the shareholders for capital expenditure selected the chief executive and its policy decisions had to be ratified by the Court of Proprietors. The East India Company's Court met frequently and had numerous subcommittees. Their function was to look after purchasing, sales, and correspondence. As we see the governance structure of the East India Company was slightly different from now, although most of the functions of a board of today was carried out by the Court of Directors. The court was subject, in many respects, to the control of a general court of proprietors (which is similar now to the shareholders in general meetings). There is an interesting fact that, The Court of Directors made their first appointment to that chief executive position on the basis of confidence, not pressure of patronage to appoint someone less well-qualified, so they tried "not to appoint any gentleman in any place of charge". (3)

From the end of the seventeenth century, the term 'director' was used by the Bank of England and Bank of Scotland. In order to void defunct charters and other excesses UK Bubble Act was enacted in 1720 which forbade unchartered companies to issue shares, established a certificate of incorporation. As the number of joint stock companies began to rise, state's role in regulation and legislating for its operation became necessary. (4)

Despite these restrictive trends entrepreneurs and their lawyers managed to evade the Bubble Act by Deed of Settlement Companies and many of our modern principles and problems in the law spring from that source. The Deed of Settlement was built on the foundation of trust and partnership and was at best an inchoate corporation. From the 17th Century using all three methods people began to employ the concept of joint stock, the pooling of investment capital.

As the industrialization was connected with the huge capital demand of new giant firms, especially in the railroad industry, legislators began to take corporations more into consideration. Now corporations were allowed

to write broader and less restrictive charters.

So, the corporations, state-controlled organizations at earlier times, began to transform to unlimited private organizations with limited responsibility and limited accountability.

In "Commonwealth Caribbean Corporate Governance" book, Suzanne Folkes-Goldson wrote that between 1895 and 1904, the first great merger wave in the US consolidated companies into mega corporations with limited liability. Due to the growth and importance of corporations, markets for the exchange of shares opened in New York and some European capital cities at this time. She also pointed out to the major problem arising in corporations during this term, stating that by the end of 19th and the beginning of 20th century, ownership and control had almost separated, as managers took the control into their hands, which also gave rise to the "agency problem".

So contrary to the belief of many, corporate governance is not a new phenomenon. Since the concept of company/corporation was established, ownership and management separated and this divergence became evolved, corporate governance existed.

As analyzed above from XX century corporate governance has become a central issue in all over the world. As corporations grow larger and larger the need to enter foreign capital markets increased. In its turn that gave rise to new challenges in the governance of international business. However, in the past decade, as a result of huge corporate failures a great deal of attention was drawn to corporate boards worldwide, it was after the Second World War, "when economies needed to be rebuilt the world over, increased cooperation amongst countries became indispensable for international movement of goods and services." (5)

Generally, between the periods from 1960s until the 1980s, the management of the larger corporations was characterized by the high supremacy of the management.

After the World War II, in the light of corporate prosperity, economic boom has evolved in the U.S and its leading corporations started to grow. But still the internal governance of companies was not considered as a highly important issue. (6)

In the next decades, corporate failures and scandals such as Enron, World Com and Tyco failures in the USA, the collapse of Maxwell publishing group in the UK, Holtzman, Berliner Bank, and HIH cases in Germany, the widespread banking distress in 1997 in Korea, Ansett Airlines and One Tel cases Australia, Credit Lyonnais and Vivendi in France and Swissair in Switzerland - compelled governments to take legal and regulatory policy initiatives in order to ensure good corporate governance, maintaining confidence and economic activity, and of course most importantly, protecting the interests of stakeholders. Especially the collapse of Enron in the USA in December 2001 has called into question the effectiveness of corporate governance systems.

As an indispensable component of the marketplace for the purposes of enhancing the long-term value of stakeholders in the business field, corporate governance entailing greater accountability from corporate boards also audit committees, strong managerial stewardship help companies to improve their performance and attract investment, to realize their corporate objectives, protect shareholder rights, meet legal requirements and demonstrate to a wider public how they are conducting their business.

In order to combat increased shareholder activism many huge companies in cooperation with institutional investors started to give attention to the development of self-regulation of corporate governance in the 1990s which in its turn led to a number of reports and codes or guidelines on corporate governance. In 1999, the OECD issued a set of corporate governance standards and guidelines. After publication of these standards and guidelines, which aimed at helping governments in their efforts to evaluate and improve the legal, institutional and regulatory framework for corporate governance in their countries, almost every country issued its own corporate governance standards.

Nowadays the greater focus of the countries developing their corporate governance structure is centered on various relations within joint-stock, limited-liability, publicly-held companies.These relations generally involve ownership and management.

The major concern is how to strike a right balance of power between shareowners and managers. In the light of that, obviously, its consequences should be analyzed in order to increase high performance of various enterprises. Moreover, in the context of corporate governance, the much more attention is placed on two ideal-typical property systems. The first one is called as "concentrated ownership system", which involves control of block holders and its high private benefits, weak securities markets, market transparency standards with low disclosure. In this system the market plays only a modest role in corporate control, whereas, large banks have a substitutionary monitoring role in the process. On the other hand, strong securities markets, rigorous disclosure standards, high market transparency, in which the market for corporate control constitutes the ultimate disciplinary mechanism is highly typical to the second, dispersed ownership system. (7)

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