

OPERATIONS WITH INVESTOR'S CORPORATE RIGHTS: THE ASPECT OF CONTROL

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Patryak O. T. Operations with Investor's Corporate Rights: the Aspect of Control

The article substantiates the expediency of applying control of operations with corporate rights of investors, outlines the program for monitoring corporate rights of the investor that will allow to use a systematic approach to solving problems of control, coordinate the control procedures, and regulate their information support. The advisable operations at the stages of preliminary, current and final control are identified. Summarizing the results of the study of the control system of corporate rights of the investor it should be emphasized that the developed program of monitoring at each stage will allow to comprehensively assess the expediency, legality, accuracy of implemented operations, identify mistakes and develop recommendations for avoiding them in the future.

Keywords: control, program of control, investor, corporate rights, operations with corporate rights.

Fig.: 1. **Tbl.:** 1. **Bibl.:** 9.

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Патряк О. Т. Операції з корпоративними правами в інвестора: контрольний аспект

У статті обґрунтовано доцільність застосування контролю операцій з корпоративними правами в інвестора, окреслено програму контролю корпоративних прав у інвестора, яка дозволить системно підійти до вирішення завдань контролю, скоординувати контрольні процедури та врегулювати їх інформаційне забезпечення. Установлено доцільні операції на етапах попереднього, поточного та кінцевого контролю. Узагальнюючи результати дослідження системи контролю корпоративних прав з боку інвестора, слід наголосити, що розроблена програма контролю кожного з етапів допоможе комплексно оцінити доцільність, законність, правильність здійснюваних операцій, виявити допущені помилки та розробити рекомендації стосовно уникнення їх у майбутньому.

Ключові слова: контроль, програма контролю, інвестор, корпоративні права, операції з корпоративними правами.

Рис.: 1. **Табл.:** 1. **Бібл.:** 9.

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Патряк А. Т. Операции с корпоративными правами у инвестора: контрольный аспект

В статье обоснована целесообразность применения контроля операций с корпоративными правами у инвестора, очерчена программа контроля корпоративных прав у инвестора, которая позволит системно подойти к решению задач контроля, скоординировать контрольные процедуры и урегулировать их информационное обеспечение. Установлены целесообразные операции на этапах предварительного, текущего и конечного контроля. Обобщая результаты исследования системы контроля корпоративных прав со стороны инвестора, нужно подчеркнуть, что разработанная программа контроля каждого из этапов поможет комплексно оценить целесообразность, законность, правильность осуществляемых операций, выявить допущенные ошибки и разработать рекомендации по избежанию их в будущем.

Ключевые слова: контроль, программа контроля, инвестор, корпоративные права, операции с корпоративными правами.

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Due to the uncertain situation in the East of Ukraine the investment attractiveness of our country is quite low. However, the decline in investment attractiveness is partly compensated by Ukrainian business aspirations for European integration. In this regard, there is a need to ensure a reliable mechanism to control the investments made, especially financial investments in corporate rights, as they are subject to business risks. Thus, in the absence of effective control and under the current geo-political situation in the country, the investor bears a significant risk of losing his investments. Making a decision on investing into the enterprise, the investor wants to be maximally sure of the investee, because its reliability, sustainability, business policies determine the fate of the deposit. Investments by their nature are characterized by significant risks that an investor seeks to minimize. In addition, investing requires not only the current and the following control that helps quickly adjust the actions of an investor, but preliminary control that helps avoid unfavorable investments beforehand.

The following scholars dedicated their researches to the problematic issue of control of corporate rights, namely:

N. I. Hordienko, M. Yu. Karpenko, N. I. Kostova, A. P. Kolesov, O. M. Kupriushyna, M. R. Luchko, M. Yu. Miliavskiy, V. Yu. Pashutina, I. V. Spasybo-Fatieieva, O. V. Harlamova and others. Note that the problem on the rights and interests of investors in corporate law is raised by lawyers and considered from a legal point of view. Therefore, we believe that control in terms of economy is an essential and primary element for effective and safe investment.

The aim of the research is to outline the program for monitoring operations with corporate rights of the investor, which will allow fulfilling systematically approach to solving the problems of control, coordinating control procedures and regulating their information support.

Consideration of the issue regarding protection of shareholder rights is quite common in scientific literature. In particular, I. V. Spasybo-Fatieieva paid a lot of attention to this issue from a legal point of view. We agree with the opinion that the Ukrainian legislation is extremely imperfect with regard to this issue, but believe that the main and most effective instrument for protection of investors is its system of control over the implementation of investments.

This approach is partially described by N. I. Kostova from the legal viewpoint: “Applying means of self-protection by the founders of the company would enable faster solving controversial situations, eliminating negative effects of violations of their rights and interests without recourse to judicial authorities...” [3].

Kupriushyna O. M. also examines various ways to protect shareholder rights offering quite a wide range of solutions, including even the sale or gift of shares if the investor has a problem with them. The scientist says that corporate audit assesses corporate governance in the company and provides interested individuals, especially shareholders, with reliable information about compliance of corporate procedures with regulatory requirements [4, p. 72].

Such scholars as N. I. Hordienko, O. V. Harlamova, and M. Yu. Karpenko emphasize the fact that “an appropriate corporate governance system allows investors to be sure that the management of the partnership is wisely using their investments in financial and economic activity and, thus, increases the cost of the investors’ stake for participation in the equity of the company” [1, p. 294].

And considering the fact that today we have only few achievements of scientists concerning the issues of control over the corporate rights of investors, this topic requires a comprehensive approach. Thus, the program for monitoring corporate rights of the investor is developed (*Tbl. 1*).

Table 1

The program of monitoring investor’s operations with corporate rights (issuer)

№	Monitoring procedure	Information support	The documentation of the monitoring procedures
1	2	3	4
1. Preliminary control (carried out before the economic operation with corporate rights)			
1.1	Making economic calculations of the feasibility of investing in the corporate rights of a particular issuer	The balance sheet (statement of financial condition) of the issuer, the financial statement (statement of comprehensive income) of the issuer, the statement of equity capital of the issuer, notes to financial statements of the issuer, balance sheet (statement of financial position) of the investor, financial statements (the statement of comprehensive income) of the investor, news reports from the media, data of stock exchange	Form ІКП-1 “The test of economic feasibility of investments in corporate rights”
1.2	Checking the compliance of the package of documents on economic operation with corporate rights with requirements of the current legislation and statutory documents	The package of documents in compliance with normative and legal requirements [8]	Form ІКП-2 “The test of compliance of the issuer’s documents concerning corporate rights with the requirements of the current legislation”
2. Current control (carried out in the process of business operation with corporate rights)			
2.1	Checking the documentary reasons (organizational, managerial, specialized and primary documents) to reflect operations in accounting	The set of organizational, managerial, specialized and primary documents which, according to the order of the accounting policy constitute a system of document production of investment operations accounting	
2.2	Control over the implementation of schedule of repayment of investments by the actual bringing of inventory items in the form of contribution of founders and shareholders to the registered capital of the telecommunication enterprise	The set of primary documents that certify the bringing of inventory items in repayment of investments in the form of contribution of founders and shareholders to the registered capital of the enterprise; trial balance sheets of financial investment accounts	The schedule of repayment of obligations on financial investments
2.3	Checking the accuracy of payments of dividends	1. The copies (extracts) of organizational documents of the issuer in part of making decisions on distribution of profits to pay dividends. 2. Reconciliation of settlements for accrued and paid dividends	Form ІКП-3 “The statement of control over the accuracy of payment of dividends”
2.4	Checking the financial condition of the issuer and the dynamics of the value of his corporate rights	Analysis of the information on the cost of corporate rights of the issuer from the data of stock exchange, financial reporting of the issuer and media reports information	Form ІКП-4 “The dynamics of cost indicators of investments”

1	2	3	4
3. The following control (carried out by the results of the reporting period or economic operation with corporate rights)			
3.1	Checking the income and expenses formation and their disclosing in the form of reporting indicators by investments in corporate rights	A set of source documents on operations with corporate rights; Registers of investment accounting; financial statements of the issuer and the investor	Working documents specifying deviations and proposals
3.2	Checking the reflection in financial statements of debts on contributions to the registered capital of the enterprise-issuer		
3.3	Checking the reflection in financial statements of operations regarding accrual and payment of dividends, current accounts receivable of the telecommunication enterprise according to them		
3.4	Checking the internal reporting on operations of financial investments in corporate rights	Forms of internal reporting	
3.5	Implementation of economic calculations regarding changes of the financial condition of the enterprise for the period in which there was a financial investment in equity instruments (corporate rights) of the telecommunication enterprise using elements of factor analysis	The balance sheet (statement of financial condition), the financial statement (statement of comprehensive income), the statement on equity capital, notes to the financial statements, (for several reporting periods).	Form ІКП-5 "Calculation of changes in the financial condition and impact of investments in corporate rights on it"

The documents designed to finalize monitoring procedures allow controlling the entity to record distortions and observations concerning the subject issues of control over operations involving corporate rights at all stages of their life cycle and by stages of control are indicated in the Program (see Tbl. 1). They are reasonable to be drawn up for organizing, summarizing information and presenting results of the conducted analysis and control over operations with issued corporate rights.

First of all, the question of expediency of investing in corporate rights of a particular issuer should be covered, because the right management decision on the choice of an investment object is the key to the profitability of the operation. This decision should be based on reliable, accurate, timely and most complete information about the issuer and his financial condition and development trends. Such information is contained in a large range of sources: financial statements of the issuer in terms of information to calculate indicators of its financial condition and the need to attract additional funding, analytical reviews of financial markets about stock quotes, etc.

In addition, in order to assess the feasibility of implementation of specific investments the investor should analyze his own financial statements for the possibility of withdrawal of funds from circulation to conduct financial investment, calculate the profitability indicators of identical or similar financial investments in the investor's portfolio.

After making an investment decision, a potential participant should monitor the compliance of the package of documents on economic operations with corporate rights with the current legislation and statutory documents. This will help check all necessary documents, detect mistakes in filling out their requisites and, consequently, prevent illegality in making transactions since such mistakes can lead to loss of property rights according to the corporate rights.

Checking the presence of documentary reasons to reflect transactions in accounting is necessary already at the stage of current control. A number of organizational, administrative and specialized documents should be available in addition to primary accounting documents, which, according to the order on accounting policies, constitute the system of production of accounting documents for investment operations.

The investor should also monitor the implementation of the maturities of investments by the actual including of inventory items in the form of contribution of founders and shareholders to the registered capital of the telecommunication enterprise. The informational support of this will be presented by a set of primary documents that certify the including of inventory items in repayment of investments in the form of contribution of founders and shareholders to the registered capital of the enterprise; trial balance sheets of financial investment accounts. To perform this type of control, it is necessary to develop a schedule of repayment of obligations on financial investments, with which the controller will compare the actual contributions of the investor.

In this regard N. I. Kostova also emphasizes the mandatory monitoring of the procedure of determining the value of property contributed by founders as payment for shares. According to Articles 8, 11, 23 of the Law of Ukraine "On Joint Stock Companies" [2], "the value of property, which is contributed by the founders of a joint stock company as payment for shares of stock of the company, shall correspond to the market value of such property established pursuant to Article 8 of this Law. <...> The approved value of property shall not vary more than 10 percent from the value of determined by the appraiser. Should the approved market value of property vary from the value determined by the appraiser, the decision of the supervisory council must mandatorily be substantiated in a corresponding manner". Availability of the expert conclusion, as the author rightly notes, will complicate unwarranted overstating the value of property, property rights, which are contributed by founders of the company as payment for shares.

The question that is the most important for shareholders – accrual and payment of dividends – requires significant attention of subjects of the investor's control. Thus, a vast majority of investors in making decisions about investing are guided not only by ensuring financial support and the issuer development but also by their own profit, which is promised them in the form of dividends.

Having conducted research in this area, V. Yu. Pashutina also writes about the sufficiency of grounds for ensuring an adequate level of control [9, p.150]: "Abuse of corporate rights in the area of dividend payments is a common legal phenomenon, and the procedure of paying dividends to shareholders as the object of abuse is contradictory and insufficiently regulated. Abuse of corporate rights in the area of dividend payments may occur in the form of abuse by the joint stock company of the right to make decisions on directing profit to payment of dividends <...> and abuse by a shareholder of the right to participate in distributing the company profit and receiving his share (dividends) <...>" [9, p. 149].

Considering this M. Yu. Miliavskiy singles out two indicators that appear to be the objects of corporate control. Firstly, it is the part of net income, the value of dividend fund; secondly, it is the share of the dividend fund in the total amount of net income [7, p. 305].

According to the results of this study, we recommend to implement the checking of correctness of paying dividends on the basis of copies (extracts) of organizational documents of the issuer in terms of making decisions on distribution of profits for dividends and also their payment; conducting the checking of mutual settlement by accrued and paid dividends will be also advisable.

In addition to all the above mentioned, the investors should constantly monitor the financial condition of the issuer and the dynamics of the value of its corporate rights. Since the factors that affect the cost of its shares may vary significantly over time, it is the speed of decisions concerning the expediency of saving their money in shares of the issuer or, maybe its changes or radical revision of positions concerning investment is of importance. Analysis of the information about the cost of corporate rights of the issuer is

based on data from stock exchanges, financial reporting of the issuer and media reports.

After the end of the accounting year the investor has to evaluate the effectiveness of implemented investments. For this purpose, first of all, it is necessary to be sure in the correctness of the following:

1) formation of incomes and expenses associated with financial investments in corporate rights of the telecommunication enterprise and disclosure of relevant information in financial statements;

2) reflection in financial statements of debts on contributions to the registered capital of the enterprise-issuer;

3) reflection in financial statements of operations regarding accrual and payment of dividends, current accounts receivable of the telecommunication enterprise according to them;

4) internal reporting on operations of financial investment in corporate rights.

The information support in this case is presented by a set of primary documents regarding transactions with corporate rights, registers of investment accounting, financial statements of the issuer and the investor for several periods, since the dynamics of return on financial investments should be considered to prevent the decline in the investment performance. Working documents with the indication of deviations and proposals are made in the course of monitoring.

After obtaining confidence in credibility of the reporting performance, the investor has to make a number of economic calculations to change the financial condition of the enterprise for the period when there took place financial investments in instruments of equity capital (corporate rights) using elements of factor analysis. Such calculations are made on the basis of the balance sheet (statement of financial position), the statement on financial results (statement of comprehensive income), the statement on equity capital and notes to financial statements for several reporting periods

The developed program is appropriate and effective both at insignificant amounts of investments and if the enterprise has a considerable share in the capital in order to influence the activity of the issuer. In this case, under the proposed program there can be carried out control exercised by a specially created internal control unit.

It should be noted that a conflict of interests of participants (shareholders) and managers (management personnel) is significant and increases in the absence of a proper control system. At the same time the institutional and organizational status of the subject of control of corporate rights at the enterprise-investor depends on the purpose and amount of investment and degree of control over the enterprise-issuer.

If the acquisition of shares of the company was carried out for the purpose of resale, then the expenditures on establishing the security service are justified, but in any case the enterprise can not be left uncontrolled at all, since at inefficient management the value of its shares will be reduced and their acquisition with the purpose of resale will be unprofitable. It is another matter when investments were carried out in order to receive dividends and implement control over the issuer activity. In this case the investor is

more interested not in growth of the share cost but in a stable progressive development of the enterprise, in which the funds were invested, because it directly affects the profits, and hence its distribution and dividends.

Development of the controlling subject of the investor in the structure of the investor's enterprise depending on the size of the investor's share and volume of the issuer activity in case of acquisition of corporate rights but not for the purpose of resale is described in Fig. 1.

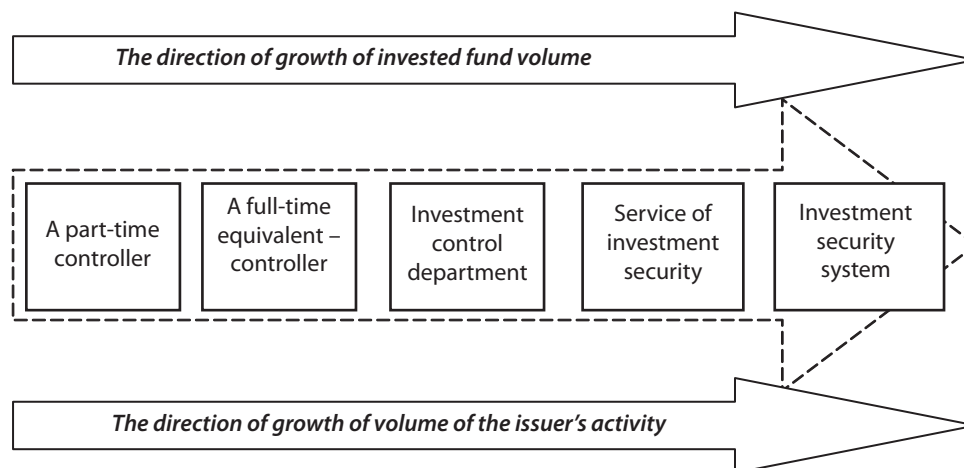


Fig. 1. Type of the subject of the investor's control depending on the level of its contribution and volumes of the issuer's activity

Thus, the vector of growth of the volume of funds invested by the investor simultaneously with the direction of growth of the volumes of the issuer's activity are in direct proportion to the level of the magnitude required for the investor of the body of control over activities of the issuer to provide a sufficient level of confidence in the rational use of invested funds by it, the level of profitability of the issuer and detection of abuses, which will allow to quickly obtain reliable information for making investment decisions.

Depending on the volume of the issuer's activity, the security service may consist both of one employee and of a numerous staff. At the same time we believe that a considerable staff should perform versatile control functions, including those without the consent of the issuer. That is, the security service of the investor can penetrate into economic activities of the issuer and be part of this system, which means to act not only as a single subject of external control but also as an integral part of the system under control, so to speak – control from inside. Internal auditors should not only recommend introducing or strengthening the control but offer to change its system there where significant risks that inadequately managed and controlled are identified [5].

The macro-level covers interests of large shareholders and investors – such as the state and institutional investors. The state carries out assessment through the monitoring system and ensures financial discipline regarding the use of public resources. There distinguished external control and internal control: previous, current, subsequent, internal audit, inspection [6, p. 10–11]. The bodies authorized to manage the state corporate rights are: the Cabinet of Ministers of Ukraine, the State Property Fund of Ukraine and the National Agency of Ukraine for Management of State

Corporate Rights and Property, central executive bodies and authorized persons.

Thus, control measures play an important role at each stage of the life cycle of corporate rights. At the stage of making a decision on the acquisition of corporate rights, control allows to assess the advisability of investing, appropriateness of choosing an investment object, correctness of the legal registration of the process of implementing the contribution, etc.

At the next stage checking the correctness of forming the base for distribution of dividends and their accrual and taxation allows to check observance by the issuer of the investor's rights in terms of completeness and timeliness of obtaining income according to the corporate rights. In addition, the detection of volume of accrued dividends allows investors to judge on the conformity of the actual profitability of corporate rights of telecommunications enterprises to indicators of investment plans of the investor.

Control measures are necessary for checking the correctness of the calculation of the investor's share that is returned to him when the investor resigns. Besides, control helps investors make decisions in management of the enterprise, if corporate rights acquired by him provide such a right.

CONCLUSIONS

Summarizing the results of the study of the monitoring system of corporate rights of the investor, it should be emphasized that the developed program of control covers all stages of the life cycle of corporate rights, creates a complex information support of control procedures.

The package of working documents of the subject of control at the enterprise-investor is described in the article to achieve the objectives envisaged in the program, which allows timely identifying and fixing deviations in investor's operations with corporate rights of the telecommunication enterprises.

There justified a procedure for implementation of such control by the investor strengthened by the system of its information and document support ensures effective implementation of the control function with the help of the system of investment activity of the enterprise-investor. ■

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