

## THE SIGNIFICANCE OF CLASSIFICATION OF CORPORATE DISPUTES

**Umida Bekmirzaeva**

Graduate student of

Tashkent State Law University

<https://www.doi.org/10.5281/zenodo.7854949>

### ARTICLE INFO

Received: 13<sup>th</sup> April 2023

Accepted: 21<sup>th</sup> April 2023

Online: 22<sup>th</sup> April 2023

### KEY WORDS

*Corporate disputes, shareholder disputes, corporate conflicts, fiduciary duty, disputes over management.*

### ABSTRACT

*This article examines the different types of classification of shareholders in the context of corporate disputes, including majority and minority shareholders, as well as common and preferred shareholders. The article also discusses the various methods that can be employed to prevent such disputes, including implementing clear shareholder agreements, effective communication between shareholders and management, and utilizing dispute resolution mechanisms. The article emphasizes the importance of addressing shareholder disputes promptly and fairly to ensure the long-term success and stability of the corporation. To achieve this, the experience of other countries including the UK and Germany are compared from a point of legal view.*

### INTRODUCTION:

#### ***Shareholder Disputes-Prevention Better Than the 'Cure' of Litigation<sup>1</sup>***

Corporate disputes are disagreements between stakeholders within a corporation, including shareholders, directors. These conflicts can arise for various reasons, including disagreements over management decisions, compensation, shareholder rights, mergers and acquisitions, or violations of fiduciary duty.<sup>2</sup> Disputes between the company and external parties, such as regulators, consumers, suppliers, or competitors, can also lead to corporate disputes. These conflicts may be resolved through litigation, arbitration, mediation, or negotiation.

In general, corporate disputes arise when the parties involved perceive a breach of trust, conflict of interest, or lack of transparency. Consequently, preventing business disputes requires effective communication, proactive management, and unambiguous rules and agreements.

Now, we have one more notion «corporate conflict» which must not be mixed with the «corporate disputes». Since according to John Burton (1990), a dispute is a short-term disagreement that can result in the disputants reaching some sort of resolution; it involves

<sup>1</sup> <https://www.lexology.com/library/detail.aspx?g=a1a3edad-e776-4324-a585-079112ff49d5>

<sup>2</sup> Cahn, A., & Donald, D. (2018). References. In Comparative Company Law: Text and Cases on the Laws Governing Corporations in Germany, the UK and the USA (pp. 1014-1034). Cambridge: Cambridge University Press.



issues that are negotiable. Conflict, in contrast, is long-term with deeply rooted issues that are seen as "non-negotiable" (1990).<sup>3</sup>

Corporate disputes must be foreseen and prevention while drafting internal regulatory documents such as shareholder agreement, charter and code of corporate ethnics<sup>4</sup> and governance since corporate disputes can pose significant risks to a company's stability, growth, and reputation. Among the most significant hazards posed by corporate disputes are:<sup>5</sup>

- Financial Losses: Business disputes can result in expensive legal fees, settlements, and damage awards. In some instances, disputes can result in the company's bankruptcy or financial collapse.
- Reputational Harm: Corporate disputes can harm a company's reputation, resulting in a loss of consumer trust, investor confidence, and brand value.
- Disruption of Operations: Disputes can disrupt a company's daily operations, resulting in decreased productivity, employee morale, and consumer satisfaction.
- Loss of Intellectual Property: Disputes can result in the loss or theft of intellectual property, trade secrets, or confidential information, placing the business at a disadvantage in the marketplace.
- Corporate disputes can erode investor confidence, resulting in a decline in share prices and capital-raising difficulties.

The concerns of corporate disputes emphasize the significance of preventing and managing conflicts expeditiously and effectively in all jurisdictions.

## DISCUSSION

At the same time, approach to the classification of corporate disputes are different in jurisdictions:

For instance, Article 30 of the Economic Procedural Code of the Republic of Uzbekistan provides a comprehensive listing of cases involving corporate disputes. So, corporate litigation includes the following:<sup>6</sup>

- disputes related to the creation, reorganization and liquidation of a legal entity;<sup>7</sup>
- disputes related to the ownership of shares, shares in the authorized capital(authorized capital) of business companies and partnerships, shares of members of cooperatives, the establishment of their encumbrances and the implementation of the rights arising from them, with the exception of disputes arising in connection with the division of inherited property or the division of common property spouses, which includes shares, shares in the authorized capital (authorized capital) of business companies and partnerships, shares of members of cooperatives;

<sup>3</sup> Raymond Shonholtz, General Theory on Disputes and Conflicts, A, 2003 J. Disp. Resol. (2003) <https://scholarship.law.missouri.edu/jdr/vol2003/iss2/6>

<sup>4</sup> Abdusaidovich K. A. Investigation of theatricalities of thefts and robberies on motor vehicles //Asian Journal of Multidimensional Research (AJMR). – 2019. – T. 8. – №. 11. – C. 109-114.

<sup>5</sup> "Jay Adkisson and Christopher M. Riser Shareholder Disputes in Close Corporations".

<sup>6</sup> Article 30 of the Economic Procedural Code of the Republic of Uzbekistan

<sup>7</sup> Esenbekova F. T. et al. Features of the approval of the world agreement by the economic court: practice and theory //International Journal of Professional Science. – 2021. – №. 5. – C. 90-96.



- disputes on claims of participants (founders, members) of a legal entity on the invalidation of transactions made by a legal entity and (or) the application of the consequences of the invalidity of such transactions;
- disputes related to the issue of securities, including contestation of decisions of the issuer's management bodies, contestation of transactions made in the process of placement of equity securities, reports (notifications) on the results of the issue (additional issue) of equity securities;<sup>8</sup>
- disputes arising from the activities of nominal holders of securities related to the registration of rights to shares and other securities, with the exercise by them of other rights and obligations provided for by law in connection with the placement and (or) circulation of securities;
- disputes about convening a general meeting of participants of a legal entity;
- disputes on appealing against decisions of the governing bodies of a legal entity.

Above-mentioned classification of corporate disputes in Uzbekistan is according to the legislation but in theory of corporate law of civil law countries<sup>9</sup> there is one more method to classify corporate disputes based on focusing on the typical interests of corporation participants, four main types of corporate conflicts can be distinguished:<sup>10</sup>

- between the corporation and its members;
- between members of the corporation;
- between the governing bodies of the corporation and its participants;
- between corporate governance bodies.

Furthermore, corporate disputes can be divided into two categories related to their legal nature:<sup>11</sup>

Corporate disputes related to propriety rights	Corporate disputes related to non-propriety rights
<ul style="list-style-type: none"><li>• Payment of dividends;</li><li>• Charging a penalty for the dividend not paid on time;</li><li>• Recovery of share price;</li><li>• Recovery participant's share in the share capital;</li><li>• Declaring invalid the agreement of the participant to give up his share in the charter fund in favor of another person;</li></ul>	<ul style="list-style-type: none"><li>• Return of property as a result of finding it invalid;</li><li>• Recovery of material and moral damage.</li><li>• Appealing against the decisions of the management bodies of the legal entity;</li><li>• calling a general meeting of legal entity participants;</li><li>• imposing the obligation to re-register the shareholder's right to shares;</li><li>• recognition of the shareholder's ownership</li></ul>

<sup>8</sup> Laptev VA Concept of corporate conflicts. Differentiation between the concepts of "corporate conflict" and "corporate dispute", "corporate takeover" and "corporate takeover" // Arbitration and civil process. – 2010. – no. 9. - S. 28-32.

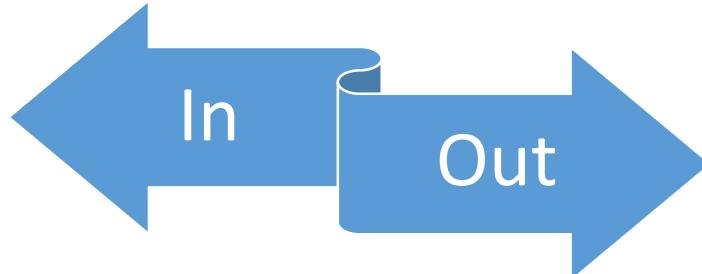
<sup>9</sup> Khakberdiev A. The concepts of criminal staging, its elements, methods of Detection and investigation N //Review of law sciences. – 2020. – T. 4. – №. 1. – C. 1.

<sup>10</sup> O.S. Erahtina Preventive Measures for Minimization of Corporative Conflicts Perm University Bulletinn 2010 Legal Sciences Issue 3(9) 103 UDC 346.2

<sup>11</sup> Corporate Disputes: Their Concept, Types And Specific Aspects Of Their Consideration In Court [Text]: A Practical Guide For Judges And Residents / M.Saidov. - Tashkent: , 2019. - 196 P

	<p>rights to shares;</p> <ul style="list-style-type: none"> <li>• imposing the obligation to pay the market value of shares;</li> <li>• Imposing on the company the obligation to provide the shareholder with the opportunity to use the company's documents within the framework of the law;</li> <li>• excluding the participant from the ranks of founders of the company;</li> <li>• finding the charter and shareholder documents invalid and applying the consequences of invalidity;</li> <li>• finding the actions of the participants, expressed in the adoption of the decision of the general meeting of the , to be illegal;</li> <li>• imposing the obligation to change the legal form of the enterprise.</li> </ul>
--	---

In addition, some scholars are in favor of grouping corporate disputes based on their participants:<sup>12</sup>



Corporate disputes in Germany are typically settled through litigation in the courts or alternative dispute resolution methods such as mediation or arbitration<sup>13</sup>. The German legal system provides several mechanisms for the resolution of corporate disputes, including the *Aktiengesetz*, the *GmbH-Gesetz*, and the *Handelsgesetzbuch*. These laws provide a framework for the management of corporate disputes and the protection of shareholder and other stakeholder rights. In Germany, corporate disputes can be divided into the following categories:<sup>14</sup>

- Shareholder disputes typically entail disagreements between shareholders over issues such as the distribution of dividends, shareholder voting rights, and company management.

<sup>12</sup> Kochutov Maria Konstantinovna Types of Corporate Disputes, Russian State University of Justice, Number: 57 Year: 2019 P- 15-17, UDC: 347.918

<sup>13</sup> Abdusaidovich K. A. The theoretical basis for the classification of criminal dramatization, methods for their identification and investigation //International Journal of Psychosocial Rehabilitation. – 2020. – T. 24. – №. 8. – C. 1930-1945.

<sup>14</sup> Christoph Paulus "Shareholder Dispute Resolution in Germany"



- Director and officer disputes can arise when directors or officers of a company disagree on matters such as executive compensation, corporate strategy<sup>15</sup>, or fiduciary responsibilities.
- Mergers and acquisitions disputes can arise when parties disagree about the terms of a merger or acquisition, or when one party violates the terms of the agreement.

Under English law, the categorization of corporate disputes as follows:<sup>16</sup>

1. actions to compel directors to act on behalf of a corporation against a third party;
2. actions brought by a corporation against directors who have breached their fiduciary duties.

Furthermore, there are other widespread shareholder disputes among which disqualification of directors and breach of fiduciary duty are most common ones:<sup>17</sup>

- Disagreement over a company's management;
- Distribution of dividends and company growth;
- Received consideration by minority shareholders;
- Personal issues affecting business operations;
- Disqualification of Directors;
- Breach of fiduciary duty.

Disqualification of Directors is one of most frequent the corporations.<sup>18</sup> A director of a company must ensure that the company complies with all applicable laws and regulations, exercise adequate skill and care, and carry out all duties and responsibilities with integrity. Directors can be disqualified if they fail to fulfill their legal obligations. Anyone may denounce a director as being "unfit."<sup>19</sup> Infractions of legal responsibilities can include anything from continuing to conduct business while the company is in debt to using company funds for personal gain. Insolvency does not inherently disqualify a director, but he or she will be expected to investigate why the company has entered liquidation and where the money has gone. It is conceivable that the Insolvency Service will conduct an investigation, and if they determine that a director has failed to fulfill their legal obligations, they will initiate court proceedings. A director may then defend their action or voluntarily disqualify themselves by submitting a "disqualification undertaking" to The Insolvency Service. The disqualification lasts up to 15 years and prohibits the individual from serving as a director or participating in the formation, marketing, or management of any UK-registered company or overseas company affiliated with a UK-registered company.

Disagreements can lead to a stalemate in a company where all directors possess the same number of shares. A company with two directors who each hold a 50% share and disagree, resulting in deadlock, is an evident example.

Breach of fiduciary duty is also a common cause of many corporate disputes. The classic definition of a fiduciary was set out by Millet LJ in ***Bristol and West Building Society v***

<sup>15</sup> Xakberdiev A. A. ARBITRATION COURT: SOME ISSUES OF LAW PROTECTION //World Bulletin of Management and Law. – 2021. – T. 4. – C. 9-12.

<sup>16</sup> Boyko T. Protection of the rights and interests of minority participants in a non-public company in the law of Russia, USA and UK. – Literes, 2021.

<sup>17</sup> <https://www.summitlawllp.co.uk/common-types-of-shareholder-dispute/>

<sup>18</sup> Secretary of State for Trade and Industry v Goldberg [2004]

<sup>19</sup> Finch, V. (1990). Disqualification of Directors: A Plea for Competence. The Modern Law Review, 53(3), 385–391. <http://www.jstor.org/stable/1096480>



**Mothew** as follows:<sup>20</sup> "A fiduciary is someone who has undertaken to act for or on behalf of another in a particular matter in circumstances which give rise to a relationship of trust and confidence. The distinguishing obligation of a fiduciary is the obligation of loyalty. The principal is entitled to the single-minded loyalty of his fiduciary. This core liability has several facets. A fiduciary must act in good faith<sup>21</sup>; he must not make a profit out of his trust; he must not place himself in a position where his duty and his interest may conflict; he may not act for his own benefit or the benefit of a third person without the informed consent of his principal. This is not intended to be an exhaustive list, but it is sufficient to indicate the nature of fiduciary obligations. They are the defining characteristics of the fiduciary"<sup>22</sup>. Those in authority who act against the company's interests (often for personal gain) or fail to take necessary precautions to safeguard the company are committing a breach of fiduciary duty.<sup>23</sup>

Some typical cases of trust being broken are:

- Deals motivated solely by profit. Purchases or sales of services to or from companies in which the Director or Manager has a direct or indirect financial stake fall under this category<sup>24</sup>.
- Freeze-outs. Any move made to prevent a minority shareholder from enjoying their ownership stake is considered a freeze-out. This could include acts of oppression, breaches of fiduciary duty<sup>25</sup>, breaches of the Corporate Bylaws, LLC Operating Agreements, and other breaches of shareholder rights or member rights, such as failing to pay proper dividends or distributions, terminating employment, being excluded from business decisions, being excluded from financial or other business information, and so on.
- Shirking one's responsibilities. A failure to use due care in running the business.

It must be noted that in the UK comprehensively regulated not only resolution of corporate disputes but also monitoring the legislative level to improve corporate law, judicial and pre-trial procedures for resolving disputes arising from corporate disputes; activities of independent and self-regulatory organizations that can significantly impact public opinion and the procedures themselves arising in this law, etc.<sup>26</sup>

## CONCLUSION

In conclusion, categorizing corporate disputes allows for a more organized and structured approach to resolving these disputes. The parties can determine the most

<sup>20</sup> Meinhard v. Salmon, 164 N.E. 545, 546 (N.Y. 1928) (quoting Chief Justice Cardozo)

<sup>21</sup> Khakberdiev A. A. PROSPECTS OF IMPROVING ARBITRATION COURTS AS ONE OF THE METHODS OF ALTERNATIVE DISPUTE RESOLUTION IN UZBEKISTAN //Web of Scientist: International Scientific Research Journal. – 2023. – T. 4. – №. 1. – C. 77-88.

<sup>22</sup> Directors, fiduciary duty and the burden of proof Christopher Brockman of the Guildhall Chambers Insolvency Team January 2017 Edition

<sup>23</sup> Vann, V. (2006). Causation And Breach of Fiduciary Duty. Singapore Journal Of Legal Studies, 86–107. <Http://Www.Jstor.Org/Stable/24869218>

<sup>24</sup> Khakberdiev A. A. WAYS OF IMPROVING ARBITRATION COURTS IN UZBEKISTAN //INTELLECTUAL EDUCATION TECHNOLOGICAL SOLUTIONS AND INNOVATIVE DIGITAL TOOLS. – 2023. – T. 2. – №. 14. – C. 75-81.

<sup>25</sup> Ҳакбердиев А. А. Ўғирлик ва талончиликка таълукли бўлган инсценировкани тергов қилиш //журнал правовых исследований. – 2020. – Т. 5. – №. 1.

<sup>26</sup> Ibratova F., Azamatov A., Yuldashev A., Tukhtamurodov S. The concept and significance of corporate disputes: national and foreign experience Applied Jurisprudence Udc 34



appropriate legal or alternative dispute resolution mechanism by identifying the type of dispute at hand. In addition, classification facilitates the administration of disputes. It enables improved dispute monitoring and the development of category-specific resolution strategies. This can contribute to more efficient dispute resolution and a reduction in the time and resources required to resolve disputes.

In corporate disputes, classification also facilitates the identification of trends and patterns. This can aid in the development of preventative measures to avoid future conflicts of a similar nature. It can also lead to the development of policies and best practices for handling particular types of disputes. In conclusion, the categorization of corporate disputes is significant because it promotes a more organized and structured approach to dispute resolution, enables better management of disputes, and facilitates the identification of trends and patterns that can inform preventive measures and best practices. In this regard, lack of a definition of this concept not only in the text of the law, but also in the generalizing documents of the highest court country, the substantive discrepancy between the criteria of this institution proposed by judicial practice and the application of this structure in the field of corporate governance, litigation preparation, arbitration participation, and administrative proceedings all contribute to certain applied problems. And it must be noted that corporate conflict is not merely a disagreement of the parties, but rather an active confrontation or dispute between the parties, and places particular emphasis on the openness and intensity of the conflict as qualifying features of its definition. Separated from operational, organizational, interpersonal, and legal disputes, the author focuses on the corporate variety.

A lack of a unifying concept of corporate conflict in legal doctrine and flaws in the current definition of corporate dispute in economic procedural legislation are exposed. Therefore, the issue of defining the nature of corporate conflicts and establishing the proper venue for litigation resulting from business dealings is still vital. Corporate disputes are defined as disagreements between a corporation and its participant (founder, shareholder, member), including a former participant, over issues such as the acquisition, exercise, or termination of corporate rights; the formation of a corporation; the establishment of corporate management, activity, and dissolution; and the distribution of corporate assets. Content, particular subject composition, reasons and circumstance in proof, and the multiplicity and exclusive nature of remedies in such conflicts are determined and characterized as fundamental aspects of corporate disputes. Corporate rights are the only legal concept that specifies the subject matter of corporate disputes, yet it is known that corporate relations are at the heart of such disputes. It is proposed that corporate relations be categorized relations pertaining to the acquisition, exercise, and termination of corporate rights; the formation of a legal entity; the establishment of corporate management; the conduct of corporate activities; and the dissolution of a legal entity. Classification of corporate disputes is accomplished by examining their defining characteristics, investigating applicable scientific methodologies, and reviewing applicable case law. In particular, the proposal calls for ***the categorization of corporate disputes based on both objective, substantive criteria*** and the context in which they arise. Corporate disputes have been identified and separated from other types of litigation.



It must be taken into account that good faith (*bona fides*) as a general premise and presumption is used almost all jurisdictions. The courts will apply broad principles of good faith when deciding corporate disputes. However, the many different types of corporations give corporate interactions their own unique flavor. Given the diversity of business structures, corporate relationships, and corporate environments, it stands to reason that the good faith rules' applicability should also vary. In common law jurisdictions, the necessary requirement of good faith is applied via a system of good faith factors and unique tests.

## References:

1. <https://www.lexology.com/library/detail.aspx?g=a1a3edad-e776-4324-a585-079112ff49d5>
2. Cahn, A., & Donald, D. (2018). References. In Comparative Company Law: Text and Cases on the Laws Governing Corporations in Germany, the UK and the USA (pp. 1014-1034). Cambridge: Cambridge University Press.
3. Raymond Shonholtz, General Theory on Disputes and Conflicts, A, 2003 J. Disp. Resol. (2003) <https://scholarship.law.missouri.edu/jdr/vol2003/iss2/6>
4. Abdusaidovich K. A. Investigation of theatricalities of thefts and robberies on motor vehicles //Asian Journal of Multidimensional Research (AJMR). – 2019. – T. 8. – №. 11. – C. 109-114.
5. "Jay Adkisson and Christopher M. Riser Shareholder Disputes in Close Corporations".
6. Article 30 of the Economic Procedural Code of the Republic of Uzbekistan
7. Esenbekova F. T. et al. Features of the approval of the world agreement by the economic court: practice and theory //International Journal of Professional Science. – 2021. – №. 5. – C. 90-96.
8. Laptev VA Concept of corporate conflicts. Differentiation between the concepts of "corporate conflict" and " corporate dispute", "corporate takeover" and "corporate takeover" // Arbitration and civil process. – 2010. – no. 9. - S. 28-32.
9. Khakberdiev A. The concepts of criminal staging, its elements, methods of Detection and investigation N //Review of law sciences. – 2020. – T. 4. – №. 1. – C. 1.
10. O.S. Erahina Preventive Measures for Minimization of Corporative Conflicts Perm University Bulletinn 2010 Legal Sciences Issue 3(9) 103 UDC 346.2
11. Corporate Disputes: Their Concept, Types And Specific Aspects Of Their Consideration In Court [Text]: A Practical Guide For Judges And Residents / M.Saidov. - Tashkent:, 2019. - 196 P
12. Kochutov Maria Konstantinovna Types of Corporate Disputes, Russian State University of Justice, Number: 57 Year: 2019 P- 15-17, UDC: 347.918
13. Abdusaidovich K. A. The theoretical basis for the classification of criminal dramatization, methods for their identification and investigation //International Journal of Psychosocial Rehabilitation. – 2020. – T. 24. – №. 8. – C. 1930-1945.
14. Christoph Paulus "Shareholder Dispute Resolution in Germany"
15. Xakberdiev A. A. ARBITRATION COURT: SOME ISSUES OF LAW PROTECTION //World Bulletin of Management and Law. – 2021. – T. 4. – C. 9-12.



16. Boyko T. Protection of the rights and interests of minority participants in a non-public company in the law of Russia, USA and UK. – Literes, 2021.
17. <https://www.summitlawllp.co.uk/common-types-of-shareholder-dispute/>
18. Secretary of State for Trade and Industry v Goldberg [2004]
19. Finch, V. (1990). Disqualification of Directors: A Plea for Competence. *The Modern Law Review*, 53(3), 385-391. <http://www.jstor.org/stable/1096480>
20. Meinhard v. Salmon, 164 N.E. 545, 546 (N.Y. 1928) (quoting Chief Justice Cardozo)
21. Khakberdiev A. A. PROSPECTS OF IMPROVING ARBITRATION COURTS AS ONE OF THE METHODS OF ALTERNATIVE DISPUTE RESOLUTION IN UZBEKISTAN //Web of Scientist: International Scientific Research Journal. – 2023. – T. 4. – №. 1. – C. 77-88.
22. Directors, fiduciary duty and the burden of proof Christopher Brockman of the Guildhall Chambers Insolvency Team January 2017 Edition
23. Vann, V. (2006). Causation And Breach of Fiduciary Duty. *Singapore Journal Of Legal Studies*, 86–107. <Http://Www.Jstor.Org/Stable/24869218>
24. Khakberdiev A. A. WAYS OF IMPROVING ARBITRATION COURTS IN UZBEKISTAN //INTELLECTUAL EDUCATION TECHNOLOGICAL SOLUTIONS AND INNOVATIVE DIGITAL TOOLS. – 2023. – T. 2. – №. 14. – C. 75-81.
25. Ҳакбердиев А. А. Ўғирлик ва талончиликка таълуқли бўлган инсценировкани тергов қилиш //журнал правовых исследований. – 2020. – Т. 5. – №. 1.
26. Ibratova F., Azamatov A., Yuldashev A., Tukhtamurodov S. The concept and significance of corporate disputes: national and foreign experience Applied Jurisprudence Udc 34.