CORPORATE LAW AND PRINCIPLES OF GOOD FAITH IN MIXED PARTNERSHIP STRUCTURES

Ibragimova Mokhinur Sanat kizi
Email: mokhinuribragimova2002@gmail.com

Abstract: The thesis focuses on exploring the importance of corporate law and good-faith principle in mixed partnership formations involving public and private or partners of different kinds. It introduces and gives the theoretical background of the principle of good faith in law and then performs a comparative legal practice of mixed partnerships set up in Uzbekistan, Russia and the United States (U.S.). The paper explains the role of good faith in supporting fiduciary obligations, conflict of interest management, disclosure requirements and contractual good faith in these partnerships. The current issues and developments (increased transparency obligations and anti-corruption efforts) to promote good faith in the mixed partnership structure are also noted, both in theoretical perspective and in practice (with case law). The conclusion of the thesis is that the principle of good faith is an essential guarantee of trust and good faith in corporate relationships, which allows avoiding the misuse of rights and coordinating the interests of various stakeholders.

Keywords: mixed partnership, good faith, corporate law, fiduciary duty, conflict of interest, public–private partnership.

Аннотация: В данном тезисе исследуются вопросы корпоративного права и принципа добросовестности в структурах смешанного партнёрства, объединяющих различных (в том числе государственных и частных) участников. Приведены введение и теоретические основы принципа добросовестности в праве, а также сравнительно-правовой анализ смешанных партнёрских структур в Узбекистане, России и США. В статье рассматривается, как принцип добросовестности проявляется в корпоративных отношениях через фидуциарные обязанности участников, урегулирование конфликта интересов, раскрытие информации и добросовестное исполнение договорных обязательств. Используя как теоретический анализ, так и практические примеры (включая судебную практику), авторы подчёркивают современные проблемы и тенденции, связанные с обеспечением принципа добросовестности в подобных структурах – например, усиление требований к прозрачности и антикоррупционные меры. В заключение отмечается, что принцип добросовестности является фундаментальной гарантией доверия и справедливости в корпоративных партнёрствах, способствуя предотвращению злоупотреблений правами и балансированию интересов различных участников.

Ключевые слова: смешанное партнёрство, добросовестность, корпоративное право, фидуциарные обязанности, конфликт интересов, государственно-частное партнёрство.

Annotatsiya: Mazkur tezisda aralash sheriklik tuzilmalarida korporativ huquq masalalari va halollik tamoyilining oʻrni oʻrganiladi. Unda halollik tamoyilining huquqiy negizlari boʻyicha kirish va nazariy maʼlumotlar berilib, aralash sheriklik tuzilmalarining Oʻzbekiston, Rossiya va AQSH huquqiy jihatlari solishtirma tahlil qilinadi. Maqolada halollik tamoyilining korporativ huquqdagi ahamiyati, xususan, fidoütsiar majburiyatlar, manfaatlar toʻqnashuvi, axborotni oshkor etish va shartnomaviy majburiyatlarning vijdonan bajarilishi kontekstida koʻrib chiqiladi. Nazariy yondashuvlar va amaliy misollar (jumladan, sud amaliyoti) asosida bunday sheriklik tuzilmalarida halollik tamoyiliga oid dolzarb masalalar yoritiladi. Xulosa o'rnida, halollik tamoyili korporativ sheriklikda ishonch va adolatni ta'minlovchi asosiy tamoyil ekanligi, u turli manfaatdor tomonlar huquqlarining suiiste'mol qilinishini oldini olishi va ularning manfaatlarini muvozanatlashtirishi ta'kidlanadi.

Kalit so'zlar: aralash sheriklik, halollik tamoyili, korporativ huquq, fidoütsiar majburiyatlar, manfaatlar to'qnashuvi, davlat-xususiy sheriklik.

Introduction

Mixed partnerships forms are those business or project partnership forms that bring together different form of partners like public and private sectors or individuals and corporate entities. One noticeable arrangement is the publicvprivates partnership (PPP), where government agencies partner with the enterprises in mutual ventures. This category of the so-called "mixed" structures also might comprise the joint ventures or corporations, in which the state ownership is combined with the private shareholding. These are becoming popular globally to carry out the management of infrastructure, public services, and major ventures since they have the best of both sectors. i.e. in Europe models of mixed partnership (in which both public and private share capital are involved) have been diffused, at central and local governments, to provide public-interest servicessamili.com. Mixed partnerships are able to fulfill objectives which neither of the sectors could individually by pooling resources and expertise of various partners.

Nevertheless, the legal and governance issues concerning mixed partnerships are unprecedented because these structures enhance partners with possibly conflicting interests and responsibilities. It is imperative to have cooperation and mutual trust within these structures. Here is where the principle of good faith in corporate law comes in efficiently. Good faith usually reflects the requirement that parties should be honest, fair, and loyal to each other, and not exercise their rights and status in bad faith. Good faith is the foundation of correlative duties (loyalty, transparency, fair dealing) in the context of corporations and partnerships between partners, directors and shareholders. This principle is particularly important in the area of mixed partnerships since combining the matters of the public interest and personal interest demands a great extent of trust and honesty. An act of bad faith on the side of one partner (such as a private partner concealing substantial information or a public partner taking an opportunistic action) may imperil the entire cooperation.

Theoretical Background: Good Faith in Law and Corporate Relations

The argument of good faith (also known as bona fides or fairness) lies deep within the legal tradition. Since Roman law and up until the contemporary civil law tradition, good faith has been taken as a fundamental guiding principle, the spirit of the law that obliges parties to be conscientious and considerate in their legal relations [1]. Essentially, it has always been a question: is it rational to follow own interest as high as possible, or one should consider the interests and expectations of the second party? Century after century, legal doctrine responded by promoting good faith to a fundamental principle, i.e. that parties should act in good faith, reasonably and fairly in relation to one another. This is expected not only in the fulfillment of agreements but throughout the whole course of interaction - during negotiations and contract signing, as well as their execution and enforcement. The majority of the civil law jurisdictions explicitly apply the principle of good faith as a general requirement expressed in their civil codes.

Many specific doctrines have been affected by the concept of good faith, even where there is no overarching code provision, in common law systems. The United States and the United Kingdom offer the example of countries where courts have been traditionally reluctant to accept the idea of a universal duty of good faith in every contract, yet they have created similar notions. In U.S. contract law, the implied covenant of good faith and fair dealing meant that neither party should engage in any activity that will annihilate the rights of the other party to enjoy the fruits of the contract [2]. This implied obligation, present in virtually all contracts, cannot be avoided completely - even business partners who restrict the fiduciary obligations through agreement still have the obligations to deal in good faith and fair dealing [3]. Accordingly, in all jurisdictions, even where the general principle is not codified, good faith functions as a fundamental norm, both by case law and by implied terms.

In corporate law and partnerships, good faith is converted into tangible expectations regarding how the people in charge and the ones holding interests in the business conduct themselves. As commonly described by corporate law scholars, fiduciary duties (including duties of loyalty and care) are said to be infused with a good faith element. A fiduciary (such as a company director or a partner in a partnership) is obliged to act in good faith in the interests of the company or partnership and not in his own interest at the costs of others. It is explicit in many legal systems: thus in Russian corporate law, member of a governing body of a company is prescribed to act reasonably and in good faith in the interest of a company. Delaware (the most popular U.S. corporate jurisdiction) courts have explained that the directors must act in good faith, and gross actions that amount to “bad faith” (including intentional failure to discharge duty or acting with improper motives) are considered a breach of fiduciary duty [4]. Overall, the theoretical foundations of good faith in the corporate settings highlight that business associations cannot be viewed only as contractual webs, but also as relationships of trust. The normative effect of good faith is particularly important in association formulations of partnerships where there is a convergence of a public interest and a privately motivated profit-taking enterprise to ensure that the conduct of the parties is aligned to the objectives of the common venture.

Having outlined the general concept of good faith and its legal significance, we now turn to how different jurisdictions structure mixed partnerships and how they embed the good faith principle in their laws and practices.

Comparative Legal Analysis of Mixed Partnership Structures

Mixed partnership structures can take various legal forms depending on the jurisdiction. Below, we compare how Uzbekistan, Russia and the United States approach these structures, including the legal frameworks that govern them and the extent to which good faith and related duties are emphasized.

Uzbekistan

Mixed partnership forms are quite novel in Uzbekistan and are typified by the emergence of the public--private partnerships (PPPs) over the last few years. In 2019, Uzbekistan adopted a Law “On Public-Private Partnership” (No. ZRU-537, 12 June 2019) to give a legal framework to PPP projects. The objects of PPP are widely defined by this law: starting with infrastructure and property and extending to services and innovation, the roles of the public and private partners are also established. The Uzbek PPP system is based on the long-term partnership between the state entities and the private investor with the aim to obtain the socially significant results, i.e., construct the infrastructure or enhance the popular services. In Uzbekistan, and as intended in PPP projects, the ownership of the project is regularly retained by the state, with some operating rights or revenue streams allocated to the private partner to invest and construct the project. This conforms to the international practice and it is supposed to balance the public and the private interests.

In addition to formal PPPs, Uzbekistan also practices mixed enterprises in areas such as finance, construction and utilities, in which state-owned enterprises invest with foreign or domestic privately owned investors. In Uzbekistan, corporate law (e.g., Law on Joint Stock Companies and Protection of Shareholders Rights, and the Law on Limited and Additional Liability Companies) has been developing to cover governance in these mixed-ownership companies.

Another aspect which the government has requiring is the introduction of anti-corruption clauses in public contracts; this move shows that the government demands integrity, and good faith negotiations by all parties in transactions where state interests are concerned. Summing up, the legal system of mixed partnership in Uzbekistan can be noted by its rapid evolvement and distinct direction at introducing the good faith obligations as a means of providing the trustful cooperation between the public and the private partners by means of the fiduciary duties, conflict-of-interest regulations and anti-corruption practices.

Russia

Mixed partnerships are also used in the Russian Federation, both under the formal PPP arrangements and in the form of mixed-ownership companies. The Russian concessions and PPP law (and a 2015 federal law on PPP) permit government agencies, at the federal or regional level, to sign concession or PPP agreements with private investors in infrastructure and public services projects (roads, utilities, social facilities, etc.). Besides that, there is a large number of joint-stock companies with a big proportion of state ownership in which the state and independent shareholders participate separately – such companies can be large energy or transportation companies. They are in effect mixed partnerships in corporate form, frequently with the state a controlling shareholder but governed by the rules of corporate law and co-investing with private investors.

Russia has experienced issues of conflict of interest and power mishandling by the controlling stakeholders in the mixed partnerships that the state has been engaged in. Laws guard against this by requiring special procedures where transactions are concerned with interested parties (related-party transactions) and substantial transactions: such transactions need to be authorized by disinterested directors or shareholders, otherwise the transaction may be void or can give rise to liability. The repelling reason is to make good faith and fairness operational – a majority shareholder (even when it is the government) cannot just foist a transaction beneficial to itself on minority investors. In corporate cases as well, Russian courts have referred to general civil law principles such as the inadmissibility of the abuse of rights. As an example, decisions of majority shareholders may be set aside at least where they are made solely to the detriment of minority shareholders or the company (an extension of the civil-law doctrine of abuse of right based on lack of good faith). Professor Pierre-Henri Conac notes that in most jurisdictions (such as Russia), the courts employ general duties of good faith or loyalty to prevent shareholder abuses and to uphold the company and minority shareholders [7].

In summary, Russia's approach to mixed partnerships combines a strong statutory mandate for good faith conduct by corporate actors with specific rules targeting conflicts of interest. Whether in a PPP contract or a partially state-owned corporation, the legal expectation is that all parties (public officials, private partners, directors, and shareholders alike) exercise their rights conscientiously and in the joint interest of the enterprise. Failure to do so can lead to legal consequences, reflecting the important role of good faith in sustaining partnerships where power asymmetries might otherwise lead to unfair outcomes.

United States

The United States has slightly different formats of mixed partnership structures, as the government does not imply a single national format of public and private partnership. Nevertheless, a substantial number of U.S. states do have enabling legislation to allow PPPs infrastructure (typically referred to as P3 projects, as in a toll road or bridge constructed by a private concessionaire in agreement with a state government). They are generally contractual in nature whereby a privately owned company funds and manages a facility over a duration of time although the ownership or the final control is frequently retained by the public sector. There are also other programs that the U.S. federal government considers as partnership-like in one way or another (such as energy or defense projects with private consortia), but not necessarily using the name PPP. U.S. PPP contracts typically focus on elaborated terms to assign risks and duties; the idea of good faith performance is typically covered by clauses requiring cooperation and fair dealing, supported by the underlying contract law that implies good faith in performing all contracts.

In regards to corporate law, and partnerships in the U.S., good faith is implied in the concept of a fiduciary duty, and in covenants of contract. Directors and officers of a company have fiduciary duties towards a corporation and shareholders in a corporate governance context. The U.S. courts (particularly in Delaware, where a large number of big corporations are incorporated) have confirmed that this implies a duty to act in good faith. Although in U.S. corporate statutes the term "good faith" is not listed as a distinct obligation, it has long been established by case law (including the well-known In re Walt Disney Co. Derivative Litigation in 2006) that bad faith actions, such as intentional misconduct or a knowing violation of one's duties, constitute a violation of the duty of loyalty, and directors cannot be exculpated of such actions [4]. Furthermore, the law of Delaware does not allow corporate charters to indemnify or exculpate directors against those acts that are not in good faith, which highlights the fact that good faith is not a suggestion but a required minimum with regard to director behavior.

Where partnerships and LLCs (limited liability companies), the structures most frequently used in the U.S. to organize joint ventures and private investment partnerships, are concerned, contractual flexibility often exists to allocate or restrict responsibilities. Nevertheless, the covenant-good-faith-and-fair-dealing is still effective. The partnership laws of most states (including the Revised Uniform Partnership Act that has been enacted in numerous states) specifically provide that the partners should exercise any rights and discharge their obligations under the partnership agreement in good faith. As an example, partners are usually under an obligation to reveal material information to one another and not to cheat on their partners - an obligation that exists based on fiduciary loyalty as well as the implied covenant. The law cannot permit a waiver of the implied covenant of good faith even in situations where the partners decide to restrict the fiduciary duties. Dieckman v. Regency (2017), which concerned a master limited partnership, confirmed that although a conflict-of-interest transaction might technically satisfy contractual conditions, it might still violate the implied covenant where the actions of the general partner defeated the spirit of the contract, e.g., by deceiving minority investors or by bad-faith management of approvals. This is an example of how American judges employ the concept of good faith as a means to promote fairness in partnerships: controlling parties cannot act in exercise of their contractual rights in a manner that frustrises the reasonable expectations of their partners.

Overall, the U.S. approach relies on a mix of explicit fiduciary duty law and implicit good faith obligations to police mixed or joint enterprises. Whether in a corporate joint venture or a PPP contract, one finds that transparency, honest disclosure, and loyalty to agreed purposes are enforced either through fiduciary duty litigation or through contract law remedies. Good faith thus operates as an indispensable principle that promotes cooperation and protects parties from opportunism in the absence of detailed regulation.

Good Faith in Corporate Law: Key Contexts

The principle of good faith manifests in several key aspects of corporate law and governance. In mixed partnership structures, these aspects become especially pronounced, as they ensure that all partners – whether public or private, majority or minority – adhere to standards of integrity. Below, we examine good faith in the contexts of **(a) fiduciary duties, (b) conflict of interest, (c) disclosure,** and **(d) contractual integrity**, highlighting how each is treated across different legal systems.

Fiduciary Duties and Good Faith

Fiduciary duties are the duties of trust and loyalty owed by those in control of an entity to the entity and its beneficiaries (shareholders, partners, etc.). Good faith is inherently intertwined with fiduciary obligations. A fiduciary, such as a company director, board member, or managing partner, must act in what they genuinely believe to be the best interests of the company or partnership. This **duty to act bona fide** (in good faith) is often explicitly stated in laws or derived by courts.

- Civil law jurisdictions, such as Russia and Uzbekistan, simply specify in their statutes that the fiduciaries must act in good faith. As an example, the Joint Stock Company Law of Russia assumes that the board members act in good faith and reasonably unless it is proved otherwise If the actions of a director are disputed in court, one of the tests is whether they discharged their duties in good faith: did they not have a conflict of personal interests, did they obtain sufficient information, and did they sincerely seek to further the goals of the company? Provided that the answer is yes, they will be considered to have acted in good faith and be shielded otherwise they can be held liable. Uzbekistan is also heading that way, with draft provisions of the Civil Code and recent decrees stressing on good faith management, and even making executives responsible of deliberate bad-faith acts that damage the company.
- Fiduciary duty of good faith has been developed through case law in common law jurisdictions such as the U.S. (Delaware), and the UK. Although the model of the UK Companies Act 2006, to take just one example, puts the duties of directors in the context of promoting the success of the company, it implicitly assumes good faith (that is, directors must act in the manner which, in good faith, they believe to be most likely to promote the success of the company). American courts have struggled to

identify the obligation of good faith, especially in the Disney case of Delaware, and the cases that followed. The Supreme Court in Delaware explained that a lack of good faith means an intention to cause wrong or a deliberate ignorance of duties and obligations - this is not just negligence [4]. In practice, any director who takes deliberate actions to damage the company or is aware of the apparent danger and chooses to overlook it has breached the duty of good faith. This is considered as violation of loyalty (as it is disloyal to the interests of the corporation) and may lead to personal liability particularly because the statutes do not permit indemnification with respect to bad-faith acts.

- In **partnership law**, fiduciary duties among partners (particularly in traditional partnerships and LLPs) also include an obligation of utmost good faith. For example, English partnership law has long recognized that partners owe each other a duty of uberrima fides (utmost good faith) in all dealings – meaning a partner must be honest and not take advantage of the others. In the U.S., the Revised Uniform Partnership Act (RUPA) §404 imposes a duty of loyalty and an obligation of good faith and fair dealing on partners. Even though partners can modify some duties by agreement, they cannot eliminate the core requirement of good faith.

In mixed partnerships, strong fiduciary duties are crucial. Consider a joint venture company where a government entity appoints some board members and a private investor appoints others. Each board member, regardless of who appointed them, must act in the venture's best interest. They cannot favor their appointing party at the expense of the venture without breaching fiduciary duty. Laws in many countries explicitly address this: for instance, **in EU jurisdictions**, the duty of loyalty means a nominee director cannot simply vote as instructed by the shareholder if it would harm the company – they must exercise independent judgment in good faith.

Conflict of Interest

The good-faith requirement in corporate arrangements can be described as a litmus test by conflict of interest situations. Conflict of interest occurs when a person or organization has a responsibility to act in the best interest of the company or partnership but this responsibility may be altered by some conflicting personal interest. The conflicts in mixed partnerships may have various forms: a public official may experience conflict of duty to the people and the partnership to be lucrative or a partner in the private sector may have business interests that collide with those of the joint venture.

The good faith demands that conflict of interest should be managed in a candid and reasonable manner. The significant mechanisms are disclosure of the conflict and recusal or independent approval of any conflicted transactions. Corporate laws throughout the world have evolved strong regulations on this count:

- **Disclosure and approval:** Most jurisdictions mandate that if a director or controlling shareholder has an interest in a transaction (self-dealing), they must disclose it to the other decision-makers, and the transaction often must be approved by disinterested directors or shareholders. For instance, Russian law on JSCs requires board members to inform the board of any stake they have in proposed deals, and such deals need special approval by those not conflicted. Uzbekistan's company laws similarly treat transactions with affiliated persons as requiring heightened scrutiny – as evidenced by planned amendments that punish directors who bypass approval processes in bad faith.
- **Fairness and implied duties:** Even when formal procedures are followed, courts may look at whether the spirit of those procedures was honored. A striking example is the Delaware case *Dieckman*

v. Regency concerning a limited partnership. The partnership agreement had a conflicts committee process as a safe harbor, but the controlling partner manipulated the process by stacking the committee and not fully disclosing conflicts. The Delaware Supreme Court held that this violated the implied covenant of good faith – **even though the letter of the contract was followed, the controller's actions undermined the purpose of the safeguards**. Implied in the agreement was an expectation that the conflict resolution process would be honest, not a sham; appointing a knowingly conflicted person to a "conflicts committee" was bad faith subterfuge.

In summary, managing conflicts of interest in good faith means **putting the partnership's or company's interest ahead of one's own** when making decisions, or stepping aside and allowing unbiased parties to decide. Mixed partnerships often include built-in conflicts (public vs. private incentives), so a culture of good faith is essential. Each partner must trust that the other will not exploit the arrangement for unilateral gain. Legal rules buttressed by the good faith principle – disclosure duties, approval requirements, fiduciary loyalty, and judicial review for fairness – are therefore critical to sustaining mixed enterprises.

Conclusion

Mixed forms of partnership, ranging between the public and the private partnerships, joint ventures and the mixed ownership corporations, have become important instruments of contemporary economic and social development. The problem is that their success is based on a very frail yet critical pillar of good faith between partners. This thesis has observed the various ways in which the principle of good faith is incorporated in the corporate law of various jurisdictions and the operation of the principle in areas like fiduciary duties, conflict of interest, disclosure and contractual performance. When applying different legal cultures, one can note the presence of a single element in all of them, namely, good faith is a key concept that helps prevent abuse and cultivate confidence in joint activities.

Comparative study reveals that the legal formulations might vary-Uzbekistan restating statutory reform, Russia enumerated obligations and judicial principles, the U.S. case law and implied covenants. The good faith principle serves as a shield in order to make sure that power unevenness (such as a state versus a private investor, or a majority versus a minority shareholder) are not abused. It asks parties to be truthful and faithful to the objectives of their common undertaking and to one another.

The promises and pitfalls of enforcing good faith are demonstrated by practical examples. In Uzbekistan reforms are tightening the corporate accountability which is an indication that executives will be answerable incase they behave in bad faith in the related-party transactions. The Russian jurisprudence is clarifying how to act as a conscientious director. The courts of Delaware in the United States have indicated that they will not condone any attempt to manipulatively exploit contractual protections in bad faith. European legal theory still attacks oppressive behavior, under the banners of good faith and loyalty. These advances point to the idea that good faith is not an abstract ideal, but a real legal criterion that is more and more specified and applied.

For practitioners and parties involved in such partnerships, the lesson is clear. Embracing good faith is not just about avoiding liability; it is also smart governance. A partnership imbued with a culture of good faith is more likely to be resilient, to resolve disputes amicably, and to achieve its intended outcomes. In contrast, a partnership riddled with suspicion and self-dealing is prone to collapse or public scandal. Therefore, **adhering to the principles of good faith and fair dealing is both a legal mandate and a practical necessity** for the longevity and success of mixed partnership structures.

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