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Shareholders' rights to information and inspection as means of protecting minority shareholders: Germany, United Kingdom, France, and Kyrgyzstan

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Abstract

The thesis examines three European countries' and Kyrgyzstan laws from the aspect of minority shareholders' right to information. Starting with the general analysis of information available to shareholders and investors, types and general aspects of shareholders' right to access information and to conduct inspection, the thesis focuses on the concept of a right to information available to a minority shareholder and how with this regard protection of minority shareholders takes place. In addition, the thesis focuses on a balance that is established by limitation to this right imposed by statutory provisions and the abuse of rights doctrine. A goal of the research is to show the reader a balance or a lack of balance between legislators' attempts to protect shareholders through the right to information and limitations to this right imposed by countries for preventing abuse of rights and wellbeing of the company. The research shows that there is no adequate balance in Kyrgyzstan because of a lack of limitations to the minority shareholders' right in to information and various limits to the shareholders' right to information provided in the European countries can be implemented into the legislation of Kyrgyzstan for preventing further abuse of rights by minority shareholders acting in bad faith.

To my Mother

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Introduction

When a shareholder buys a share and becomes a co-owner of a company, together with a share he gets a number of rights, which give a possibility to manage, control, and supervise a company. Information plays one of the main roles in the context of shareholders' participation in life of a company. Information is important to future shareholders as well, and before buying company's shares a potential investor usually conducts an assessment of the company's business and corporate governance in order to decide whether to invest money into it or not. Shareholders' right to information is one of the most important and fundamental rights that a shareholder has in a company and some problems in this sphere started appearing in companies of different countries. One of the problems is related to minority shareholders and their protection. In the CIS countries a new trend appeared to limit the rights of minority shareholders to information because of their tendency to abuse the rights to the detriment of the company. In other countries legislators are trying to improve the situation of minority shareholders in the company and to give them more extensive rights to information. Therefore, protection of minority shareholders through the right to information or limiting this right has become an issue in many countries. The present thesis will concentrate its analysis on the right to information that minority shareholders are entitled to and on limitation of this right in four countries: Germany, France, United Kingdom, and Kyrgyzstan.

The approach to this problem differs in many countries and in this regard, two respective groups appeared: one group believes that minority shareholders should be given maximum amount of rights and protection; the second group believes that minority shareholders have already too many rights and these rights should be limited as far as they started to abuse their rights and create serious problems for companies.

Representatives of the first group argue that rights of minority shareholders are almost not defended and those who have control over the company or who keep big portions of shares have many means for ignoring and abusing rights of minority shareholders. As far as minorities do not take an active part in a company's activities, their votes usually do not have a considerate meaning. Supporters of the first group also assert that a common practice is that majority shareholders and management of a company are not interested in disclosing information to minority shareholders and in letting them involve in companies' business. Moreover, as a rule these shareholders, especially physical persons, do not know their rights, and do not show their interest in companies where they have shares.[1] This practical vulnerability of minority shareholders puts members of the first group in a position to defend minority shareholders' rights.

Legislations of many countries declare defense of minority shareholders' rights, however, as representatives of the first group say, it does not mean that the defense can be realized. One of the problems is a lack of interpretation of legal norms and inadequate judicial practice. For example, according to laws of some Central Asian countries, a shareholder who has even one share has a right to get information about a company. However, it is unclear in practice what the volume of information that should be disclosed to the shareholder is.[2] Therefore, this group believes that minority shareholders should be given a maximum amount of rights to information and legislators should provide them with maximum protection.

From a point of view of opponents of the first group, laws of many countries are drafted in such a way that sometimes it is hard to say that rights of minority shareholders are proportionate to a stock of shares that they have. This is the position of the second group,

[1] S. Gribanova, T. Batisheva, *Opposition of* shareholders (Protivostoyanie akcionerov)"Kazakhstan's expert" magazine, article #33(89) (September 11, 2006)
Available at http://www.expert.ru/kazakhstan/2006/33/zaschita_prav_minoritariev/, last accessed 24.02.2011.
[2] S. Gribanova, T. Batisheva, *Opposition of* shareholders (Protivostoyanie akcionerov)"Kazakhstan's expert" magazine, article #33(89) (September 11, 2006)
Available at http://www.expert.ru/kazakhstan/2006/33/zaschita_prav_minoritariev/, last accessed 24.02.2011.

which believes that minority shareholders' rights to information are to be limited. Some countries, including Russia, for example, changed their laws already and limited rights to information of minority shareholders.[3] The reason for that is a recent widespread notion of minority shareholders' abuse of their rights for creating problems to a company and block its activities due to different reasons. In many of such situations an aim of a shareholder is to blackmail a company to buy the minority shareholder's shares back and thus to avoid lawsuits and other possible problems.[4] Moreover, representatives of the second group claim that while the need for minority shareholder protection was established, this should not be taken to the extreme. In fact, excessive lawsuits by minority shareholders in the name of 'minority protection' can impede the legal court system and deter investments. Overprotection may also lead to abuse by minority shareholders to deliberately use their rights to create obstacles for company directors in running the day-to-day operation."[5] The author of the thesis supports the point of view of the second group with regard to Kyrgyz legislation and believes that minority's rights should not be overprotected and there should be a balance between their rights and wellbeing of the company.

Therefore, this Master's thesis will cover shareholders right to information and it will concentrate on minority shareholders' right to information in four countries: three leading European countries – Germany, France and the United Kingdom, and Kyrgyzstan. The approach to the right to information in European Union States is quite different from the approach taken in Kyrgyzstan. Moreover, these three specific countries are taken because they provide different approaches to the right to information and its limitation. Analyzing the right

[3]Pavel Netupskiy, *Finans, Kompanii zashitili ot lyuboznatelnyh minoritariev (Companies were defended from interested minorities)*, (11.03.2011), available at http://www.finansmag.ru/articles/112102, last accessed 24.02.2011.

[4] Alexander Molotnikov, *A problem of rights abuse in corporate conflicts*, *Magazine "Mergers and Acquisitions"*, available at website of Institute of Entrepreneurship problems http://www.ippnou.ru/print/000825/, last accessed 23.03.2011.

[5] Unknown author, *Article on Minority Shareholders*, available at http://www.law-essays-uk.com/resources/free-essays/minority-shareholders.php, last visited 22.03.2011.

to information and limitation will give a solid basis for considering a possibility and a way of amending Kyrgyz law in this sphere.

There are three main questions that the work will answer: (1) whether there is a balance between legislators' attempt to protect rights of minority shareholders through the right to information and limits or absence of limits to the right to information that countries impose on minority shareholder in the laws of all four countries? (2) Whether the legislation of Kyrgyzstan gives unlimited volume of rights to information comparing to Germany, France and the United Kingdom? (3) Whether it is necessary to limit the rights to information in Kyrgyzstan and if yes then how to limit them taking into account the European experience?

Hypothetical thesis of the work is the following: there is no adequate balance between Kyrgyz legislators' attempts to protect rights of minority shareholders through the right to information and limits to the right to information that Kyrgyzstan imposes on minority shareholders in the corporate laws. Legislation of Kyrgyzstan has inadequate limits in the volume of rights to information comparing to Germany, France, and the United Kingdom and it is necessary to limit the rights to information in Kyrgyzstan. Some provisions of European countries corporate legislation can be implemented into the legislation of Kyrgyzstan. Also, recommendations of implementing the limitations to the right to information will be given.

The first chapter of the thesis will give a comparative analysis of different types of information in order to analyze information that is available to general public and shareholders in four countries. First section will cover information available to general public; second section will talk about collective information, i.e. information that all the shareholders are entitled to and that the company provides to all the shareholders without a request; and finally, the third section will cover individual information, i.e. information that the company sends to shareholders upon a request or only to shareholders that demand for it. Thus, the first chapter will look at extent of information that all the shareholders and even general public are

entitled to and will show approaches that the four analyzed countries have regarding information provision.

After analyzing the available information, the second chapter of the thesis will concentrate on the shareholders' rights to information. In the first section the author will cover shareholders' right to obtain information that is available to all the shareholders; then the author will concentrate on minority shareholders' rights to access information; and finally, overview of enforcement of shareholder's right to information and inspection will be provided, including liabilities for failing to provide information to shareholders and remedies that minority shareholders have in case of such a failure.

After analyzing the right to information that minority shareholders enjoy, the third chapter will focus on comparative analysis of limits to rights to information and inspection. The first section will cover general limits to rights of information and inspection in the given countries; then right of the company to refuse the provision of information will be written about; and finally, a topic of abuse of rights and limits imposed to the right to information because of this notion will be analyzed.

The final, fourth chapter, will answer the main question of the thesis. It will assess balance of rights to information and their limits. Problems of imbalance and possible solutions for re-balancing the right to information and its limitations under the Kyrgyzstan law will be covered. Recommendations will be also given in the last chapter.

Methods of the research are comparative analysis of legislation and analyzing previous researches conducted.

The thesis will mostly focus on public companies; however, some sections will include shareholders' right to information in private companies as well.

Chapter I

Information

Before starting to discuss shareholders' right to information it is important to distinguish what documents exactly shareholders have a right to obtain and inspect. Thus, this chapter will cover different types of information that a shareholder or a future investor has a right to.

Diversity of information can be explained by different approaches to information and disclosure depending on a size of a company or whether a company is listed or not. Andreas Cahn shares this point of view and according to him when a company's size is small and the shareholders are in close contact with the management, inspection of documents upon request is a good way to obtain information because it provides what shareholders need and it is flexible. However, in case of a listed company, i.e. when company's securities are available on capital market, the number of shareholders can significantly increase. The scholar believes that such companies are also supposed to be responsible to potential investors. For existing shareholders, regular disclosure of certain information allows them to decide on matters coming up for a vote at general shareholders' meeting and to compare their investments and possible profits with those in other companies when deciding on whether to buy, hold or sell the company's securities.[6] Indeed, for small and private companies legislators prescribe not very significant list of obligations with regard to information disclosure, whereas in case of big and public companies, laws present more rigid rules that protect shareholders and investors' information awareness.

A German legal scholar has undertaken a systematic approach with regard to the specific persons entitled by law to request the information. He generated two categories of

[6] Andreas Cahn and David C. Donald: Comparative Company law, Text and Cases on the Laws Governing Corporations in Germany, the UK and the USA, 510-511(2010).

information instruments: individual information instruments, entitling individual shareholders to request information and collective information instruments, entitling the management board to report or disclose information in certain occasions to the shareholders as a whole.[7] Moreover, for the purpose of this paper, it is important to examine another category of information, which is public information that is available to the public and not only to shareholders. This analysis of the information types is necessary for the thesis because an overview of documents that are available not only to shareholders but also to the general public will give a clear picture what an object of the right to information in different situations is and will show the extent of transparency of companies.

Public Information

The aim of the public disclosure requirement is to provide information to all shareholders and investors at the same time.[8] Germany, France, England, and Kyrgyzstan share some similarities in the extent of information that should be available to the public, yet, there are some differences in ways of disclosing information or where the information should be submitted by the companies and variety of documents that are to be disclosed to the public. As it was mentioned above, the volume of information depends on a size of a company. The bigger the company the more information it should present to the public. Also, there is a difference in the volume of information between private and public, listed and non-listed companies.

First of all, the laws in the countries prescribe slightly different ways of disclosing the information to the public; however, the basic places where public can find information about a company are the same. In all four countries certain information should be submitted to a

[7] Gerald Spindler, *Informing Shareholders and Investors: A behavioral and Economics Approach from a German Company Law Perspective*, (The Journal of Interdisciplinary Economics), 2010, Vol. 22, pp. 89-108.
[8] Gerald Spindler, *Informing Shareholders and Investors: A Behavioural and Economics Approach from a German Company Law Perspective*, (the Journal of Interdisciplinary Economics), 2010, Vol. 22, pp. 89-108, p. 10.

special Register, be published in a Gazette and in companies of the EU states some information should be available electronically. Such a harmonization is an outcome of the First Council Directive on Disclosure[9]. In Germany, for example, certain information no longer has to be submitted to the Commercial Register but should be filed to the German electronic Federal Gazette where it has to be published.[10] However, every company must still be registered with the Commercial Register and this Register is a primary source of information on companies. In France the information should be filed for public disclosure to the Register of the Commercial Court and some documents shall be published in the Legal Gazette. Moreover, there is "Legal Information about Companies" website[11], where any internet users can access basic information about any French company (head office, activity, legal form, key figures – revenue, result, headcount). Also, the website gives access to the following documents of a company: memorandum of association and company certificates, debt report, and annual financial statements. However, in order to access the documents users have to pay certain amount of money[12]. In the United Kingdom there is a relevant Registrar of Companies and details of every company incorporated in the UK or incorporated somewhere else but having business in the UK must be filed there. Also, in case of a quoted company [13] certain information, such as annual accounts, reports[14] and information related to audit concerns can be available on a website of a company, and thus be publicly disclosed.[15] Some information also should be published in a Legal Gazette and a national newspaper[16]. In Kyrgyzstan a company should submit documents to the Uniform Register of Legal entities, which then can give extract of information about a company to interested persons. Certain

[9] First Council Directive (68/151/EEC), *amended* by Directive 2003/58/EC, which enabled the benefits of modern technology and let companies file the compulsory documents by electronic means.
[10] Law of the Commercial Register, (2006), *amend.* SG. 104/11 Dec. 2007
[11] www.infogreffe.fr
[12] Complete file of a company's documents cost 86,50 EUR
www.infogreffe.fr (last accessed on 08.03.2011)
[13] listed company, a company whose shares are quoted on the main market of the London Stock Exchange
[14] Sec. 430 of UK Companies Act of 2006.
[15] Ibid., Sec. 527.
[16] Ibid., Sec. 719 (2).

documents should be published in any mass media.[17] Unlike European states, Kyrgyz laws do not require companies to submit information in an electronic way yet.

Secondly, there are some differences on a kind of information the companies should submit to the public. As it was mentioned above, the EU First Disclosure Directive harmonized documents that are to be disclosed, therefore, all three analyzed European countries provide similar list of documents subject to disclosure. These documents are: instrument of constitution, statutes, amount of subscribed capital, the balance sheet and the profit and loss account for each financial year, any transfer of the seat of the company any instrument or decision concerning the duration, winding-up or liquidation of the company, and particulars of persons who can represent the company.[18] These documents are the minimum that companies should disclose.

Three European countries provide the documents for mandatory disclosure; however, the ways of disclosing such information are different. In Germany, where information that should be released to the public depends on a size[19] of a company, large and medium-sized companies in accordance with § 325 of the German Commercial Code, must file over mentioned documents together with some extra documents,[20] such as notes and appropriation of profits, to the Federal Gazette. Small companies that can make use of the facilities under § 326 of the German Commercial Code, can file and publish only a balance sheet and notes also to the electronic Federal Gazette. In France, the Commercial Code does not give a precise list

[17] Art. 81 (2) of Law on Joint Stock Companies (2003) # 64, last *amended* October 12, 2009 # 264.
[18] Art. 2, First Council Directive (68/151/EEC).
[19] Small companies are those which exceed no more than one of the three following criteria: (1) balance sheet total: 4, 840, 000 EUR; (2) turnover: 9,680,000 EUR; (3) annual average of 50 employees.
Medium-sized companies are those which exceed at least two of the three criteria specified under small companies criteria but exceed no more than one of the three following criteria: (1) balance sheet total: 19,250,000 EUR; (2) turnover: 38,500,000 EUR; (3) annual average of 250 employees.
Large companies are those which exceed at least two of the three criteria specified under medium-sized companies criteria and if it's active in an organized market.
(http://www.nbb.be/DOC/BA/DE/DE_Filing_AC_in_Germany_v201005.pdf)
[20] Annual financials (including balance sheet, profit and loss statements), notes, audit certificate, annual report, report of Supervisory board if any, management report, if not already apparent from the annual accounts, a proposal and resolution regarding the appropriation of the profits of the financial year.

of documents that should be published; instead, it gives a list of documents[21] that should be filed with the court registry and thus, be also disclosed. However, certain information, such as consolidated financial accounts[22], notice of conversion of a company[23], etc., still shall be published in the Official Gazette in France. Also, in practice, as it was discussed above, any person can get basic information on any French company from the Companies' Information website after paying a certain fee.

Unlike already analyzed countries, the UK Company Act of 2006 gives the fullest list of documents subject to disclosure and available for public inspection and also gives a list of documents that are not available for public inspection. In the UK the provisions of the First Company Law directive were amended[24], extended and applied and now the following groups of documents must be available for public disclosure in the register: constitutional documents; directors' information; accounts, reports and returns; registered office and winding up information; in case of public company – share capital, mergers and divisions, etc.[25] Thus, basically, the list of documents that should be available for mandatory disclosure is more extensive in the UK. However, unlike the provision in Germany, these documents are not to be published in the Gazette, but the register is obliged to publish in the Gazette notice of the receipt of any documents subject to the Directive.[26] Among materials not available for public disclosure are: directors' residential addresses, the contents of any instrument creating or evidencing a charge and which is delivered to the registrar, the contents of any documents held by the registrar pending a decision of the Regulator of Community Interest Companies,

[21] Annual accounts, annual report and auditors' report, amendments made by the meeting, consolidated financial statements, group annual report, auditors' report on the consolidated financial statements and report of the supervisory board, Art. L232-23 of French Commercial Code.
[22] Art. L233-16 of French Commercial Code.
[23] Art. L225-244 of French Commercial Code.
[24] For the purpose of the thesis it is not necessary to delve deeply into details of the way the Directive provisions were amended, extended or narrowed in each country. That could be a topic of another research.
[25] Sec. 1078 of the UK Companies Act of 2006
[26] Ibid., Sec. 1077.

etc.[27] The list is not exhaustive and any other material can be excluded from public inspection by or under any other enactment.[28] From this analysis it is possible to conclude that the UK approach to the public information is more advanced in terms of application and extension of the Directive.

Contrary to the situation with the analyzed European states, for not listed companies Kyrgyz law does not provide an extensive amount of information to be disclosed to the public. Small companies are not required to make a lot of information available. Instead, the law on Joint Stock Companies requires only companies with more than 500 shareholders or those that issued shares publicly at least once, to publish the following documents: (1) annual report on financial economic activities; (2) prospectus of a new issue of shares; (3) message about a general meeting of shareholders; (4) information of issue of securities in case additional securities and bonds are issued.[29] These documents should be published in a national magazine or newspaper as it was mentioned above. The information containing in these documents is to be disclosed in the European countries as well and thus, this very Kyrgyzstan provision does not provide greater rights to the general public to information comparing to the three European states.

The Kyrgyz approach changes dramatically with regard to listed companies. In Kyrgyzstan, as in all other CIS countries, the concept of "reporting companies" has been adopted. That means that all companies whose securities have been offered to investors are subject to periodic disclosure requirements and an obligation to disclose material events as they happen. Exemptions apply to small offerings in terms of the number of shareholders.[30] In case of a listed company, the law obliges the company to submit to the Register of Securities a list of documents related to securities (name of the issuer, data on state registration of the

[27] Ibid., Sec. 1087.
[28] Ibid.
[29] Art. 83of Law on Joint Stock Companies dated March 27 of 2003 # 64, last amended October 12, 2009 # 264
[30] Rilka Dragneva: Investor Protection in the CIS. Legal reform and Voluntary Harmonization, (2007), p. 168.

issuer, legal address, types and nominal value of issued securities, type of an offer that was used while issuing).[31] Any interested person is able to obtain the information from the Register. Furthermore, annual and quarterly reports should also be available to any interested persons.[32] This right is quite extensive as far as annual report includes annual financial report and audit report, information about all the earlier issued securities, data on general number of shareholders and a list of all the majority shareholders and number of shares they possess, short description of corporate governance practice of the issuer, report of a director general about activities and financial results of the issuer for the reporting year. The quarterly report also includes a list of significant events that have an effect on business activity of the issuer.[33] Therefore, listed companies have an obligation to disclose a rather broad range of information that is related not only to securities, but also to financial position of the company, which gives a possibility to the potential investors to study the company and decide whether it will be profitable to invest or not. The same goal is reached in the case of the three European countries. For instance, according to §15 of WpHG (German Securities Trading Act), listed companies are obliged to provide additional statements every three or six months. Thus, an issuer of securities admitted to a German stock exchange is obliged to disclose any information related to the securities or the issuer and which directly concerns the issuer, if it is not publicly known and is capable to affect the market price significantly.

Thirdly, in Kyrgyzstan as well as in all the analyzed EU countries with respect to listed companies there is so called "ad hoc" disclosure, which requires material information regarding the issuer, its management and its securities to be published as soon as possible. All the jurisdictions oblige listed companies to promptly publish information that could affect[34] the market value of their shares unless the interests of the company require otherwise. In

[31] Art. 13 (3) of Law on Securities market of Kyrgyz Republic, dated July 24, 2009 # 251.
[32] Ibid, Art. 30 (6).
[33] Law on Securities market of Kyrgyz Republic, dated July 24, 2009 # 251., Art. 30 (3) (4).
[34] Mergers, splits, restructurings or reorganizations, changes in the value of assets, etc.

Kyrgyzstan a similar right is provided only to a shareholder[35] with an exception related to reorganization of a company[36] when such a fact is required to be published.

In sum, the analyzed articles providing a right to information to the general public show that there are some similarities regarding public information in all the countries – namely, listed and big companies have an obligation to disclose much more information to the public than small and non-listed or private companies. Also, as far as there is the First Council Directive on Disclosure, the main provisions related to disclosure are quite similar in Germany, France and the UK, even though, the ways of disclosure have some differences in these countries. The disclosure approach with regard to non-listed companies is quite different in Kyrgyzstan and the Kyrgyz legislation does not oblige such companies to disclose much information, whereas with regard to listed companies, the public disclosure is broad but still not as extensive as in the European countries. However, still with regard to a listed company, potential investors in Kyrgyzstan have an opportunity to learn the company and see whether there is a sense to make any investments into it. The next section will examine what information is an object of the special right of collective information that shareholders enjoy.

Collective Information

If documents available to potential investors are similar in all the European countries, then company related documents available to shareholders are not the same in these countries and differences will be given in this section. In all the analyzed countries management of a company has an obligation to send or make available certain documents to all the shareholders without a special request from the later. Information is available to shareholders in most of the cases during the general meeting of shareholders, for the purpose of the general

[35] Art. 82 (1) of Law on Joint Stock Companies dated March 27 of 2003 # 64, last amended October 12, 2009 # 264.
[36] Ibid, Art 12 (5).

meeting and outside of the general meeting. That is why within this section collective information will be analyzed in the light of the general meeting.

Collective information for the purposes of general meeting

Usually during general meeting of shareholders most important problems are being solved, crucial issues are being discussed. That is why management is required to present certain documents before the general meeting so that shareholders would have enough information on issues they are going to vote for.

There are two types of collective information available at and for the purpose of general meeting: *basic information* available to every general meeting and *special information* that depends on specific items of the agenda and certain occasions. With regard to the second type, every country has separate provisions scattered all over the code. For example, according to §186 (4) of German Stock Corporations Act (AktG), the management board shall provide to the general meeting a report on the exclusion of pre-emptive rights on new shares stating the reasons for the limitation or exclusion of the subscription right.[37] Another example is shown in §293a AktG, which requires management to provide shareholders with report on the enterprise agreement if the approval of the general meeting is required.

Concerning the first group – basic information available at each general meeting - the analyzed European countries have similarities. Namely, in all the countries annual accounts and reports, including management and supervisory board reports, should be available for shareholders' inspection for the purpose of general meeting. Germany and France give other documents available. In Germany management board should, in addition, present to the shareholders proposal on appropriation of balance sheet and if the shareholders request, a copy of the documents must be provided.[38] Immediately after the call to the meeting, the

[37] Gerald Spindler, Informing Shareholders and Investors: A Behavioural and Economics Approach from a German Company Law Perspective, the Journal of Interdisciplinary Economics, 2010, Vol. 22, pp. 89-108, p. 7.
[38] §175 (2) and (3) of German Stock Corporations Act.

German Stock Corporations Act requires companies to post certain information[39] about the general meeting on the company's website.[40] In France, the board of directors or management must send or make available to the shareholders the necessary documents to enable them to make decisions.[41] In addition to the basic group of documents, which should be available at least fifteen days prior to the meeting called to vote upon the annual accounts[42], management should make available to shareholders inventory, list of directors, members of the supervisory board, reasons for the proposed resolutions, report of the statutory auditors and consolidated account.[43] Another difference is that unlike situation in Germany, every shareholder is entitled at any time to obtain the disclosure of certain documents relating to the last three financial years.[44] Therefore, in France a bigger range of documents should be available to shareholders without their request, whereas in Germany sometimes a request and questioning of management board is a way to obtain access to the documents. Moreover, French law does not limit the inspection only to shareholders' meeting as it is done in Germany, but makes available only those documents, which are pertaining to the last three years.

As two previously discussed countries, the UK also prescribes the disclosure of basic documents (annual accounts and reports [45]) to the meeting, however, besides that, the United Kingdom Companies Act of 2006 does not provide a special list of information that should be available to shareholders for the purpose of general meeting; instead, it has provided a shareholder with a right to obtain certain documents for the shareholders' meeting if there is a request. For example, under Article 314 of the UK Companies Act of 2006, a statement with respect to a matter referred to in a proposed resolution to be dealt with at that meeting is available to the shareholder only if he/she files a request with a company. Also, the Act

[39] Meeting notice, explanation of agenda items on which no resolution is to be taken, texts of the resolutions and other documents submitted to the meeting, total number of shares and voting rights, forms for voting by proxy.
[40] §124a of German Stock Corporations Act.
[41] Art. L225-108 of the French Commercial Code, last amended in 2006.
[42] Art. L225-100 of French Commercial Code, last amended in 2006.
[43] Ibid
[44] Art. L225-117.
[45] Sec. 437 of the UK Companies Act of 2006.

provides a right of shareholders to obtain information but not with regard to the general shareholders' meeting.

In Kyrgyzstan, like in the European states, the basic information (annual accounts and reports) also should be presented to all the shareholders. In addition, in case the general meeting is to choose members of the boards or change of the charter, data about candidates to be members of the directors' board, data on candidates to be members of executive and supervisory boards, a draft of amendments to the charter should be presented.[46] In such a way, this is an occasion when Kyrgyz law has similarities with the law of the European countries.

Summarizing the analyzed provisions, we can conclude that general meetings play an important role in all the jurisdictions and that can be a reason why fundamental documents are presented to shareholders specifically with regard to the general shareholders' meeting in most of the countries.

Collective Information not for the purpose of the general meeting

In some countries, certain information should be available to shareholders not only in connection to the general meeting. However, German law connects the whole concept of shareholders' information to the general meeting and thus, the Company Acts do not provide special collective information that is available to shareholders outside of the general meeting or not related to the general meeting of shareholders without their request. Unlike Germany, in France shareholders are entitled at any time to obtain information related to inventory, annual accounts and lists of directors, reports of the board of directors or executive board and supervisory board, a list of agreements relating to normal business entered into under normal terms and conditions, and their objects relating to the last three financial years,[47] as it was already mentioned. In the United Kingdom, collective information right not for the purpose of

[46] Art. 42 (4) of Law on Joint Stock Companies dated March 27 of 2003 # 64, last amended October 12, 2009 # 264.
[47] Art. 225-115, 225-116 of French Commercial Code last amended 2006.

the general meeting is used more frequently and in a bigger amount of cases than in other analyzed countries. According to Article 423 of the Companies Act of 2006 every company must send a copy of its annual accounts and reports for each financial year to every member of the company. A public company must send the copy of its annual accounts and reports at least 21 days before the date of the relevant accounts meeting. Summary financial statement instead of copies of the accounts and reports can also be sent by a company.[48] Also, the company must send or submit a copy of written resolutions proposed by directors to every eligible member.[49]

Kyrgyzstan, just like the UK is not that concerned about limiting obtaining information only at and for the purpose of the general meeting. A Kyrgyz company provides the shareholders with an access to a number of documents, which significantly differs from the documents available to the general public with regard to any Kyrgyz joint stock company. Any shareholder of a company is entitled to get founding documents; amendments to the documents; certificate of state registration (re-registration) of the company; internal documents of the company; yearly, quarterly and other reports that are presented to governmental bodies; prospects of securities issue; minutes of general meetings, board of directors meeting and audit committee; lists to affiliated companies with data on number and categories of shares possessed by them; report of audit committee, state financial control; other documents, prescribed by other legal norms, charter or other documents by a company; matters that are related to significant facts in business activities of the company, including major transactions and transactions with participation of interested persons.[50] As it is seen from the list of documents available to each shareholder, it is quite significant and if we compare it to the list of company documents available to the public, we will see a huge

[48] Sec. 425 of the UK Companies Act of 2006.
[49] Sec. 291 of the UK Companies Act of 2006.
[50] Art. 82 of the Law on Joint Stock Companies of the Kyrgyz Republic.

difference between information available to any person and information available to a shareholder.

From this section it is possible to see that all the analyzed countries have some similarities regarding information that should be available to shareholders for the purpose of general meeting; yet, there are some differences regarding a possibility of obtaining information outside of general meeting as it is a case in France, UK, and Kyrgyzstan, but not in Germany, where a right to information is connected to the general meeting. Also, a big contrast is seen between the documents available to the general public and to all the shareholders in Kyrgyzstan. Hence, this section analyzed information available to shareholders without a special request. It is also important to analyze so-called individual information – the one that is available to shareholders only upon a request.

Individual Information

Sometimes shareholders have to be active themselves and proactively seek information or inspection[51], to use their right to demand or request information. The shareholders' individual right to request information will be discussed thoroughly in the next chapter while this section will deal with information that can be asked or requested by shareholders.

Normally, in all the analyzed European countries shareholders have a right to question management and directors of the company, especially during a shareholders' meeting.[52] Besides asking questions, shareholders can request some information in the meeting, before the meeting and outside of the meeting. Approaches in all the countries are different, that is why each country's approach will be analyzed separately below.

In Germany all the requests are submitted with regard to the general meeting. A shareholder can request in the general meeting to obtain information about a matter that is not

[51] Mathias M. Siems: Convergence of Shareholder Law, 121 (2008).
[52] This right is analyzed in the next chapter.

already fully disclosed, but that interests the shareholder in a proper way and examples can be the following: permissible additional details with regard to executive compensation or background and activities of directors, explanation of items on the financial statements, relationships with affiliated companies, or the intended use of funds from a proposed capital increase.[53] Also, shareholders can request information before the meeting. This right resembles to regular disclosure and is related to some specific transactions such as sales of assets, contracting of corporate alliances, mergers, changes in corporate form. In these cases the shareholder can request copies of the relevant documents, which should be delivered before the general meeting as far as the documents will be presented to the general meeting.[54] A shareholder should be given a copy of all the documents that should be presented to him/her during the shareholders' meeting in accordance with §175 (2) of the German Stock Corporations Act (annual financial statements, management and supervisory report, etc.). Therefore, German law limits the right to request information to the items on the agenda of the general meeting and includes information regarding the company's affairs.

In France as it was mentioned above, shareholders can at any time obtain certain information related to inventory, annual accounts and lists of directors, reports of the board of directors or executive board and supervisory board, a list of agreements relating to normal business entered into under normal terms and conditions, and their objects relating to the last three financial years.[55] That means that they are free to ask company questions concerning the matters and to request relevant information and copies. The French Commercial Code does not provide any special types of individual information.

The types of information that shareholders can request from the UK Company are closely related not to the general meeting as it is in Germany, but to registers, reports and

[53] Andreas Cahn and David C. Donald: Comparative Company Law (Text and Cases on the Laws Governing Corporations in Germany, the UK and the USA), 511-512 (2010).
[54] Ibid
[55] Art. 225-115, 225-116 of French Commercial Code last amended 2006.

contract that a company keeps on different matters and as it was shown above, the access to these documents is not always limited to shareholders.[56] This means that in most of the cases the UK Company act provides a possibility not only to a member of the company, but also to any interested person to have an access to the documents. Some legal scholars, such as Andreas Cahn, give the following examples with regard to that: "the registers that may be inspected and copied contain the register of members[57], including any register of overseas branch members[58]; general meeting minutes and resolutions for the last ten years[59]; the register of debenture holders[60]; the register of disclosed interests in the company's shares[61]; and the register of charges on the company's assets[62]. The reports that must be kept available for inspection include the directors' statement and the auditor's report[63], and any report prepared on an investigation of undisclosed holders of the company's shares[64]. A number of contracts and conveyance documents must also be kept for inspection. These include directors' service contracts[65], provisions indemnifying a director against liability to a person other than the company[66], contracts to repurchase the company's shares[67], instruments creating charges on the company's assets[68], and all required documents in connection with a merger for at least one month before the general meeting voting on the transaction[69]."[70] Also, upon a request of 5% of voting shareholders a company is obliged to send or submit some sort

[56] Art. 225-115, 225-116 of French Commercial Code last amended 2006.
[57] Sec. 116 of UK Company Act of 2006.
[58] Ibid., Sec. 132.
[59] Ibid., Sec. 358 (3), 355.
[60] Ibid., Sec. 744 (1) of UK Company Act of 2006.
[61] Ibid, Sec. 809 (1).
[62] Ibid, Sec. 877.
[63] Ibid, Sec. 720.
[64] Ibid, Sec. 807 (1).
[65] UK Company Act of 2006., Sec. 228 (1).
[66] Ibid, Sec. 238 (1).
[67] Ibid, Sec. 702 (2).
[68] Ibid, Sec. 892 (4).
[69] Ibid, Sec. 911.
[70] Andreas Cahn and David C. Donald: Comparative Company law (Text and Cases on the laws governing corporations in Germany, the UK and the USA), 512-513 (2010).

of documents, for example written resolutions.[71] The UK approach shows that the right to individual information is closely related to the right of inspection in the countries and upon request a shareholder has a right to copy and inspection of significant information. It is also shown that in order to obtain some sort of documents, a request from a certain percentage of shareholders must be submitted to the company.

In Kyrgyzstan shareholders have a rather significant amount of documents that they can request and be provided with. Documents[72] prescribed in Article 82 of the Joint Stock Companies Act can be available to shareholders upon request if the company does not provide shareholders with the documents without the request. Moreover, upon a request of a shareholder the company is obliged to provide shareholder with copies of the documents for a fee that does not exceed cost of copying.[73]

As a result, analysis of three types of information in this chapter shows that mandatory disclosure of information plays an important role in company world today. In European countries very often it is not even necessary to be a shareholder to receive certain information. With regard to Kyrgyzstan, the requirement of mandatory disclosure is limited and applies mostly to listed companies. Concerning collective and individual information it was shown that German system limits the information that company can provide to the general meeting and agenda of this general meeting, whereas in the UK information that a shareholder is entitled to obtain is closely tied to registers, reports and contract. In France shareholders can obtain certain information at any time. Kyrgyzstan differs from the analyzed European states in that it provides an extensive list of documents available to all the shareholders whereas it does not provide a requirement of mandatory disclosure to companies, where listed companies is an exception. In such a way a shareholder who owns even one share has a right to internal

[71] Sec. 291 of the UK Companies Act of 2006
[72] The documents were specified above in the section of Collective Information.
[73] Sec. 82 (2) of Law on Joint Stock Companies (2003) # 64, last amended October 12, 2009 # 264.

documents of the company, which has a broad meaning, can be interpreted by courts in different ways, and can be a reason for rights abuse by the shareholders.

Chapter II

Comparative analysis of shareholders rights to access information and conduct inspection

In the previous chapter the author looked at what information is available to the general public and to shareholders upon request and without a request. The second chapter will deal with a shareholder's right to access information and to conduct inspection in Germany, France, UK, and Kyrgyzstan. This analysis will be done in order to show what right to information is available to all the shareholders, not just to minority ones. First section will focus on shareholders' right to information in general, which will cover general norms on giving access to information to all the shareholders in four countries. The next section will focus on minority shareholders' right to access information, where the author will answer how countries protect minority shareholders through the right to information and whether minority shareholders have any special rights to information. Then scope and frequency together with procedure of accessing information will be discussed. At the end of the chapter we will see how the right of shareholders to information is being enforced and what the remedies and liabilities are with this regard.

Shareholders' right to obtain information and conduct inspection in general

All the provisions of analyzed company law about shareholders' right to information bring this right down to two main ways a shareholder can exercise the right: (1) request documents and conduct inspection for and not for the purpose of general meeting and (2) ask questions. These rights will be analyzed both with regard to public and private companies in Germany, France, UK, and Kyrgyzstan.

Requesting documents and conducting inspection for and not for the purpose of general meeting

Public Companies

An obligation of the management of the company to present certain documents[74] to shareholders before the general meeting is common in all the analyzed countries. This right is common probably because of the main goal of shareholders at the general meeting – to vote for and against resolutions and resolve issues, contained in the agenda of the meeting. In order to give a possibility of a shareholder to vote with respect to a resolution prepared by a management board, the shareholder should have enough information on that issue.

As it was mentioned above, with regard to public companies (AG), in Germany the right to request information with reference to shareholders' meeting is of the greatest importance comparing to other countries. Upon shareholders' request each shareholder shall be given information in the general meeting regarding company's affairs in order to properly assess items on the agenda. A shareholder also can request documents before the meeting in order to examine the documents that are going to be presented during the general meeting.[75] For that purpose shareholders can request the management board to deliver relevant documents to them before the meeting. In French public companies (SA), just like in Germany, certain documents[76] should be presented by the board of directors to the general meeting; and before the meeting board of directors must send or make available to the shareholders the necessary documents for enabling them to make decisions.[77] In the UK annual accounts and reports should also be laid down before the general meeting.[78] Shareholders can also request other

[74] The documents available for inspection before the general meeting are analyzed in the previous chapter in the section of collective and individual information.
[75] §131 (1) of German Commercial Code.
[76] Annual accounts and reports.
[77] Art. L225-100 of the French Commercial Code.
[78] Sec. 437 of the UK Companies act of 2006.

information from the UK companies regarding registers, reports, contracts[79], i.e. documents that will help to assess items on the agenda. In Kyrgyzstan, the right is the same as in all the previously mentioned countries and the law requires the company to make a list of documents[80], including annual accounts, balance sheet and reports available to shareholders both at and before the meeting.

Not in all the countries a right to information is limited to general meeting. This is the case only in Germany. France provides that shareholder at any time can access certain documents relating to 3 years. In the United Kingdom shareholders can get access not only to annual accounts and reports, but also to some registers, reports and contracts upon request to the management board. In Kyrgyzstan, a shareholder can get access to a list of documents, including constitutional documents, annual accounts, reports, internal document of the company, etc.; and the law does not limit this right to any period of time when it is possible to do, which means that shareholder can request any documents from the list at any time.

Private Companies

An approach to the right to information is a bit different with respect to private companies. A provision of the company law act regarding German private companies (GmbH) does not directly stress out a necessity of shareholders to access company related documents only during the shareholders' meeting. Instead, they provide that upon request the managing directors should provide a shareholder with information regarding the affairs of the company. Moreover, they should allow the shareholder to inspect books and records.[81] In a French limited liability company (SARL), just like in a French public company, the right to examine documents is limited to the last three financial years. In such a company certain

[79] The documents available for inspection on request of the shareholder are analyzed already in the previous chapter in the section of individual information.
[80] The available documents are analyzed in the previous chapter of the thesis in the section of collective information.
[81] §51a of the German act on limited liability companies.

documents, including annual accounts, auditor's report, consolidated accounts, management report are sent to the members in the manner and within the time limits determined in the Conseil d'Etat decree.[82] UK limited liability companies take a more active position and send copies of their annual accounts and reports for each financial year to every member of the company and to every person who is entitled to receive notice of the general meeting.[83] In Kyrgyzstan limited liability companies' shareholders are able to obtain full company related information, together with inspection books and other documentation.[84] Thus, the right to request information with regard to a Kyrgyz limited liability company is quite extensive and includes all the possible company related information.

Asking questions

Asking questions is tied to general meeting in all the analyzed countries and it is available during the general meetings. In Germany, shareholders have the right to ask management board questions at the general meeting.[85] Only law on public companies mentions this right expressly. However, the authorities agree that it exists in case of a limited liability company too.[86] In French private companies not only a member can submit written questions that must be answered at the meeting by the chief executive, but members who are not managers can also twice per financial year ask written communication of the company's books and documents and to ask the manager written questions concerning any matter which is related to operation of the business.[87] In the case of public companies, the law does not give any specifications and any shareholder can submit written questions, which the board will answer during the general meeting.[88] In addition, in France shareholders have the right to be

[82] Art. L223-26 of the French Commercial Code
[83] Sec. 423 (1) of the UK Company Act of 2006.
[84] Art. 37 (2) of Law of the Kyrgyz Republic on business partnerships and companies (1996) #60, last amended October 12, 2009.
[85] §131 (1) (2) of the German Stock Corporations Act.
[86] Bernhard V. Falkenhausen and Ernst C. Steefel: Shareholders' Rights in German Corporations (AG and GmBH), 428 (1961)
[87] Art. L223-36 of the French Commercial Code.
[88] Ibid, L225-108.

consulted on particular matters not only by holding general meetings but also by means of individual written consultations.[89] The United Kingdom Company Act 2006 did not provide an obligation of the company to answer questions of shareholders, however, because the UK adopted and implemented Directive on Shareholders' rights[90] and a new obligation to answer any question, asked by a member of the company, relating to the business being dealt with. An existence of the Directive ensures that in all the EU countries there is a right to ask questions at the general meeting. In Kyrgyzstan, the law does not specifically provide an obligation of a company to answer questions that shareholders ask during a general meeting. However, language of the Act on Joint Stock Company points out that executive body of the company should report to the shareholders during the annual general meeting of shareholders, which means that shareholders can ask questions during the general meeting. Such an interpretation of the law is adopted in Joint Stock companies in practice.

In sum, the rights of shareholders to information can be classified into two groups: a right to request information and conduct inspection and a right to ask questions during the general meeting of shareholders. These rights are quite similar in all the countries, however, there are differences on when these rights can be exercised (in a case of Germany, the rights can be exercised during and for the general meeting), in what period of time they can be exercised (in a case of France, shareholders can access documents pertaining to the previous three financial years), and amount of documents that are available to shareholders, which is different in all the countries. It is very important to mention that the right to access information and inspection can be refused by the management of the company.[91] The analysis also showed that in some cases the information available to shareholders is less limited in private companies than in public ones. Further differences will be related to the ways

[89] Mads Andenas and Frank Wooldridge: European Comparative Company law, Cambridge 285 (2009).
[90] Directive 2007/36/EC.
[91] The right to refusal will be analyzed in the third chapter of the thesis.

countries protect their minority shareholders' through the right to information and how the countries limit[92] the right to information.

Protection of minority shareholders' rights through the right to information

Legal scholars who analyzed the protection of minority shareholders have an opinion that the protection of minority shareholders' investments in both private and public companies is an area of uncertainty. They also state that minority shareholders in publicly quoted companies tend to have a higher level of protection than shareholders in private companies.[93] Indeed, in some countries minority shareholders are protected better than in others in different ways and in some countries shareholders of private companies still enjoy the protection, when in other countries, there is no mandatory protection of minority shareholders prescribed by the law and it is possible only if certain provisions are included into constituting documents. Therefore, this section will analyze a right to information as means of protection of minority shareholders: what actions are required from minority shareholders to access needed information and how countries ensure equal access to information by all the shareholders, including minority ones.

Minority Shareholders' right to Information and Inspection Depending on Quantity of Shares

Not in all the cases a single minority shareholder, who has a small amount of shares, can be entitled to all the rights to information available to shareholders in general; the more shares a shareholder has, the more rights he can be entitled to. In many countries an extent of rights that a shareholder can enjoy depends on whether his block of shares represents 5%, 10% or another percentage of company shares. Only having such a minimum percentage of shares

[92] Limits to the right to information will be discussed in the third chapter of the thesis.
[93] Matthias W. Stecher: Protection of Minority Shareholders, 4 (1997).

individually or in a group, minority shareholders can enjoy some rights that will give them a certain access to information. Somebody would think that it is a limitation of minority shareholders' rights to information; however, this limitation is being minimized by counties. For instance, even though in order to enjoy some rights a specific block of shares is needed. This block of shares is to be owned not by one shareholder, but by a number of shareholders altogether. Thus, the protection of minority shareholders takes place in almost all the analyzed countries.

As it was shown above in the thesis, shareholders' general meeting plays an important role in the context of a right to information as far as very often only questions concerning items on the agenda of the general meeting can be discussed and during such a general meeting shareholders can get an access to information interesting to them. Not every shareholder can put matters on the agenda of the general meeting. Mathias Stecher, who edited a book dedicated to Protection of Minority Shareholders, shares the point of view that putting matters on the agenda of the general meeting is an important right of minority shareholders and if the board convenes a shareholders' meeting, not all the points that a minority shareholder wants to discuss can be contained in the agenda.[94] In a number of jurisdictions, therefore, minority shareholders possessing a certain amount of shares can request to add some items to the agenda.

All the analyzed countries give a right to a shareholder to put items on the agenda of the general meeting, however, such a right has different meanings in the discussed countries. The biggest meaning it has in Germany, where shareholders can ask questions and access certain documents only during the shareholders' meeting and this right is limited to the items in the agenda. In limited liability companies (GmbH) shareholders who hold shares representing at least one-tenth of the share capital are entitled to request the convening of the meeting upon indicating their purpose. For that shareholders can request certain items to be put into the

[94] Matthias W. Stecher: Protection of Minority Shareholders, 74 (1997).

agenda. If the company management believes that there is no need to call the meeting and refuses to do so, the minority shareholders can call the meeting themselves.[95] In a German corporation, the law gives the same right to the minority shareholders, but minorities should have at least one-twentieth of the share capital to be able to call the meeting and put matters on the agenda. The Articles of Association can specify even smaller minority. This way, in public companies minority shareholders' rights are protected better than in private companies in Germany.

In Kyrgyzstan, France and the UK general meeting plays not such a big role for the right to information as it does in Germany, but still the role is rather significant. Just like in Germany, French and United Kingdom[96] legislations also allow minority shareholders to put items on the agenda, but this time they should have 5% of the registered capital.[97] This right applies to public companies; the law is silent on this subject with respect to limited liability companies. Therefore, as French lawyers propose, minority shareholders may not demand that a resolution be put into the agenda of the general meeting unless the Articles or by-laws have a provision allowing it.[98] French and UK experience also shows that minority shareholders in public companies are more protected and have more rights than in a private company.

In Kyrgyzstan minority shareholders have to have only one percent of shares in order to be able to put items on the agenda of the general meeting upon filing a request and motivation with the management of the company. However, this right is limited to inclusion of only one proposal of questions that minority shareholders want to see in the agenda. With regard to limited liability companies, just like in France and the UK, the law does not give any special

[95] §50 of the German Limited Liability Company Act (GmbHG).
[96] In the United Kingdom, the right of shareholders to put items on the agenda was not included into the UK Companies Act of 2006, however, while implementing Shareholders' rights directive, the new right was introduced into the UK legislation in 2009. In the UK countries the block of shares required to put items on the agenda vary, however in general, most of the countries keep the rule of 5% block of shares.
[97] Art. L225-105 of the French Commercial Code.
[98] Matthias W. Stecher, Protection of Minority Shareholders, 77 (1997).

provisions and minority shareholders will be able to put items on the agenda only in case such a right is prescribed in the constituting documents.

The analysis of the right to put items on the agenda in the analyzed countries shows that minority shareholders of public companies representing a certain amount of shares have some protection and are able to add items on the agenda. If they are able to add items on the agenda, they are able to get information about matters interesting to them during the general meeting and in some countries this is the only way to get information on such matters.

In some countries other minority shareholders' rights to information also depend on the quantity of shares a shareholder possesses. France, for example, presented a limitation of minority shareholders' right to ask questions. If every member is entitled to submit written questions to the chief executive[99], then only shareholders representing at least 5% of the share capital, either individually or as a group, may submit written questions to the chairman of the board of directors on one or more of the company's management operations[100] or on any matter of such a nature as to threaten the continued operation of the company.[101] A similar provision regarding the right to ask questions is not adopted in any of the other countries being discussed. In the UK shareholders representing at least 5 % of the total voting rights can require a company to circulate statements on a proposed resolution that is going to be dealt at the meeting.[102] As far as it is a special rule contained only in the UK legislation, other countries do not have a similar provision.

In sum, the analysis showed that in some cases for exercising a right that any majority shareholder has, a minority shareholder either should himself have a certain block of shares or should cooperate with other minority shareholders to reach the threshold. Such a right to cooperate can be seen as protection of minority shareholders.

[99] Art. L223-26 of French Commercial Code,.
[100] Ibid., Art. L225-231.
[101] Ibid., Art. L225-232.
[102] Sec. 314 of the UK Company Act of 2006.

Shareholders' equal treatment

The second aspect, that it is important to cover in the thesis, is the countries' company law acts attempts to protect minority shareholders' rights by means of giving the equal rights to information to all the shareholders.

Analyzed countries show equality of shareholders to the right to information in different ways. German law emphasizes equal right of shareholders to information and states that even if the shareholder is given information outside the general meeting, the management board shall give such information to other shareholders as well even if this information is not necessary for assessment of items on the agenda.[103] In the UK this equality can be seen from a fact that almost all the articles concerning the right to information and inspection are aimed at "any member". For instance, a company must, on request of *any member*, send to him a copy of the company's articles;[104] the register and the index of members' names must be open to the inspection of *any member* of the company.[105] The same way of stressing the equality of shareholders rights is chosen in France, where it is pointed out that "every shareholder" may at any time obtain documents relating to the last three financial years regarding corporate management.[106] Moreover, in France, the Commercial code directly declares that "the right to disclosure of documents…shall be equally enjoyed by each joint owner…"[107] In Kyrgyzstan according to Article 82 of the Law on Joint Stock companies, company provides all the shareholders with a right to access certain documents. All these non-discriminatory provisions of the countries' company laws show a way minority shareholders are protected by means of the right to information. A block of rights to information, which is given to all the shareholders – is given to minority ones as well.

[103] § 131 (4) of German Stock Corporations Act..
[104] Sec. 32 of the UK Companies Act of 2006.
[105] Ibid., Sec. 116.
[106] Art. L225-117 of the French Commercial Code.
[107] Ibid, Art. L225-118.

Existence of such equal rights means that information rights are given not just to minorities of shareholders, but to each individual shareholder.[108] The rights to access information and to conduct inspection available to each individual shareholder were already analyzed above in the section of general rights to information available to all the shareholders. Therefore, the next step in analyzing rights of minority shareholders is to look at the scope and frequency of exercising the right to information by them.

Scope and frequency of accessing information and inspection by minority shareholders

The scope of shareholders' right to information was already discussed in the first chapter of the thesis. As far as it was shown in the thesis that most of the rights to information that any shareholder enjoy are the same rights that a minority shareholder can exercise, the analysis of the scope of available to shareholders information is also applicable to minority shareholders. In sum, with regard to public companies in all the countries shareholders have a right to examine annual accounts and reports, including management and supervisory board reports.

Out of all the documents, which are contained in the scope of documents available to shareholders, the biggest dispute has been formed about a right of a shareholder to inspect books and records. This dispute has become especially acute with regard to minority shareholders, who can buy one share and enjoy the right to know financial details of a company. Germany, France, the UK, and Kyrgyzstan have different approaches towards this issue as well.

[108] Evanghelos Perakis, - editor: Rights of Minority Shareholders, XVIth Congress of the International Academy of Comparative law, Brisbane (Australia), Report of Germany prepared by Klaus J. Hopt, 398 (2002).

Books and records inspection

Inspection of books and records is considered to be another mechanism for minority protection. In most of the countries shareholders are entitled to inspect books and records; however, usually it can be done upon a request to the management board. In Germany and France shareholders of private companies have more rights with regard to inspecting books and records than in public ones. Namely, German law for stock corporations does not recognize a general right of shareholders to inspect corporate books and records.[109] However, section 131 of the German Stock Corporations Act provides each shareholder with a right to information at the general meeting for enabling a shareholder to assess a relevant item in the agenda, which means that shareholders can ask questions and can get access to books if it is related to agenda of the meeting.

Moreover, if shareholders of the German Stock Corporation suspect mismanagement, they may ask the shareholders meeting to appoint a special auditor in order to make an investigation. If the shareholders' meeting denies the request, shareholders representing at least 10% of the corporate capital may repeat their request before a competent court. The petition will be granted only when the petitioners can show that the acts of mismanagement involve grave violations of fiduciary duties or are contrary to law or the provisions of the articles of association.[110] Thus, other provisions of law give possible solutions to shareholders, however, every time such shareholders have to prove and explain their intentions.

A shareholder of a limited liability company (GmbH) may inspect the books and record of the company either in person or through a representative, whenever the shareholder can show good cause for such an inspection. If the management board refuses to provide the

[109] Bernhard V. Falkenhausen and Ernst C. Steefel: the American Journal of Comparative Law, Shareholders' Rights in German Corporations (AG and GmBH), p. 428 (1961).
[110] Bernhard V. Falkenhausen and Ernst C. Steefel: the American Journal of Comparative Law, Shareholders' Rights in German Corporations (AG and GmBH), p. 428 (1961).

shareholder with the right to inspect books, in practice the shareholder must prove to the court that there is a need for inspection in order to let the shareholder exercise his membership rights.[111] Therefore, the right of the shareholder always depends on discretion of either management board or the court.

Regarding France, it is important to point out that French shareholders have substantial inspection rights.[112] In private companies members who are not managers have the right twice per financial year to ask written communication of the company's books and documents[113]. Unlike the situation with private companies, provisions of public companies are silent about this matter. Instead, the law states that auditors are the ones who are able to inspect books and records at all time of the year, make all checks and inspections as they may consider appropriate[114]. If shareholders are not that confident that auditors are working in good faith and do not perform their duties efficiently, one or more shareholders representing 5% of the share capital can apply to the Court for an Order for the withdrawal, on reasonable grounds, of one or more auditors appointed by the general meeting.[115] In such a case, a new auditor will be appointed and thus, will be entitled to check the books, records, and other financial documents.

The law of the United Kingdom does not specify a right of a shareholder to inspect books and records; and just like in France, a right to access at all times to the company's books and records belongs to auditors of the company.[116] However, according to some lawyers working in the UK, in practice, even though the UK Company Act of 2006 Shareholders does not have any prevailing right to inspect books and records of a company, shareholders can be entitled to inspect the company's records if it can be shown that the

[111] Ibid.
[112] Frank B. Cross, Robert A. Prentice,: Law and corporate finance, Great Britain, 126 (2007).
[113] Art. L223-36 of the French Commercial Code.
[114] Ibid, L225-236.
[115] Ibid, L225-230.
[116] Sec. 499 of the UK Companies Act of 2006.

inspection is necessary with reference to some specific dispute or question in which the shareholder is interested and even then, such right is only granted to such extent as may be necessary for the particular occasion.[117] With regard to this issue, a British scholar Frank Cross stated that the English common law recognized shareholders' rights to access corporate books and records in the early 1700s as a way to protect shareholders' property interests. Generally, even now, shareholders in common law nations have the right to inspect relevant corporate records at a proper time, in a proper place, and for a proper purpose.[118]

In Kyrgyzstan, the scope of information available to shareholders, as it was shown in the thesis already, is very broad and books with records are included into the documents that shareholders can inspect at any time.

Therefore, this analysis showed that company laws are very careful with giving all the shareholders access to the books and records. However, all the laws, where the right to inspect books and records is not absolute, provide ways to solve the problem. Examples can be following: demand appointment of another auditor as it is done in France or another solution that is possible with German system - to initiate general meeting, include certain items into the agenda so that inspection of books and records becomes necessary for evaluating items on the agenda.

Frequency of accessing information

Frequency of accessing information, or in other words how often shareholders are allowed to exercise their right to information, varies in each country depending on an approach a country has towards the right to information.

Thus, as far as in Germany the right to information of a shareholder is limited to a general meeting, the shareholder can access information only when general meetings are

[117] Shearn Delamore and Co., *Shareholders and Directors: Rights to Inspect the Company's Records*, Vol 7 No 4.0 (December 2008), http://www.shearndelamore.com/assets/.../newsletters2008/2008_dec_cc_news1.pdf. accessed on 26.03.2011.
[118] Frank B. Cross, Robert A. Prentice,: Law and corporate finance, Great Britain, 126 (2007).

conducted in a company. The frequency of such meetings can also be different because besides annual general meeting of shareholders, which is conducted once a year, there can be extraordinary general meetings of shareholders, which can be convened at the request of minority shareholders if their shareholding amounts to one twentieth of the registered share capital.[119]

Because France entitles every shareholder at any time to obtain documents regarding corporate management relating to the last three financial years, the frequency of conducting an inspection is indefinite. However, with regard to questions, in private companies shareholders holding at least one-tenth of the registered capital may question, in writing, chairman of the board of directors twice per fiscal year.[120] Other questions should be asked during general meetings, which are conducted at least once a year, just like in Germany.

In the UK copies of annual accounts and reports are circulated once a year by the company for each financial year. Also, shareholders can request documents, which are related to registers, reports and contracts. The law does not provide a maximum amount of times shareholders can do that per year, that is why the frequency is not definite here as well. During the general meetings shareholders can ask questions; hence, with regard to asking questions, the situation is just like in Germany and France – shareholders will be able to ask questions at least once a year if there are no extraordinary general meetings.

In Kyrgyzstan, there are no limits on when shareholders can require documents prescribed in Art. 82 of the Law on Joint Stock companies, therefore, just like in the previously analyzed countries, frequency is not definite.

Consequently, we see that frequency of exercising the right of shareholder to information depends on a general meeting, where the shareholders can ask questions and only in the case of France, there is a limit of asking certain questions twice per year.

[119] §122 of the German Stock Corporations Act.
[120] Art. L223-36 of the French Commercial Code.

Procedure of exercising the right to information and inspection

As it was shown above, in some countries the right to information deeply depends on the way shareholders are obliged to exercise their right, where a request should be filed and a proper purpose of requesting information should be passed to the management board for enabling them give an access to document or a permission to inspect them.

Germany, France, and Kyrgyzstan do not have a special formula according to which shareholders should request information they need. However, company act provisions show that the request normally should be in a written form as it is shown in French private company, where members can ask written communication of the company books and documents and to ask the manager written questions concerning any matter. In other companies[121] the law does not specify that a request should be in a written form. However, as practice shows, in case a shareholder wants to obtain a document, a written request for this document is needed.[122]

If in Germany, France, and Kyrgyzstan there are no special rules on filing a request with the company except it being in a written form, then some of the rights related to information containing in the UK Company law act of 2006 present an obligation to file a formal request for obtaining information. For example, any member of the company has a right to inspect and require copies of register and the index of members' names. In order to exercise either of these rights a shareholder must make a request to the company to that effect.[123] The article also has a quite detailed requirement to the content of the request. Specifically, the request

[121] In GmbH before exercising a right to information a shareholder should request management board to give or make available to him needed documents. After getting the request, managing director can refuse to provide such information. (§51a of GmbHG). In German AG each shareholder is also provided with information only upon request and can also refuse to provide information. (§131 of AktG). The legal provisions of German acts do not specify in which form the request should be made. In a case of French public companies, there is no obligation to ask questions only in a written form. The wording of the provision is the following "any shareholder is entitled, under the conditions and subject to the time limits determined in a Conseil d'Etat decree, to discovery of..", then a list of documents is given. (Art. L225-115 of the French Commercial Code).

[122] High level group of company law experts, *A Modern Regulatory Framework for Company Law in Europe*, a consultative document, p. 19. Document is available at http://ec.europa.eu/internal_market/company/docs/modern/consult_en.pdf, last accessed on 26.03.2011.

[123] Sec. 116 (1-3) of the UK Company act of 2006.

should contain name and address of an individual or a legal entity requesting the information. Moreover, the purpose for which the information is to be used should be specified in the request. Also, the requesting entity or an individual should answer whether the information will be disclosed to any other person and if so name of the person should be given together with his/her purpose of having this information.[124] After receiving the request a company can decide whether to comply with the request or not.[125] There is a certain period of time within which a company should provide a shareholder with the document. The terms are different; for instance, if the shareholder is asking to inspect a register or give a copy of it, the company should decide whether to comply with the request or not within five days, whereas obtaining of other documents might take different time.

However, not in all the cases the UK Company act requires to submit a formal request with all the requirements. In most of the cases simply a request is needed, which, just like in other analyzed countries, does not have a requirement to be in a written form, however such form is assumed. Moreover, the UK legislation provides special time when the inspection is available. For private companies a person wishing to inspect the records must give the company notice where time on a particular working day between 9 am and 3 pm should be specified and the notice period should be between 2 and 10 days. Public companies must make the records available for inspection for at least 2 hours between 9 am and 5 pm on every weekday.[126] Such requirements give an opportunity to companies prepare needed documents for the inspection and not to lose time looking for them when a person or a shareholder comes to inspect. Furthermore, the place of inspection is also specified in the UK Act, where in most of the cases it is the registered office of the company, however, under article 1136 of the UK

[124] Ibid, Art. 116 (4)
[125] A right to refuse to give information will be discussed in the next chapter.
[126] Department for business, enterprise and regulatory reform, Explanatory memorandum to the companies (company records) regulations 2008 #3006, p. 4, available at http://www.legislation.gov.uk/ukdsi/2009/9780111479032/pdfs/ukdsiem_9780111479032_en.pdf.

Act other places can be specified by regulations. In Germany, France, and Kyrgyzstan, inspection of documents should also be conducted in the registered office of the company.

Therefore, out of all the countries the UK law seems more advance with regard to request requirements and procedure of obtaining information. Also, shareholders' rights are protected in the UK law because in some cases the company cannot refuse to give information on its own discretion, but a court's order is needed. In addition, the proper purpose provisions insure that persons without a proper purpose will not have an excess to certain documents, which plays an important role in the context of abuse of rights by shareholders and using received information in a bad faith.

The notion of proper purpose of requesting information

As it was discussed above, proper purpose plays a very important role with regard to providing a shareholder with information in the United Kingdom concerning inspection and making copies of certain documents such as the register of members of the company or the register of debenture holders. Even though a "proper purpose" is not directly mentioned in the laws of Germany, France, or Kyrgyzstan, the proper purpose doctrine might be important for these counties as well; especially it might be useful to Germany, where management can refuse to provide information to shareholders. Therefore, it is important to understand what purpose can be considered as a proper or improper one and a register of members will be taken as an example in the present section.

The UK Company law act of 2006 does not define what a proper purpose is, neither the term is defined in the Explanatory notes. Therefore, it will be a matter for the courts to decide. ICSA international company conducted a research on this problem and they came up with ICSA Guidance on Access to the Register or Members: Proper Purpose test. They did not find any court decisions on that matter in the UK and that is why they made an attempt to create a

guidance note and provide examples of what should constitute a proper purpose and what is likely to be an improper purpose.[127]

The ICSA working group presented a number of examples of purposes, which it considered proper or improper with respect to requests to inspect or obtain a copy of the register. However, company's and court's response to a shareholders' request will depend on circumstances of the case, that's why, this list cannot be considered exhaustive.

The right to inspect register and make copies is given not only to shareholders, but to other entities as well. However, for the purpose of this thesis only examples concerning shareholders will be discussed. Following are some examples of proper purposes: (1) a shareholder or his attorney want to check that shareholder's personal details are accurately recorded on the register; (2) shareholders or indirect investors want to contact other shareholders about matters relating to the company, their shareholding or a related exercise of rights; (3) shareholders seeking other shareholder information with a view to enforcing a judgment whether by charging order, stop order, stop notice, third party debt order or otherwise[128];

Examples of improper purpose are: (1) any purpose that could be unlawful (for example, obtaining personal information for the purposes of identity fraud or purposes that might abuse someone's rights under the Data Protection Act of 1998); (2) any representation of communication to members that the company thinks would threaten, harass or intimidate members or would otherwise be an unwarranted misuse of the member's personal information; (3) any other purpose not related to the members in their capacity as members of the company or to the exercise of their shareholder rights.[129]

[127] Working group of Institute of Chartered Secretaries and Administrators,*ICSA Guidance on Access to the Register of Members: Proper Purpose Test*, (January 2009), p. 2. The document is available at http://www.icsasoftware.com/dl/060607Access-to-the-Register-of-Members.pdf, last visited 26.03.2011.
[128] Working group of Institute of Chartered Secretaries and Administrators,*ICSA Guidance on Access to the Register of Members: Proper Purpose Test*, (January 2009), p. 4. The document is available at http://www.icsasoftware.com/dl/060607Access-to-the-Register-of-Members.pdf, last visited 26.03.2011.
[129] Ibid.

These examples show that it might be difficult to decide whether the purpose is proper or not because normally, there is no possibility that a requesting shareholder will write directly in the request an unlawful purpose and thus, the company members have to put additional attempts to find out about real intentions of the interested person. The ICSA provides that in case of a doubt whether the proper purpose exists or not, companies should undertake further enquiries.[130] In case there is still a doubt, it is always possible to apply to the court and make court decide.

Therefore, the notion of proper purpose is very important for the UK Company act in respective cases of the registers. Nonetheless, the analyzed section showed that there is a difficulty in deciding what a proper and improper purpose is and sometimes companies have to conduct a special investigation trying to obtain enough proof that the requesting shareholder is acting in a good faith or not.

Enforcement of the right to information and inspection

The fact that minority shareholders rights are being protected is not arguable anymore because most of the countries change their regimes for keeping in line with world standards. Moreover, in the World Bank roundtable in Russia it was stated that the standard argument is that a company cannot have minority investors if there is no credible minority protection regime and that is why many countries have mandatory minority protection regimes.[131] As it was stated throughout the thesis, there is a significant number of mandatory shareholders' rights to information and in order to ensure that they work, countries should have a good enforcement mechanisms. This section will analyze enforcement mechanisms in four analyzed countries.

[130] Working group of Institute of Chartered Secretaries and Administrators,*ICSA Guidance on Access to the Register of Members: Proper Purpose Test*, (January 2009), p. 4. The document is available at http://www.icsasoftware.com/dl/060607Access-to-the-Register-of-Members.pdf, last visited 26.03.2011.
[131] Manne Airaksinen, *Session IV of the OECD/World Bank corporate governance roundtable for Russia, shareholder rights and equitable treatment, Presentation of Enforcement of minority shareholders' rights*, p. 1. The document is available at http://www.oecd.org/dataoecd/54/45/1920897.pdf, last visited 27.03.2011.

Germany

German company law is characterized by different procedures and remedies provided for different types of violations. Not a significant attention is devoted to a complex analysis and systematic of shareholders' remedies.[132] However, with regard to the right to information German law specifies detailed procedure and a right to shareholder to go to the court.

In German stock corporations the law states three requirements that a shareholder should satisfy in order to be able to file an application with the regional court of the district. Under these requirements the shareholder must prove that: (1) requested information was denied; (2) the resolution has been adopted concerning the item on the agenda; (3) shareholder was present at the general meeting and raised his objections in the minutes of the general meeting. Moreover, such application to the court must be filed within two weeks of the general meeting in which the information was denied.[133] The regional court will issue an order stating the reasons for its decision, where it will either grant the application or agree with the management board and deny the application. If the court denies, the shareholder can appeal, but it is possible only if the regional court permits such an appeal in its decision.[134]

If the application is granted, the information shall be given even outside the general meeting. After the proceeding the court decides which party should pay the costs of the proceeding after making a fair assessment of the case circumstances.

With a case of German private companies (GmbH), if the managing director refuses to provide information he signs a resolution. Just like in the public company the shareholder who is not provided with the information requested is entitled to submit an application with the regional court, however, mentioned three requirements that a shareholder should satisfy for having a standing in the procedure do not apply to the private companies, which means that it is more difficult to have a proceeding in the court if a claimant is a shareholder of a public

[132] Ibid., p. 195.
[133] §132 of the German Stock Corporations Act.
[134] Ibid., §132 (3).

company than if the claimant is a shareholder in a private company, where in addition, there are not so many grounds to deny information.

France

If in Germany the company acts gave a detailed description of the court application procedure regarding the right to information. In France the company the French Commercial code does not have such a special provisions; however, it gives a possibility to shareholders to sue directors for the breach of their duty. Giving access of certain documents to shareholders is one of directors' duties and thus, a shareholder can apply to a court to restore this right. Shareholders can go to the court with a direct or a derivative claim.

A shareholder can initiate direct suit if his individual rights were breached. The suit to compel inspection or information access is considered to be a direct suit by most of the authors because the plaintiff's role is similar to that of an outsider bringing suit against the corporation. Therefore, it is plaintiff, not the corporation who has the cause of action because it is plaintiff, not the corporation who has been injured. Moreover, a judgment for plaintiff will not affect all the shareholders.[135] However, decision of whether to sue directly or through a derivative suit will depend on every individual case. In some cases shareholders can also initiate litigation on behalf of the company (derivative suit) against any director if the company itself has a cause of action because it has suffered detriment due to directors' actions. Derivative suit is also available to minority shareholders and apart from actions for personal loss or damage, shareholders may either individually or acting as a group bring an action for liability on behalf of the company against its directors or managing director.[136]

[135] Jesse H. Choper, John C. Coffee, Jr., Ronald J. Gilson: Cases and Materials on Corporations, p. 925, (6th ed 2004).
[136] Art. L225-252 of the French Commercial Code.

United Kingdom

In the United Kingdom shareholders' remedies are accorded a broad meaning and there is also a distinction among personal actions of shareholders (direct suit), derivative actions, and unfair prejudice remedies. Derivative actions and unfair prejudice remedy are also called oppression remedy and they allow the minority shareholders to contest any abuse of the minority rights and also contest actions damaging the company in general.[137] Such a remedy is included into Art. 260 and Art. 994 of the UK Companies Act of 2006 and states that a member of a company can apply to the court by petition for an order or grounds that the company's affairs are being or have been conducted in a manner that is unfairly prejudicial to the interests of members generally or of some parts of its members or that an actual or proposed act or omission of the company is or would be prejudicial.[138] The persons whose rights are affected may represent all or only part of the shareholders, but in order for them to bring the charges it is necessary that at least the rights of the petitioner have been violated. This remedy is considered to be a flexible legal option that can be exercised by the court to resolve different types of disputes.[139]

Apart from this general right to sue, like in Germany, the UK Companies act provides a procedure of applying to the court in case the information shareholders were entitled to was refused or if there was a default in providing such information or allowing inspection. With regard to some information, e.g. register of members (Art. 116 of the UK Companies act) managers of the company cannot refuse provision of information on their own discretion, but they should apply to the court. In case this procedure is not complied and the information is refused or default is made in providing a copy required otherwise than in accordance with an

[137] Margit Vutt, *Systematics of Shareholder Remedies – Origins and Developments*, (2010), p. 194. The document is available at http://www.juridicainternational.eu/public/pdf/ji_2010_1_188.pdf, last visited on 27.03.2011.
[138] Sec. 994 of the UK Companies act of 2006.
[139] Margit Vutt, *Systematics of Shareholder Remedies – Origins and Developments*, p. 194 (2010). The document is available at http://www.juridicainternational.eu/public/pdf/ji_2010_1_188.pdf, last visited on 27.03.2011.

order of the court, an offence is committed by the company and every officer of the company who is in default. There are two remedies that the court can provide: (1) a person guilty of an offence is liable on summary conviction to a fine and (2) the court may order to compel an immediate inspection or direct that the copy required be sent to the person requesting it.[140] In sum, UK law has both: special norms applicable to specific cases of failure to provide information to a shareholder, an individual, and collective right of a shareholder to sue.

Kyrgyzstan

In Kyrgyzstan the company acts do not provide any norms related to a special procedure of applying to the court or any special remedies that are available to shareholders if their right to information was violated. However, it is stated that any shareholder whose rights were violated can apply to the court to restore his rights.[141] In case the court decides that the company managers unlawfully denied shareholder an access to documents, the court can restore this right and compel the company to give the shareholder the access to the documents. Also, such infringements can be considered as an administrative violation in case of a listed company; and for failure to disclose prescribed by law documents managers of the company or company itself can get a significant fine.[142]

In sum, out of all the analyzed countries only Germany has a specific procedure of enforcing the right to information and court, just like in other countries, plays a crucial role in this issue. In addition, Germany is the only country, which requires a shareholder to satisfy requirements in order to be able to go to the court. In all other countries shareholders can have either direct or a derivative suit. It was also stated that in most of the cases the right to compel

[140] Sec. 118 of the UK Companies act of 2006.
[141] Art. 25 of the Kyrgyz Republic Law on Joint Stock Companies and Art. 37 of Kyrgyz Republic Law on business partnerships and companies.
[142] Art. 335-1 of the Code of Kyrgyz Republic on administrative responsibility dated August 4 of 1998 No 114 last amended July 24 of 2009.
Fine payable by companies can be between 200 to 500 USD.

inspection or information access is considered to be a direct suit and the shareholder will sue the directors as an individual and not on behalf of the company.

Therefore, through the second chapter analysis the author came up with the following outcomes:

1. In all the countries shareholders' right to information can be exercised in two main ways: requesting information and asking questions. The rights are similar in all the countries, however, in Germany the rights can be exercised only during the general meeting, in France shareholders can access documents pertaining to the previous three financial years and the amount of documents available to shareholders has also differences in all the countries.
2. Minority and majority shareholders are entitled to exercise equal shareholders' rights to information.
3. Even though the rights to inspect books and records are not absolute in all the countries, as for example in Germany and France, there are ways to solve the problem. In Germany and France shareholders of private companies have more rights with regard to inspecting books and records than in public ones.
4. Out of all the countries only UK Companies Act prescribes a procedure of exercising the right to information, what should be included into the request filed by a shareholder to obtain certain documents. In all other countries just a written request is needed to obtain documents. Moreover, even though in some cases UK requires an interested person to have a proper purpose in order to access certain documents, there is a difficulty in deciding what a proper and improper purpose is.

In conclusion, analyzed countries' company acts show protection of minority rights through the right to information. Specifically, there is an equal right to information in all the countries; there is a right to cooperate to reach a threshold to exercise additional rights;

minority shareholders also have a right to inspect books and records; minority shareholders can sue directors through a direct or a derivative suit.

Chapter III

Limits to right of information and inspection

The right of a shareholder to access information and to conduct inspection is not absolute in all the countries. In some countries this right was extremely limited in the past but the global tendency to improve corporate governance in companies in order to attract additional investments made the companies reconsider their positions, change laws and grant shareholders more information. An example of such a change is the EU Shareholders' rights Directive[143], which enabled shareholders to ask questions during the general meeting. However, there are still countries[144], which keep almost unlimited rights to information. The last section of this chapter chapter of the thesis will answer a question whether this is a good sign or not, whereas the rest sections of the chapter will focus on limitations to the information right. First, general limits will be covered, then a right of the company to refuse the provision of information will be analyzed and lastly, the thesis will focus on limits imposed because of the abuse of rights notion.

General limits

In the previous chapters of the thesis detailed analysis of shareholders' rights was given, including procedure of exercising the right, scope and enforcement. Out of this analysis the certain limits will be derived in order to show how analyzed countries limit the right to information.

[143] Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies.
[144] Most of the CIS countries have a rather unlimited rights to information.

Germany

As far as the whole concept of the right to information in Germany is tied to the general meeting, German ways of limiting the shareholders' right to information are also related to it. The first way of limiting the right to information is to make information available to the shareholders' access only during the general shareholders' meeting.[145] This limitation has the following goal: all the shareholders should have equal access to the corporate information.[146] In addition, German company act states a further limitation: the shareholder can access information, which is necessary for proper assessment of items on the agenda. A goal of this limitation is prevention of rights abuse from the side of shareholders.[147] The third limitation presented by the German law is a possibility of the management board to deny the shareholder an access to documents that the shareholder requested upon existence of grounds prescribed in Art 131 (3) of the German Joint Stock Companies Act. And finally, it was stated above in the thesis that there is a number of documents that should be published or be available on the website of the company; with this regard, if information that a shareholder requests is accessible on the website of the company, a right of shareholder to this information falls away.[148] However, if the management of the company fails to publish information that it is entitled to be published by law, the shareholder can demand such information anytime from the management board of the company.[149]

[145] §131 of the German Stock Corporations Act.
[146] Lado Chanturiya, *Limitation of shareholders' rights in the world practice*, Bremen, (September 2007), p.5. *Kьbler/Assmann,* Gesellschaftsrecht. 6. Aufl. § 15 V
Document is available at www.cac-civillaw.org/publikationen/chanturia.limited-rights.ru.rtf. last visited on 27.03.2011.
[147] Ibid, *Hьffer,* Aktiengesetz, 7. Aufl. § 131 Rn. 12.
[148] §131 (7) of the German Stock Corporations Act.
[149] Lado Chanturiya, *Limitation of shareholders' rights in the world practice*, Bremen, (September 2007), p.8. MьnchKommAktG/*Kubis* § 131 Rn 6-7.
Document is available at www.cac-civillaw.org/publikationen/chanturia.limited-rights.ru.rtf. last visited on 27.03.2011.

France

In France there are two types of the right to information: a general meeting (temporary) information right and a permanent information right. The right to information is not limited in France as it is limited in Germany and shareholders can at any time access document of the company related to the last three financial years.[150] That means that shareholders are not able to request documents that are older than three years. The term is the only general limitation regarding the right to information that is prescribed in the French law. However, there are more other limitations in France, for instance, regarding quantity of shares. An example can be a threshold of 5% share capital that shareholders should have in order to apply to the Court for an order to withdraw one or more auditors appointed by the general meeting. Shareholders should have the same amount of shares in order to put items on the agenda of the general meeting. If shareholders have a smaller amount of the block of shares they will not be able to exercise their right.

United Kingdom

United Kingdom has some limitations regarding information that should not be subject to disclosure any more. Unlike the old UK legislation, the new Companies Act took care of confidential information of directors and secretaries. Thus, the act has a provision restricting disclosure of residential address of directors and secretaries. Instead of that places of work and addresses of offices will be disclosed.[151] Private information about directors will be confidential from now on. Another biggest limitation that contains in the UK Companies Act is formal and detailed requirements for requests that a shareholder should file to the company in order to get an access and make copies of certain documents. Such request should contain a proper purpose, which is also considered to be a limitation of the right to information. If the

[150] Art. L225-117 of the French Commercial Code.
[151] Sec. 240 of the UK Companies Act of 2006.

company or the court decides that the purpose is not proper, than the document will not be available for inspection, i.e. the right of the shareholder to information will be denied.

Kyrgyzstan

The only restrictions on shareholders' right to information in Kyrgyzstan are regarded the documents that shareholders are entitled to obtain. The shareholders are entitled to receive, and the company in turn shall provide the shareholders only with that information, which is provided in the laws[152] of Kyrgyzstan and the Charter of the company. However, as it was shown above, the list of documents is rather broad and some of the documents' names, such as internal documents of the company, can have ambiguous meaning and be interpreted only by a court.

As it was seen, the biggest list of limitations is given by the German law. In fact, there are a lot of other similar limitations to shareholders' rights in Germany law; it is very important that all these limitations and their application are described in detail. In the countries where limitations are not described in the law, the internal laws of the company should specify what information should be regarded as confidential and, thus, should not be available even to shareholders. However, in most of the cases, the provisions where documents prescribed by law as ones that are available to shareholders, are mandatory and cannot be changed by parties. Nevertheless, management of the company can use confidentiality in another way – to oblige shareholder not to disclose obtained information to anybody and sign a document on non-disclosure obligation.

Right of the company to refuse the provision of information

The main limitation that can be imposed by legislators regarding the right to information is the right of the management board to refuse the provision of information. In

[152] Article 42 and 82 of the Law on Joint Stock Companies; Art. 30, 31 of the Law on Securities Market. These documents were already discussed in the first chapter of the thesis.

Germany and the United Kingdom managers are given a statutory right to refuse to give information to a shareholder who is asking for it, however, these rights are quite different.

Under §131 of the German Stock Corporations act, in German corporations a shareholder needs to file a request with a management board in the general meeting to provide him with certain information. However, the management board may refuse to provide information in 6 cases. The most important grounds for refusal to provide information are: (1) likelihood that provision of such information will cause a considerable damage to the company or an affiliated enterprise, whereas damage is considered to be not just a loss, but also any damage to the company's interests. Such a damage can happen if outcomes of certain surveys or studies, which had a strategic meaning for the company, are disclosed, etc.[153] ; (2) if this information pertains to tax valuations or the amount of individual taxes and hidden reserves. The purpose of this rule is to prevent any possible confusion of shareholders about the feasible shareholders' dividends[154]; (3) if the information concerns accounting and evaluation methods, information that is already given in notes and that is available to shareholders already gives an accurate picture of the situation regarding the assets; (4) if the information concerns the difference between the value at which items are shown in the annual balance sheet and a higher value of these items; (5) if the information will be of such kind that would make management board liable to prosecution by giving such information; (6) if the information is accessible on the website of the company. If the information is denied, the shareholder can request that his question and the reason given for the refusal of the information be recorded in the minutes of the proceedings.[155] Then, the shareholder can file an application with a court and make a stand for the right there.

[153] Lado Chanturiya, *Limitation of shareholders' rights in the world practice*, Bremen, (September 2007), p.6., MьnchKommAktG/*Kubis* § 131 Rn 99.
Document is available at www.cac-civillaw.org/publikationen/chanturia.limited-rights.ru.rtf. last visited on 27.03.2011.
[154] Ibid.
[155] §131 of the German Stock Corporations Act.

In German GmbH managing directors may refuse to provide information and allow inspection. Unlike the German public company, there is only one ground for refusal – when there is a reason to fear that the shareholder will use the requested information for purposes not related to the company and thereby will inflict a considerable harm on the company or an affiliated enterprise.[156]

Managers in the United Kingdom do not have a right to refuse any sort of information unlike it is in Germany. Instead, the companies act provides specific documents that managers can deny to shareholders and any interested persons. With this regard, Art. 116 of the UK Companies Act provides members and any interested persons with a right to inspect and copy register of members of the company upon a request. When the company receives a request it must within five working days either (1) comply with the request, or (2) apply to the court. Therefore, the company cannot decide not to provide the shareholder with the information just on its own discretion, instead the court decides on that issue. If it applies to the court it must notify the requesting shareholder. If the court agrees with the company that the inspection or copy is not sought for a proper purpose, it shall direct the company not to comply with the request. Moreover, it even may order the shareholder to pay the company's costs. If the court made such a decision and it appears that the company may have other similar requests for a similar purpose, it may decide that the company is not obliged to comply with the requests.

Kyrgyzstan and France do not have such specific provisions on refusal to provide shareholders with documents access. Therefore, if the management board does not provide a shareholder with an access to some documentation, the shareholders can apply to the court.

Limits imposed by abuse of rights notion

As the thesis has already demonstrated, Kyrgyz company laws do not have any specific limitations to the right to information except the fact that a shareholder is entitled to have an

[156] §51a of the German limited liability act.

access to only those documents, which are provided in the law. As it was also already mentioned, this list of documents is quite extensive and can include documents, which are not directly specified in the law. For instance, the "internal documents" that a shareholder has a right to, can include a big amount of company documentation, including invoices. There is no official interpretation of this term and that is why the decision whether a certain document is subject to disclosure to a shareholder or not is wholly on discretion of a judge. Such situation of the companies was a necessity to use other limits imposed by general civil law norms in order to limit the rights of shareholders acting in a bad faith. This is how notion of abuse of rights came into an arena of corporate conflicts.

Shareholders, realizing their right to information, do not always act in a good faith and their actions are not always directed to obtaining information. Sometimes their actions have more serious goals, such as buying significant amount of shares for a minimal price, greenmail of majority shareholders for compelling them to buy shares on a higher price, or other goals directed at getting quick profit and cause harm to the company. Article 9 of the Kyrgyz Republic Civil code is dedicated to the abuse of rights norm and it provides a general rule on limits of rights exercising. According to this article, actions of individuals and legal entities are not allowed if there is intent to harm another person or entity as well as abuse rights in other forms.[157] Practitioners in law give following ways how minority shareholders can abuse their right to information: bad faith shareholders request a big amount of documents: when shareholders require documents certifying a right to ownership with regard to immovable and movable property of the company; requesting information shareholders do not specify numbers and dates of documents or require all the internal documents for a specific period of time – for 10 years for example; requesting special appearance of documents or start to argue about fee that they pay for copies, etc. All these issues become

[157] Art. 8 of the Kyrgyz Republic Civil Code.

subject of a court action.[158] Very often companies do not have time and labor force to find the documents and make all the copies and, that is why, they fail to provide the requested documents to the minority shareholder in time. The later files a petition to the court and writes an article to mass media saying that the company does not respect rights of minority shareholders. Consequently, the company ends up being with bed reputation and a necessity to regularly go to the court. In order to solve the problem, most of managers offer the shareholder to sell his shares back to the company. The shares are being sold for a significantly high price. This is what they call corporate greenmail in Kyrgyzstan and other CIS countries, where this problem is also acute.

There are only nine cases in Kyrgyzstan, where judges used Article 9 of the Civil code and none of these cases is related to shareholders' right to information. However, theoretically this article can be a limitation in rights to information in Kyrgyzstan and be a barrier for a shareholder to exercise the right to information if such exercise is detrimental to the company and its interests.

In Germany and in other European States, the problem of minority shareholders' abuse of rights to information is not that popular because in most of the countries there are limitations to this right in the statutes, the procedure of exercising the right is described or documents subject to disclosure to shareholders have not ambiguous, but specific names that are given in company acts. Nevertheless, the concept of rights abuse exists in all European countries. A French scholar believed that the basic principle of rights abuse seems simple and irrefutable. It provides that whoever abuses his legal rights should be held liable for the consequences of such abuse.[159] In addition, there are still some mechanisms how the right to information can be further limited using the notion of related to abuse of rights concepts.

[158] Ivanova E., *Abuse of shareholders' rights to information (Zloupotreblenie pravom akcionera na informaciyu)*, Business and Law magazine (Zhurnal hozyaistvo i pravo), (2008), No 12, p. 35.
[159] Vera Bolgar, *Abuse of Rights in France, Germany, and Switzerland: A survey of a recent chapter in legal doctrine*, 35 La. L. Rev. 1015 (1974-1975). Document is available at

In Germany another general limitation is proposed. This is a duty of shareholders' loyalty. According to this duty shareholders, who while exercising their rights, are able to influence the decisions of the company are obliged to take special loyalty and eliminate the abuse of rights. This obligation equally applies to both minority and majority shareholders.[160] The duty of loyalty is used with regard to the right to information. It is commonly accepted that a shareholder cannot use the information, which was obtained via exercising his right to information, against interests of the company.[161]

Consequently, limits imposed by abuse of rights provide a rule that a shareholder cannot use his right to information if it will be detrimental to the company. However, not many courts apply this norm because, according to some legal practitioners, it is not clear itself. Nevertheless, due to recent problems with minority shareholders abusing their rights, some kind of limitations should be applicable in Kyrgyzstan. An example can be taken from Germany, where right to information is limited in such a way that all the procedures and limitations are described in the law in detail and still Germany complies with all the EU Directives, which are protecting rights of shareholders. Some norms showing limitations in other countries can also be applicable in Kyrgyzstan, where only documents retaining to specific period of time can be accessible to shareholders as it is done in France.

http://heinonline.org/HOL/LandingPage?collection=journals&handle=hein.journals/louilr35&div=72&id=&page= , last accessed on 27.03.2011.

[160] Lado Chanturiya, *Limitation of shareholders' rights in the world practice*, Bremen, (September 2007), p.6., *Kьbler/Assmann,* Gesellschaftsrecht. 6. Aufl. § 15 V 3 c.
Document is available at www.cac-civillaw.org/publikationen/chanturia.limited-rights.ru.rtf. last visited on 27.03.2011.,

[161] Ibid, *Hьffer,* Aktiengesetz, 7. Aufl. § 131 Rn 33.

Chapter IV

Assessment of balance/imbalance of rights to information and their limits

Interests of shareholders and management board are not always the same. With regard to information right, shareholders want to have a right to get as much information as possible in order to know, for instance, financial situation of the business. Management board, on the other hand, wants to limit the rights of shareholders to information as much as possible because they do not want anybody to interfere with the company matters. To my mind, neither of these positions is right and good for the company itself. A balance should be established between protecting shareholders through the right to information and limits to information, which will resist abuse of rights and ensure wellbeing of the company.

The last chapter of the thesis will deal with the problem of imbalance and ways of re-balancing the right to information and its limitations under Kyrgyzstan law. This chapter will answer the main question of the thesis: how to limit the right to information taking into account the European experience.

Assessment of balance and problem of imbalance

Because of the possibility of rights abuse the author believes that the right to information cannot be absolute and should contain some limitations. Lado Chanturiya, a professor of Bremen University specializing in economic rights of countries of Caucasus and Central Asia, in her report shares this point of view and states that even though it is clear that all the EU Directives and model corporate governance codes are drafted with a purpose of

protecting shareholders' rights, all these documents are talking about rational limits to exercising of these rights.[162]

Out of all the analyzed countries, Germany has a bigger amount of limits, however, they are exhaustive and mandatory, i.e. they cannot be changed by a Charter or a shareholders' agreement. Lada Chanturiya believes that this approach is very important for post-Soviet union countries that do not have their own tradition of corporate law. Detailed laws in this sphere should help to develop corporate law, corporate culture; and that should lead to emergence of confidence and trust to companies.[163] Moreover, the German law not only admits the shareholders' right to information, but also has a detailed legal mechanism of enforcing this right. This is very important because in many countries, especially in the countries of Central Asia, rights are announced in the laws; however, sometimes it is extremely difficult to enforce the rights. This is another problem with the minority shareholders' right to information that can be also abused by majority shareholders or the management of the company. However, the author believes that providing information only during general meetings of shareholders is an extreme provision and that shareholders should have additional periods of time when information will be available for inspection. Provision of information only during general meetings works for Germany, but it might not work for other countries. An approach of the United Kingdom can be chosen. The approach gives specific time when the inspection is possible and an obligation of requesting shareholders to file the request certain time in advance of the inspection so that the company will be able to prepare the documents for the inspection.

The United Kingdom provides balance in a way that the procedure of obtaining certain information is well –described in the Companies Act and the Act specifies what precise

[162] Lado Chanturiya, *Limitation of shareholders' rights in the world practice*, Bremen, (September 2007), p.4. Document is available at www.cac-civillaw.org/publikationen/chanturia.limited-rights.ru.rtf. last visited on 27.03.2011.
[163] Ibid.

information should be available to the public, to the shareholders, and which information should not be available for disclosure and inspection. Such a detailed approach solves a problem of deciding in the court whether a certain document should be available to a shareholder or not. However, the notion of proper purpose can have a broad meaning and its meaning is still not clear. Consequently, its meaning as a limit to the right to information is also not clear. Therefore, it would be useful if legislators or the court interpreted it.

French law with regard to the right to information is not as descriptive as German or the United Kingdom law and does not provide specific right to refuse information to the shareholder. In addition it states that the management of the company should make documents available for inspection at any time. Such provision is very indefinite and can be a source of the rights abuse. However, France provides that shareholders can examine documents pertaining to the last three financial years. It is an important limit, which does not give a shareholder an opportunity to ask for a big amount of documents relating to the old times when even the shareholder himself was not a member of the company.

Kyrgyzstan as well as most of the Central Asian countries, does not have specific limits to information and the existing limits are related only to documents, which are prescribed by the law. Even though the company laws attempted to make the list of documents subject to disclosure to the public and shareholders very detailed in the Law on Securities market, the general norm regarding all the joint stock companies remained unchanged in the Stock Corporations act, which gives a very broad amount of documents available to disclosure; and some of the documents' names, such as "internal documents of the company" can have a broad interpretation and shareholders abusing their rights can rely on this fact and demand certain documents that will be impossible for the company to make available to the shareholder within the fixed by law period of time.

Therefore, the analysis showed that not all the company laws of the analyzed countries have a balance between legislators' attempt to protect rights of minority shareholders through the right to information and limits to the right to information that countries impose on minority shareholder in their laws. As far as Kyrgyzstan appeared not to have any significant limits, an attempt to give some solutions on how to re-balance the right to information will be given below.

Re-balancing the right to information and its limitations under Kyrgyzstan law

European countries have a better corporate culture and corporate experience than Kyrgyzstan. Therefore, it will be useful to take some European countries' experience with regard to the right to information to make an attempt to improve the legislation and to make it not so attractive for minority shareholders acting in bad faith and abusing their rights.

Kyrgyzstan declares a fixed right to information (Art. 82 of the Law on Joint Stock Company), however, realization of this right depends on a Charter. If the Charter does not have a procedure of exercising this right, it remains declarative.[164] Therefore, the UK provisions can be an example and a procedure should be prescribed with regard to exercising the right to information and obtaining needed documents. Namely, a request to obtain information or conduct inspection should include certain data, including names, number, character or content of needed documents. Otherwise, as an example[165] of abuse of rights, a bad faith shareholder can demand all the internal documents of the company for the year of 2010 or 1999.

[164] Lado Chanturiya, *Limitation of shareholders' rights in the world practice*, Bremen, (September 2007), p.8. Document is available at www.cac-civillaw.org/publikationen/chanturia.limited-rights.ru.rtf. last visited on 27.03.2011.

[165] A similar case was provided in the Business and Law magazine.
Ivanova E., *Abuse of shareholders' rights to information (Zloupotreblenie pravom akcionera na informaciyu)*, Business and Law magazine (Zhurnal hozyaistvo i pravo), (2008) No 12, p. 37.

Moreover, just like in France, documents pertaining to the last 3 or 5 financial years should be available to the shareholders. Another related tendency of abuse is to request a big amount of old documents; and because of changing of management boards of the company, some of the documents are impossible to find in the archive.

Another limitation is a threshold of 5% for obtaining a right to inspect books and records; otherwise a shareholder with even one share is able to inspect books and records, which is another ground for abuse of rights and getting information about real financial situation of the company with an intention to take it over.

Next limitation should concern time when inspection is available. Just like it was done in the UK, certain days, hours and time when an inspection will be available can be provided by the law. Another solution is to prescribe a certain frequency of accessing information. In Germany it could be done only during the general meeting, i.e. once a year. A higher frequency can be chosen, for example once a month or once a quarter. The reason for that is a tendency of bad faith shareholders to request a big amount of information too often with a purpose to freeze the activity of the company and make it working only for the information of the requests of the shareholder.

Probably the most important limitation is to remove all the unclear names of documents and specify what documents are available for disclosure so that bad faith shareholders could not request such documents as invoices or sale contracts under the name of “internal documents” or “materials related to significant facts in business activities”. Both of these terms can be interpreted too broad.

Because of the country’s peculiarity the author does not suggest limiting the rights of minority shareholders in Kyrgyzstan through giving the management a right to refuse providing information. In Kyrgyzstan there is a tendency of not only abusing rights from the side of minority shareholders, but also abusing rights of minority shareholders by the

management or majority shareholders. With such a possible limitation the management will always be able to find a legal ground not to provide information and the situation of minority shareholders' rights to information will be significantly worsened.

Conclusion

Recently minority shareholders' rights to information have become a popular topic in the circles of business people in the CIS countries, including Kyrgyzstan. Some countries, for instance Russia, started limiting the rights of minority shareholders' to information because of a big number of cases where minority shareholders abused their information rights and used them for detriment of the company. In spite of that many people became opponents to such amendments believing that minority shareholders' rights should be protected in order to correspond to the world corporate governance practice and that there was no need to limit the rights of minority shareholders.

The main goal of this research was to see whether there was a balance between countries attempts to protect minority shareholders' rights and limits or absence of limits to the right to information that most of the analyzed countries adopted for ensuring well being of the company without a threat of rights abuse.

Another question that the research aimed to answer was whether adopting limits to the minority shareholders' rights to information were needed and whether European company law experience could be used to limit the rights.

For reaching these goals the first chapter of the thesis analyzed company related information: information available to general public, information available to shareholders without a special request and information available to shareholders upon a request in Germany, France, the United Kingdom, and Kyrgyzstan.

As a result it was shown that in all the countries public mandatory disclosure plays an important role in the company world today and company law acts of Europe provide significant amount of information subject to public disclosure. With regard to Kyrgyzstan, the requirement of mandatory disclosure is limited and applies only to listed companies. Analysis

of the collective information showed that in general shareholders have rights to have an excess to annual accounts and reports. Also, analysis demonstrated approaches to the right to information that each of the counties follow. Thus, German system limits the company related information available to shareholders to the general meeting and its agenda. The United Kingdom does not limit the right to information to the items available at the general meeting but declares that a shareholder is entitled to have an access to certain registers, reports and contract. France allows a shareholder at any time to have an access to certain information, pertaining last three financial years. Kyrgyzstan differs from all the analyzed countries in a way that it provides an extensive list of documents that are available to each shareholder, including an internal document of the company, which is broad in the meaning and can cause abuse of rights.

The second chapter analyzed shareholders' right to access information and conduct inspection and this chapter focused on minority shareholders and their protection through the right to information. The analyzed countries' company acts show protection of minority rights through the right to information illustrated in the following ways: there is an equal right to information in all the countries; there is a right to cooperate to reach a threshold to exercise additional rights; minority shareholders also have a right to inspect books and records; and minority shareholders can sue directors through a direct or a derivative suit. Moreover, procedure of exercising the right to information and inspection in four countries was analyzed and it was shown that the United Kingdom is more advance with regard to such procedure than other countries in a way that some provisions such as a requirement of a proper purpose declaration to obtain information was a way to ensure good faith of shareholders, which are entitled to receive information. And thirdly, the enforcement of the right was studied and the analysis came to a conclusion that unlike other countries Germany provided a detailed

procedure of enforcing the right in the court and even standing of a shareholder who was refused the information access.

The third chapter focused on limits to the right to information and inspection, where first general limits imposing by each country were presented. It was concluded that Germany had the biggest number of limits, but in such a way that all the procedures and limitations were described in the law in detail; and they were mandatory. Most of the limits imposed by the UK were connected with the procedure of exercising the rights to information; France limited the right by the fact that only documents pertaining to last three years could be available to shareholders. In its turn Kyrgyzstan had only one limitation – shareholders could request only those documents, which were prescribed by the law. Then, right of the company to refuse the provision of information was analyzed and the author concluded that only German and UK management board can refuse information to the shareholders, whereas Germany describes a procedure and grounds of refusal in detail. And finally, the concept of abuse of rights and minority shareholders' rights problematic aspect related to abuse of rights was discussed. The section also covered another notion – a duty of shareholders' loyalty, which put a limit to any right of a shareholder if its exercise could be detrimental to the company.

The last chapter assessed imbalance of rights to information and their limits in four countries and the author made an attempt to re-balance or propose ways of limitation of minority shareholders' rights to information taking into account the European experience.

In conclusion, the research answered the stated questions and confirmed the hypothesis that the author had. There is no adequate balance between Kyrgyz legislators' attempts to protect rights of minority shareholders through the right to information and limits to the right to information. It was revealed that legislation of Kyrgyzstan has inadequate limits to the right comparing to Germany, France of the United Kingdom, which provide various ways of

limiting the right for preventing minority shareholders' abuse of rights. A number of the limits prescribed in the legislation of the European countries, can be implemented into the legislation of Kyrgyzstan.

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