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CORPORATE AGREEMENT AS A MEANS OF PROVIDING SECURITY IN THE COURSE OF ENTREPRENEURSHIP DEVELOPMENT*

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Abstract. A corporate agreement has become necessary for entrepreneurship development in Russia in connection with the need of participants of associations to regulate the emerging corporate relationships within the organization in the area of corporate governance and business administration. However, the decade-long experience of implementation of regulations relating to corporate agreements has posed plenty of questions, in particular, about the legal nature of corporate agreements, their scope of validity, and the liability of associations to counteragents for failure to perform their obligations due to limitations set by a corporate agreement. Therefore, the objective of this paper is to explore the legal nature and contents of the corporate agreement as a means of providing security in the course of entrepreneurship development based on analysis of court practice and reception of regulations relating to corporate agreements from foreign legal systems. The conducted research has shown that the subject field and scope of the corporate agreement are not imperatively prescribed by law. The corporate agreement in the Russian legislation has adopted general features of legal regulation common in continental Europe, whereas the contents were borrowed from the Anglo-Saxon law.

Keywords: corporate agreement; administration of legal entities; entrepreneurship; liability

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1. Introduction

The legislative framework for the institution of corporate agreement in the Russian legal system was established relatively recently, namely in 2014, when the Civil Code of the Russian Federation (CC RF) was supplemented with Article 67.2 regulating conclusion of such agreements. However, in spite of the absence of direct legislative regulation on the part of the state before the adoption of this article, corporate agreements had been employed by

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legal entities, when participants of large corporations tried to use this mechanism to solve internal conflicts of interest and organize effective and coordinated business administration led by the example of other countries. In particular, the institution of corporate agreements was widely used when organizations with the participation of foreign companies emerged in the Russian legal environment, which allowed them to apply foreign norms to the corporate relationships between participants and shareholders of such organizations in order to settle issues arising in the course of business administration.

At first, the court practice did not deem corporate or shareholders' agreements effective and generally treated them negatively. Large judicial proceedings in respect to shareholders' agreements concluded by CJSC Russian Standard Insurance and PJSC Megafon, which were regulated by foreign legal norms and ruled invalid by the court, were widely discussed in the media. As far as legal proceedings in respect to PJSC Megafon are concerned, participants of this legal entity had made a corporate agreement governed by the law of a foreign state and covering such areas as election and approval of the members of the board of directors, conditions and sequence of actions if a shareholder decided to dispose of a part or the full amount of shares belonging to them. The court hearing the case came to the conclusion that shareholders' agreements should be governed by the Russian law and charter documents of the corresponding entity rather than by foreign regulations. In the case of CJSC Russian Standard Insurance, the company's shareholders included the following provisions in the shareholders' agreement: as in the previous example, the procedure for holding general meetings and voting, as well as the conditions of how shareholders should make their contributions to the charter capital; at the same time the parties agreed on procedures different from those prescribed by the law. According to courts, such agreements, like many other agreements based on foreign regulations, were in direct contradiction to the legislation of the Russian Federation (The Resolution of the Federal Arbitration Court of the Western-Siberian region of 31 March 2006 no. F04–2109/2005 (14105-A75-11), ruling // The document has not been published. URL: <http://www.consultant.ru> (date of access: 01.12.2018); the Resolution of Moscow Arbitration Court of 26 December 2006 in respect to the case no. A40-62048/06-81-343 // The document has not been published. URL: <http://www.consultant.ru> (date of access: 01.12.2018). It should be mentioned that the courts noted that shareholders' agreements within certain organizations were acceptable only in terms of issues connected with the establishment of an association. In other words, in spite of the attempts made by legal entities to introduce corporate agreements into the business practices of the Russian legal system, at that moment, courts acknowledged the possibility of concluding only constituent agreements by shareholders. The above-mentioned decisions provided the basis for the adoption of corresponding amendments to several laws of the Russian Federation and encouraged recognition of the new legal institution and establishment of its legislative framework.

Therefore, the institution of the corporate agreement is meant to regulate the process of corporate governance in order to create favorable conditions for effective entrepreneurship and develop clearer and more flexible procedures for each individual case allowing the participants to exercise their rights and establishing certain liabilities for parties of the agreement, which encourages stability of civil circulation. However, even after the adoption of amendments to the federal laws of the Russian Federation no. 208-FZ of 26 December 1995 "On joint-stock companies" ("On JSC") and no. 14-FZ of 8 February 1998 "On limited liability companies" ("On LLC") and after the introduction of a separate article into the CC RF devoted to the corporate agreement, there is still no unequivocal position in the legal sphere regarding the legal force, essence and other issues connected with this legal category. Up to now, court practice remains uncoordinated when it comes to specific categories of disputes arising from corporate agreements made by participants of an association or shareholders. In addition, up until now, the Supreme Court of the Russian Federation has not expressed a unified position on this topic or issued an explanatory information letter; the Plenum of the Supreme Court has not published any resolutions that would work towards a single interpretation of the law and regulations governing the legal institution that constitutes the subject matter of this research. In this connection, in the course of business activities, legal entities often face problems leading to destabilization of civil circulation in general, affecting investment appeal and the chances of conducting safe business operations in Russia in particular.

2. Literature Review

Research papers written by Abramov et al. (2010), Ardalan et al. (2017); Pruner da Silva et al. (2018), Sitdikova et al. (2018) are devoted to the issues and specific features of transactions made by corporate legal entities. As far as liability for failure to perform one's obligations under corporate agreements is concerned, we studied papers by LeRoy and Redfern (1947), Baglion (2008). The issues of essence and scope of corporate agreements are discussed in the papers by Aliev (2015), Andreev (2014), Borodkin (2014) and Leus (2016). Papers devoted to the comparative analysis of the institution of corporate agreement in Russia and other countries by Masaev (2015) and Varyushin (2015) were used in this article as well.

In order to explore the legal category of corporate agreements, their essence and characteristics, we are going to analyze the legislation of the Russian Federation and mainly countries with the Anglo-Saxon legal system, as well as the existing court practice in respect to the performance of obligations by legal entities.

3. Methods

In the research, we used general scientific and specific legal methods of obtaining knowledge: the historical-legal, technical-legal, comparative-legal and sociological methods. The methodology of structured systems became the main research approach that allowed us to identify the legal nature and scope of corporate agreements.

The combination of historical-legal and comparative-legal methods helped to understand the specific features of the ways, in which historic environment influenced the development of corporate agreement institution and the impact of the Anglo-Saxon legal system on its evolution in Russia.

The technical-legal method allowed us to analyze legal norms regulating the legal nature of corporate agreements, identify their characteristics and substantiate proposals aimed at improvement of legislation towards stable development of entrepreneurship in Russia.

Based on the sociological method, we made conclusions, suggestions and recommendations aimed at legal consolidation of penalties for violations of terms set forth in corporate agreements.

4. Results

It has been established that corporate agreements are concluded so that their parties can achieve the common goal — competent and effective management of a business association or corporation and achievement of the best possible result of its operation, which reflects the long-term nature of such agreement. The document under consideration can be characterized as supportive since at the moment when it is concluded, its parties make provisions for the sequence and algorithms of their actions aimed at management of the association.

It has been found that when defining the scope of the corporate agreement at the moment of its conclusion, the parties should be guided by the principles of good faith and autonomy of will, as well as current mandatory statutory provisions.

We have identified the necessity to introduce the norm stipulating the possibility of applying for compensation as liability for infringement of the terms of the corporate agreement into Article 67.2 as a means allowing to restore

the infringed right without any risks for the non-breaching party. Besides, it should be specified in this norm that if the amount agreed by the parties as compensation for infringement of the terms of corporate agreement turns out to be lower than the losses incurred to the other party, the damaged party has a right to claim indemnification for the losses reduced by the compensation paid under the agreement.

We suppose that it is reasonable to introduce the mechanism of issuing an injunction if one of the parties of a corporate agreement commits certain actions that, according to the claiming party, can lead to infringement of the terms of the agreement and future losses that can be potentially incurred to the association. The concept of the injunction is common in the American law and can be used as one of the possible ways to protect the rights of the parties of a corporate agreement and those of the association itself in the course of business activities regulated by the corporate agreement. In our opinion, this mechanism will encourage compliance with the terms of the corporate agreement provided by all of its parties, while timely measures will allow the business association to avoid possible losses connected with breaches of arrangements set forth in the corporate agreement.

5. Discussion

As economy and law evolved, while business connections and legal relations developed, it became evident that there was a necessity of introduction of a corporate or shareholders' agreement as one of the regulators of internal corporate relationships within organizations, which would allow to coordinate the process of performing obligations and exercising the rights belonging to participants of corresponding associations in greater detail, as opposed to charter documents, which already existed at that time (Sitdikova, Starodumova, Shilovskaya 2017). As M.V. Leus notes, corporate agreements to the full extent encourage disclosure and consideration of the unique and specific character of the corporate law and corporate relationships arising in organizations. In addition, they allow expanding the scope of rights and powers of its parties, i.e. participants of business associations (Leus 2016).

Having realized that reception of the institution of corporate agreements from foreign law and wide spread of such agreements in the civil circulation between legal entities are inevitable, the Russian legislative body introduced the concepts of agreement on the exercise of the rights of participants of associations and shareholders' agreement into legislation, the essence of which is by and large the same: providing participants of associations with the right to choose the patterns of internal interactions between each other on their own, as well as the mechanism of exercising their outward rights and obligations resulting from the activities conducted by the association and the process of their administration.

The purpose of legal consolidation of corporate agreements was an attempt to equalize the positions of different shareholders in a joint stock company, including minority shareholders. Apart from this goal, a shareholders' agreement was meant to become one of the instruments for the protection of minority shareholders' interests and rights and allow them to take part in corporate governance. In his work, I.A. Masaev notes that in fact, corporate agreements can expand the scope of rights and responsibilities of a participant of association if they express a wish to become a party to such an agreement (Masaev 2015). The supporters of adoption of new norms that would provide legislative regulation of corporate agreements, which were already widely used, among other things, were guided by the necessity to specify the liability of parties for infringement of their terms. As we can see today, this task has not been achieved, since up until now, the norms relating to corporate agreements are superficial: they do not specify important fundamental issues or address the issues of liability, contracting parties and scope of such agreements. Therefore, a conclusion can be made that the Russian law is just at the outset of the way to effective regulation of corporate agreements.

The impetus to the legislative development of the corporate agreement institution can be associated with the decisions on the two most resonant court cases, involving CJSC Russian Standard Insurance and PJSC Megafon, which we mentioned earlier. Let us turn to the corporate conflict regarding the former organization. On May 30,

2003, the LLC "Russian Standard-Invest", the company "Cardiff S.A." (France) and Mr Rustam Tariko signed a shareholders agreement concerning the CJSC Russian Standard Insurance. The CJSC Russian Standard Insurance was established on March 25, 2003 by the sole founder of the LLC "Russian Standard-Invest".

The signed agreement, first, concerned the CJSC Russian Standard Insurance but didn't involve its participation. Second, it extended its effect to all shareholders of the company (both present and future) and throughout the existence of this company. It regulated the procedure for creating an already established legal entity, as well as the issues of its legal capacity, the procedure for paying in authorized capital, the structure and basic principles of management, conditions for the procedure for distributing profits, conditions for exercising the pre-emptive right to repurchase shares, the procedure for determining the market value of shares. In addition to this, the parties subordinated the agreement to the action of the law of England, even though Russian law expressly prohibited such conditions regarding a Russian legal entity. Collisions also arose with respect to such terms of the agreement as limiting the company's activities, establishing uncertainty regarding the decision-making procedure of the management bodies, for example, by obliging the company to place additional shares in favor of Cardiff S.A. at its request. The most serious violation of the agreement, which is currently directly contained in the legislation, was that the agreement established a priority action over the charter of the company. This aspect will be considered by us a later. As a result, the corporate contract was invalidated.

Whereas before the adoption of the federal laws "On JSC" and "On LLC" regarding shareholders' agreements and agreements on the exercise of the rights of participants of associations courts treated such arrangements between participants of associations negatively and often ruled them invalid, after the introduction of the above-mentioned norms in 2008–2009 the attitude of courts to this legal institution has changed. For instance, the Arbitration Court of the Samara region held alienation of shares owned by a shareholder valid due to the implementation of bankruptcy and insolvency proceedings in respect to this shareholder (the Resolution of Moscow Arbitration Court of 30 December 2010 in respect to the case no. A55-24220/2010. (Case file of the Supreme Arbitration Court. URL: <http://kad.arbitr.ru> (date of access: 20.11.2018)). In the case under examination, the shareholders of the company had entered in a corporate agreement, whereby they agreed that if bankruptcy and insolvency proceedings were implemented in respect to any party to this agreement, any shareholder, who was also a participant of the same agreement, would have the right to request alienation of shares belonging to the shareholder in question in their own favor or in favor of all parties in a proportionate manner. The court found that this provision did not contradict either specific norms contained in the above-mentioned laws or the norms of the civil legislation in general and upheld the plaintiff's claim.

After the introduction of amendments to the federal laws, preparation for the introduction of corresponding amendments to the CC RF started; therefore, Article 67.2 of the CC RF was adopted in 2014. It immediately addresses the institution of corporate agreements and has partially eliminated the gaps in the regulation of corporate agreements that existed before its adoption, but at the same time gave rise to new disputes and questions. For example, though not explicitly, Article 67.2 allows to draw a conclusion that a corporate agreement in itself is neither a document that creates new legal standards, i.e. it can't be called a local regulatory legal act, or one of internal documents of an organization whose legal force can be stronger than that of articles of association. A corporate agreement can change or supplement only non-mandatory provisions of the law while staying well within mandatory statutory provisions and charter documents of the association.

In order to understand the place of the corporate agreement in the Russian legal system, we identified the fundamental terms that guarantee that the agreement is deemed to be concluded and is held valid (according to clause 1 of Article 432 of the CC RF):

- 1) terms covering the subject matter of the agreement;
- 2) terms mentioned in the law as essential for this type of agreements;

3) terms with respect to which, in the opinion of the parties, a consensus should be reached.

Many theorists point out the fact that the legal nature of corporate agreements is somewhat different from that typical of classic civil law contracts, which is reflected in a few issues, including their subject matter (Andreev 2014). Other specialists in civil law, such as E.N. Abramova, recognize a specific aspect or object, in respect to which parties to the contract have certain legal rights and responsibilities, as the subject matter of a civil law contract (Abramova et al. 2010).

Considering the concept of corporate agreements, it is difficult to give a straight answer to what should be understood as their subject matter. However, it can be definitely concluded that none of the above-mentioned definitions or existing points of view regarding the subject matter of classic contracts can be used when speaking about corporate agreements.

According to the federal law no. 99-FZ of 5 May 2014 (as amended on 03 July 2016) “On amendments to chapter IV of part I of the CC RF and the annulment of certain provisions of legislative acts of the Russian Federation”, a corporate agreement is defined as an agreement between participants of a business association on the realization of their rights, in accordance with which they undertake to exercise these rights in a certain manner or to abstain from exercising them. Besides, it is pointed out that parties to such an agreement can establish the voting procedure in a general meeting, commit in a coordinated manner the other actions whereby the association is managed, acquire or alienate stakes in its charter capital at a price determined by such an agreement or upon the onset of specific circumstances or abstain from usage of the above-mentioned powers until the onset of specific circumstances.

By taking a closer look at clause 1 of Article 67.2 of the CC RF, one can come to the firm conclusion that the subject matter of corporate agreements concluded by participants or shareholders of corresponding business associations involves neither certain actions or inaction, things, operating results or services, but rather certain procedures for the exercise of rights possessed to participants of such association or abstaining from implementation of such rights. Thus, a corporate agreement does not establish which actions have to be performed by its parties — such agreements are concluded with respect to a particular material thing or work (service). Rather, a corporate agreement specifies how exactly, as opposed to the commonly accepted and default non-mandatory provisions of the law, its participants shall exercise their rights: how they should vote, in which cases they should abstain from voting, which decisions and under which conditions they can make, which deals to conclude etc. Essentially, a corporate agreement is meant to individualize the procedures for the exercise of rights in a business association and, accordingly, the procedures for its governance.

The current legislation does not address the contents of corporate agreements: analysis of Article 67.2 of the CC RF, Article 32.1 of the federal law “On JSC” and Article 8 of the federal law “On LLC” shows that this issue is not reflected in the law. Relying on the fact of absence of regulation of the contents of the agreements under consideration, most theorists have come to the conclusion that presently, the general rule implies that parties can include any provisions in their corporate agreement as long as it follows the condition outlined in clause 2 of Article 67.2 of the CC RF that imposes restrictions on their rights and responsibilities. According to this clause, a corporate agreement cannot impose an obligation on the participants of an association to vote according to directions of the bodies of the association or to define the structure of the bodies of the association and the competence thereof. Otherwise, parties to the agreement are free to include any rights and responsibilities in the text of the agreement that they would like to introduce into their relationships in accordance with their voluntary general consensus. In other words, since legislation lacks mandatory provisions regarding acceptable conditions that can be included in a corporate agreement by its parties or the ones imposing prohibitions or a wider range of restrictions, a conclusion can be made that the basic principle of contractual freedom can be applied to corporate agreements to the full extent (Aliev 2015).

An important issue from the perspective of the new regulation on corporate agreements introduced in the civil legislation is connected with the scope of validity of such agreements and the correlation between corporate agreements, articles of association, within which such agreement is concluded, and mandatory provisions of the civil and corporate law. Understanding the boundaries of a corporate agreement is necessary in order to defend the rights of the contracting parties from the negative consequences of incorporation of conditions therein that are either directly prohibited by the current legislation of the Russian Federation or contradict them or the contents of the articles of association.

Up until now, court practice has not yet worked out a unified position as to which provisions that are deemed contradictory to the articles of association are, therefore, recognized as void and which of them, in spite of being in direct general contradiction to the conditions and provisions of the articles of association, are still deemed valid by the court and inclusion of which into the agreement remains within the framework of the current legislation.

For instance, as a result of consideration of a case an arbitration court deemed a corporate agreement concluded by shareholders of an association void since some of its provisions contradicted and did not correlate with the federal law “On JSC” and articles of association. The parties had included provisions in the agreement changing the procedure and terms of convening the general meeting; in addition, the agreement stipulated introduction of a new governing body not mentioned in the articles of association, namely temporary administration; it also contained provisions for changing the competence of governing bodies and altering the procedure of approval of transactions made by the association. During the hearing of the case, the court of primary jurisdiction came to the conclusion that a shareholders’ agreement by its nature cannot change or supplement the current articles of association; moreover, it cannot contradict the provisions of the federal law “On JSC” (the Resolution of the Arbitration Court of the Saratov Region of 7 September 2010 in respect to the case no. A57-7487/2010 // URL: <http://www.rospravosudie.com> (date of access: 15.10.2018).

Within another dispute of interest, the plaintiff requested the court to hold invalid the provisions included in the text of corporate agreement regarding the voting procedure in the general meeting, according to which the parties assumed the obligation to vote unanimously for certain items on the agenda. The plaintiff substantiated his request by saying that, in his opinion, these provisions were in direct contradiction to mandatory regulations in respect to the shareholders’ or participants’ of an association right to vote in a general meeting at their own discretion. Courts of three jurisdictions found lawful the inclusion of such provisions in the text of a corporate agreement and identified no grounds for holding them invalid or contradicting the mandatory regulations of the current legislation of the Russian Federation (the Resolution of the Federal Arbitration Court of the Western-Siberian region of 20 March 2014 in respect to the case no. A45-1845/2013 // The document has not been published. URL: <http://www.consultant.ru> (date of access: 17.10.2018).

A logical conclusion can be drawn that, in spite of the specific sphere of application of corporate agreements, they are subject to the general rule that mandatory norms contained in laws and regulations shall prevail in the case of their legislative consolidation.

Having conducted comparative legal research into the established regulation of the institution of corporate agreement and shareholders’ agreement, which are identical concepts by their nature, in the legal framework of the Anglo-Saxon countries, continental Europe and the Russian Federation, we have come to interesting conclusions caused by the so-called double reception of the legal category under examination. The Russian legislation generally adopts the experience of European neighbors, so in the sphere of regulation of corporate agreements, there are lots of similarities with the regulations established in European countries. However, it should be taken into account that corporate agreements and the practices of the conclusion of any internal agreements between shareholders and participants of an association originated from the Anglo-Saxon legal

system, where this legal institution first appeared. Consequently, by borrowing provisions on corporate agreements developed in continental Europe over time, the Russian legislation could have adopted some features typical of the statutory regulation of the institution of shareholders' agreements in the countries with the Anglo-Saxon legal system. For example, as corporate law and the sphere of internal corporate regulations evolved in Russia, in the practice of conclusion of written agreements between shareholders and participants of corresponding associations such typical features of the Anglo-Saxon model of shareholders' agreements started to emerge as deadlock provisions and clauses on preferential right to purchase a share in a company, its part or stocks belonging to a participant of a legal entity. It should be noted that instead of including such provisions in the text of corporate agreements, parties to such agreements increasingly tend to distinguish certain types of such provisions depending on the application of the pre-emption right and on the party willing to purchase a share of the business, like in Anglo-Saxon countries. Interestingly, the actual reception of this institution was based on the model spread in European countries with features of legal regulation of corporate agreements commonly found in continental Europe, while as far as their contents are concerned, the Russian law has followed the Anglo-Saxon model.

The first references to corporate agreements in the Anglo-Saxon legal framework, or, to be more precise, to one of the types of such agreements, go back to the 1840s and first appeared in resolutions of English courts. As M.S. Varyushin notes, corporate agreements of that time, called shareholders' agreements in the countries with the Anglo-Saxon legal system, were different from those widely used by legal entities nowadays, since they constituted not an agreement between participants of a company, but rather a memorandum of a joint-stock partnership, which included such provisions as the amount of the charter capital and the size of dividends annually distributed among the participants (Varyushin 2015). Later the English law started to differentiate between the relations between the company itself and its participants (shareholders), which are of corporate nature and are regulated by charter documents of the organization, on the one hand, and the relations between participants of the organization, which have become predominantly of binding character, on the other hand.

The period when corporate agreements appeared in the USA coincided with similar business realities in England and took place in the 1850s. At that time the following legal concepts emerged and were consolidated in the court practice of the USA: voting agreements, pooling agreements and shareholders' agreements. For example, when one of the cases was reviewed by an American federal court, it was determined that in spite of the existing prohibition on making changes to mandatory norms and standards of corporate governance, the conclusion of an agreement between shareholders in respect to the exercise of their voting right resulting from the owned shares and expressed in the choice of certain candidates to enter the board of directors would not be considered a violation and would be accepted as valid (LeRoy, Redfern 1947).

Basically, corporate agreements are understood by the English law as contracts concluded either between all or some of the shareholders or between shareholders and the company (Masaev 2015). In England, apart from various judicial precedents, shareholders' agreements are regulated by the Companies Act 2006.

As previously noted, in European countries or, to be more precise, in countries with the Romano-Germanic legal system, the pre-emption right is often not recognized as an acceptable condition that can be included in a shareholders' agreement, whereas in the countries with the Anglo-Saxon legal framework provisions regarding the preferential right to purchase or sell a share in a company are among the most common ones and are recognized by court practice as valid and effective. For instance, put and call option clauses widespread in England and the Anglo-Saxon legal system, are also widely used in the Russian corporate agreement practice.

In addition, following the Anglo-Saxon model of shareholders' agreements, the Russian legal system has borrowed clauses aimed at the solution of deadlock situations by participants or shareholders of a business association. As a rule, such provisions are used when agreements are concluded by shareholders or participants of

large companies, holding companies and corporations if stocks or shares are distributed between them in such a way that it is impossible to make a decision by voting, i.e. if one group is against the positive decision about the issue on the agenda, whereas the other group is for it, but the total shares of voices are equal, so there is no majority of votes. Speaking about establishing the liability of parties to a corporate agreement in the event of its violation by one of the parties, the Russian law has followed the model set by European countries. One of the main means of protection provided to the parties is indemnity. This measure is common not only in the sphere of regulation of corporate relationships but also in the Russian civil law in general. However, just as in many European countries with the Romano-Germanic legal system, in the Russian legal framework, the mechanism of proving and compensation for losses in respect to corporate relationships on the whole and corporate agreements, in particular, raises some questions and causes certain difficulties. Up until now, the system of proving losses suffered by one of the parties to the agreement as a result of its violation by other parties has not been fully refined, since parties often have problems establishing cause-and-effect relationships between the violation and incurred losses, including a lengthy collection of evidence.

In view of the foregoing, we believe that presently the legal category of corporate agreements is only at the beginning of its formation and establishment in the Russian legal system. In our opinion, in the future it will be subject to more thorough statutory regulation; besides, it is likely that the Supreme Court of the Russian Federation will soon provide general explanatory remarks on this topic that will allow achieving unity of opinions in the course of consideration of disputable situations.

In the Russian civil law, as it is directly specified in Article 67.2 of the CC RF, corporate agreements must be made in writing; otherwise, according to the general rule, a corporate agreement can be subject to consequences of nonadherence to the simple written form prescribed by the law for particular types of contracts. This rule can be traced back to foreign legal systems where it appeared as the institution of corporate agreements emerged and further developed. In legal systems of foreign countries the necessity of concluding such contracts in the written form is confirmed, in particular, by the Model Business Corporation Act, which represents a collection or set of regulations in the area of corporate law and has had a significant impact on this legal sphere in the USA (Borodkin 2014).

Within the legal framework of foreign countries, corporate agreements can guarantee certain rights to parties, which have to be reflected in the agreement. For example, parties can make provisions allowing shareholders to sell their shares or a part of them to a third party that can be represented by a participant of the organization or an external person. Apart from that, the agreement can include clauses on the preferential right of full or partial purchase of shares belonging to another participant of the corporation at a certain price (Baglioni 2008).

In one of the cases reviewed by V.G. Borodkin, the court directed that according to the articles of association it was necessary to offer other shareholders of the company to buy saleable shares before their actual sale. This case is of interest because the shareholder made a sale of their shares to another shareholder without offering other shareholders to buy them or notifying them of the sale. On these grounds one of the shareholders requested the court to hold the deal invalid, since in their understanding the restriction on selling shares to third parties from the perspective of the notification of the intention to sell shares belonging to other participants of the company, shall also apply to alienation of shares in favor of other participants of the legal entity. The court of appeal deemed the plaintiff's demand illegal and rejected the claim, since it considered the applicable regulations to be vague and indefinite and came to the conclusion that if participants of the company are willing to establish different ways of alienation of shares, such conditions must be unambiguously reflected in the articles of association (Borodkin 2014).

Establishment of conditions in a corporate agreement regarding the pre-emption right can be caused by the wish to prevent the participation of third parties in the corporation or to increase the corporate legal capacity of one or several minority shareholders.

However, in practical terms, the question about the purchase price of such shares arises. In foreign countries with various legal frameworks, this issue is solved in different ways. For example, the American model of corporate agreements uses the rights of first refusal and first offer.

The practices of share price determination in the English law are of interest, because corporate agreements in this legal system can include two possible models depending on the rights provided to majority and minority shareholders: the drag-along right implies that a shareholder of an entity sells their stake, they have the right to force the remaining shareholders to join the deal and sell their shares to the same prospective owner, while the tag-along right implies that a shareholder can join in the deal between another shareholder and a third party if the former sell their shares to the latter and the terms of such transaction are favorable for the joining party (Borodkin 2014). The purchase of their shares must be made at the same terms and conditions as the initial deal. This right protects minority shareholders as the weakest participants of a corporation compared with majority shareholders. We believe that this rule should also be introduced in the legislation of the Russian Federation.

Conclusions

In the course of the research of the legal category of corporate agreements, their essence and characteristics, we have come to the conclusion that the subject matter of corporate agreements concluded by participants or shareholders of corresponding business associations involves neither certain actions or inaction, things, operating results or services, but rather certain procedures for the exercise of rights possessed to participants of such association or abstaining from implementation of such rights. Such procedures specify the exact way, in which the parties shall exercise their rights as opposed to the commonly accepted and default non-mandatory provisions of the law.

Apart from the conditions mentioned in Article 67.2 of the CC RF, the contents of a corporate agreement may include the following provisions: an option clause expressed by providing an irrevocable offer to one of participants of the association or a third party by a party to a corporate agreement to conclude a purchase and sale contract in respect to the shares owned by the initiator of the offer upon the onset of specific circumstances; a clause on pre-emption right; and deadlock provisions.

The conclusion has been drawn that if a party to a corporate agreement violates the clause that establishes the preferential right to purchase shares, the other party can demand transfer of the rights and responsibilities of the buyer to it by judicial means.

Based on the comparative analysis of the Russian law and the law of the countries with the Anglo-Saxon legal system, we have found mixed reception of the regulations regarding corporate agreements by the Russian legal framework, which makes it much harder to implement these norms in the entrepreneurial activities conducted by legal entities. In common-law countries liability is established for infringement of corporate agreements by its parties; besides, there are also some protection mechanisms in place. If a corporate legal entity acts as a party and participant of a corporate agreement, it is possible to include a provision in this document enabling the organization to prevent the shareholders from taking particular actions or not to accept their instructions that in any way contradict the concluded effective agreement. Also, the text of an agreement can contain clauses according to which articles of association can be changed only if all shareholders agree to that.

It is planned to conduct further more detailed research based on the court practice existing in Russia and other countries regarding liability for infringement of corporate agreements; in addition, such research will help to unify the legal norms of Russia and foreign countries.

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