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CORPORATE AGREEMENT AS A TOOL FOR STIMULATING PROGRESSIVE ENTERPRISE DEVELOPMENT

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A corporate agreement currently appears to be a promising tool for stimulating the progressive development of industrial enterprises. This paper examines the possibilities of its timely and correct use so that a healthy climate in the team of employees contributes to increased stability and a steady increase in labor productivity, as well as the profitability of the enterprise.

Keywords: corporate agreement, enterprise, workforce, administration, manager, progress, development.

КОРПОРАТИВНЫЙ ДОГОВОР КАК ИНСТРУМЕНТ СТИМУЛИРОВАНИЯ ПРОГРЕССИВНОГО РАЗВИТИЯ ПРЕДПРИЯТИЙ

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Перспективным инструментом стимулирования прогрессивного развития промышленных предприятий в настоящее время представляется корпоративный договор. В данной работе рассматриваются возможности его своевременного и корректного использования для того чтобы здоровый климат в коллективе сотрудников способствовал повышению стабильности и неуклонному росту производительности труда, а также рентабельности предприятия.

Ключевые слова: корпоративный договор, предприятие, трудовой коллектив, администрация, руководитель, прогресс, развитие.

The relevance of this study is emphasized by the fact that the corporate agreement was officially enshrined in Russian legislation only seven years ago, when Article 67.2 was introduced into the Civil Code of the Russian Federation, which was supposed to unify the provisions of federal laws. The relevance of the issue under study is also due to the fact that a year later, in 2015, this Code and federal laws - on joint stock companies and limited liability companies - received appropriate additions, as well as changes intended to eliminate conflicts that arose between them. As the Civil Code of the Russian Federation continues to transform, the institution of a corporate agreement should be recognized as still far from being fully developed, and its key provisions relating to the parties to a corporate agreement, essential conditions, as well as measures of liability for violation of the above-mentioned conditions, are subject to numerous clarifications.

Only as all the necessary changes and clarifications are made to the relevant legislative acts of the Russian Federation will the debate about the corporate agreement in the world of academic theorists and practitioners come to its logical conclusion. The author of this study is confident that a correct understanding of the opportunities that a corporate agreement gives to domestic commercial actors, and the natural restrictions it imposes, which its participants must strictly adhere to, will definitely contribute to the timely overcoming of this humanitarian crisis that has long arisen. The topic of this work is the legal regulation of a corporate agreement. This agreement is intended to ensure that participants in a business company can legally and freely exercise their corporate rights.

The conclusion of a corporate agreement is similar to an agreement on the exercise of the rights of participants in a limited liability company or a shareholder agreement, and its demand in continental law and in Anglo-Saxon law is quite high. But if in foreign legal orders a corporate agreement at the doctrinal and practical level has been implemented for a long time, then the domestic model of corporate agreements still requires significant clarification.

It seems that the study of the legal regulation of a corporate agreement in the future will make it possible to form an adequate system of means to counter the situation in which the shortcomings in the legal status of a corporate agreement in domestic legislation do not allow full use of the original capabilities of this document in world practice. It is understood that the continuation of the coronavirus pandemic and the ensuing self-isolation regime may further significantly contribute to the acceleration of the global economic downturn, which, in particular, will be overcome by the correct use of the wide range of possibilities of the corporate agreement. Therefore, a scrupulous analysis of foreign models of a corporate agreement, which were taken into account when introducing amendments in this area to the Civil Code of the Russian Federation, can have a significant impact on the formation of a comprehensive understanding of the quality and condition of its compromise model. The degree of scientific development of the research topic. Well-known civil law scholars and economists paid attention to the study of the problems of legal regulation of a corporate agreement in their works: A. V. Asoskov, D. Biryukov, V. G. Borodkin, M. S. Varyushin, A. G. Grigorieva, S. P. Grishaev, Y. Dianova, V. V. Dolinskaya, A. N. Kirsanov, E. A. Kondratyeva and others. The topic of corporate agreement has been widely covered by such authors as O. G. Lazarenkova, D. V. Lomakin, N. O. Mironova, A. Nesterenko, O. Rybina, V. V. Stepanov, E. A. Sukhanov, S. I. Fedorov, V.A. Vogel, I. S. Shitkina, H.-I. Schramm et al., whose works were used in writing this work.

This topic has become the object of attention of a significant number of scientific organizations and institutions. However, the rapid development of the social situation and the force majeure circumstances included in it constantly encourages us to look for new effective solutions where traditional views and algorithms lose their traditional effectiveness. The object of the study is social relations emerging in the sphere of legislative regulation of corporate agreements in the Russian Federation. The subject of the study is the rules of law governing social relations arising in the sphere of legal regulation of a corporate agreement in the Russian Federation. The purpose of the research is to study the institution of corporate agreement in the Russian Federation in history and modern times, as well as to substantiate a number of provisions for improving the current legislation in the implementation of the norms of this institution [1].

The scientific novelty of this study lies in the comprehensive analysis of the legal regulation of a corporate agreement, as well as the history of its emergence in Russia. Changes in the regulation of legal relations in the sphere of a corporate agreement are proposed; the need to make changes to a number of articles of the Federal Law of December 26, 1995 N 208-FZ "On Joint-Stock Companies" regarding the corporate agreement is justified. The study and analysis of the state of the corporate agreement was carried out on the basis of the practice of applying the Federal Law of December 26, 1995 No. 208-FZ "On Joint-Stock Companies" and the Federal Law of February 8, 1998 No. 14-FZ "On Limited Liability Companies". The regulatory framework for the study is the Constitution of the Russian Federation, the Civil Code of the Russian Federation, the Code of the Russian Federation on Administrative Offences, Federal Law of February 8, 1998 No. 14-FZ "On Limited Liability Companies", Federal Law of December 30, 2012 No. 302 -FZ "On Amendments to Chapters 1, 2, 3 and 4 of Part 1 of the Civil Code of the Russian Federation" supplements the content of the first paragraph of paragraph 1 of Article 2 with the following words "regulates relations related to participation in corporate organizations or their management (corporate relations) "

The theoretical basis of the study was the works of domestic and foreign scientists who studied the problems of legal regulation of a corporate agreement. In the course of this study, works directly related to the topic were used by such authors as A. V. Asoskov, D. Biryukov, V. G. Borodkin, M. S. Varyushin, A. G. Grigorieva, S. P. Grishaev, Y. Dianova , V. V. Dolinskaya, A. N. Kirsanov, E. A. Kondratyeva, O. G. Lazarenkova, D. V. Lomakin, N. O. Mironova, A. Nesterenko, O. Rybina, V. V. Stepanov , E. A. Sukhanov, S. I. Fedorov, V.A. Vogel, I. S. Shitkina, H.-I. Schramm et al. The empirical basis of the study is judicial acts of courts of general jurisdiction, arbitration courts, including Resolutions and Determinations of the Constitutional Court of the Russian Federation, Review of judicial practice of the Supreme Court of the Russian Federation in the field of implementation of the mechanism of legal regulation of a corporate agreement [2]. The methodological basis of the work is based on the principles of objectivity and consistency, information and system approaches. The work uses general scientific dialectical, formal legal, historical, comparative methods, methods of analysis and synthesis, etc. Practical significance of the research topic. The conclusions of the thesis can be applied within the framework of law-making and law enforcement activities, and some of the research results can be used when delivering lecture courses and conducting seminars on "Civil Law", specifically corporate law, when drawing up educational and methodological complexes for special courses on corporate law [3].

Propositions:

1. It is necessary to state paragraph 1 of Article 67.2 of the Civil Code of the Russian Federation in the following wording: "Participants of a business company have the right to conclude among themselves a corporate agreement on the exercise of their corporate rights (agreement on the exercise of the rights of participants in a limited liability company, shareholder agreement), in accordance with which they undertake to exercise these rights in a certain way or to abstain (refuse) from exercising them, including voting in a certain way at the general meeting of the company's participants, in concert to carry out other actions to manage the company, to acquire or alienate shares in its authorized capital (shares) at a certain price or upon the occurrence of certain circumstances, or refrain from alienating shares (shares) until the occurrence of certain circumstances." The exclusion of the words "or some of them" from this paragraph will allow maintaining good relations between all members of the business society, and having a common position for all members in the process of resolving key issues of the activity of this company.

2. Paragraph 4 of Article 67.2 of the Civil Code of the Russian Federation should be stated in the following wording: "Participants in a business company who have entered into a corporate agreement are obliged to notify the company of the fact of concluding a corporate agreement and its contents. In case of failure to fulfill this obligation, the company's participants who are not parties to the corporate agreement have the right to demand compensation for losses caused to them." The removal from this paragraph of the words "at the same time, its contents are not required to be disclosed" seems to be a circumstance of fundamental importance, since this will eliminate the possibility of a conflict of interests of a business company.

3. Point 3 of Article 8 of the Federal Law on LLC should be stated in the following wording: “The founders (participants) of the company have the right to enter into an agreement on the exercise of the rights of the company’s participants, according to which they undertake to exercise their rights in a certain way and (or) to refrain (refuse) from exercising the specified rights, including voting in a certain way at a general meeting of company participants, agreeing on a voting option with other participants, selling a share or part of a share at a price determined by this agreement and (or) upon the occurrence of certain circumstances, or to refrain (refuse) from alienating a share or part of a share before the occurrence of certain circumstances, as well as carry out other actions in concert related to the management of the company, the creation, activities, reorganization and liquidation of the company. Each founder (participant) of a company has the right to conclude only one agreement on the exercise of the rights of company participants. Such an agreement is concluded in writing by drawing up a single document signed by the parties, or in the form of an electronic document called a “smart contract”. The inclusion in the content of this paragraph of the addition “Each founder (participant) of a company has the right to conclude only one agreement on the exercise of the rights of members of the company” allows each founder (participant) of a business company to strictly adhere to their responsibilities. The inclusion in the content of this paragraph of the addition “or in the form of an electronic document called a “smart contract” will allow contracts to be concluded in the absence of the parties, which will make the process of signing them more convenient and less expensive.

4. Point 1 of Article 32.1 of the Federal Law on JSC should be stated in the following wording: “A shareholder agreement is an agreement on the exercise of rights certified by shares and (or) on the specifics of the exercise of rights to shares. Under a shareholder agreement, its parties undertake to exercise in a certain way the rights certified by shares and (or) rights to shares and (or) to refrain (refuse) from exercising these rights. A shareholders' agreement may provide for the obligation of its parties to vote in a certain way at the general meeting of shareholders, to agree on a voting option with other shareholders, to acquire or alienate shares at a predetermined price and (or) upon the occurrence of certain circumstances, to refrain (refuse) from alienating shares until the occurrence of certain circumstances, as well as carry out other actions in concert related to the management of the company, the activities, reorganization and liquidation of the company. The shareholder agreement is concluded in writing by drawing up a single document signed by the parties, or in the form of an electronic document called a “smart contract”. The inclusion in the content of this paragraph of the addition “or in the form of an electronic document called a “smart contract” will allow contracts to be concluded in the absence of the parties, which will make the process of signing them more convenient and less expensive.

The work done during this study allows us to draw the following conclusions, designed to reflect the ways and prospects for continuing work on the presented topic:

1. A corporate agreement in the practice of Russian companies can play a more significant positive role than the capabilities of domestic legislation currently allow it. Although, when forming the provisions of the Civil Code of the Russian Federation that are directly related to the corporate agreement, the European and American traditions of the functioning of this document were to some extent taken into account, however, a detailed interpretation of the opportunities it brings to companies still remains only a medium-term perspective.

2. At the moment when the development of provisions on a corporate agreement in Russian legislation acquires sufficient functional significance, this document will become an organic continuation of the charter and constituent documents of the corporation as a whole, in no way and in no way contradicting any of them. In the course of the development of domestic legislative initiatives in this direction, it is necessary to achieve such a state of a corporate agreement when they can neither cancel, nor replace, nor replace any of the constituent documents, but supplement them in a way that only the genre and style of documentation peculiar to it allows .

3. A corporate agreement cannot and should not infringe upon the rights of any participants in the corporation, even if they own, at first glance, a very small number of shares (shares). This document must be structured in such a way that anyone’s minority status does not serve as a basis for depriving a company participant of all or some of the rights due to him by law. Only in this case

will the domestic sample of a corporate agreement become a logical continuation of the best Russian and world traditions of legislative initiatives in the above-mentioned direction.

4. In the content of the corporate agreement, all participants in the business company signing it strive to include a maximum of essential conditions so that in the event of disputes regarding their rights, the court can take into account exactly the argument that seems most weighty to each of these parties. Nevertheless, as practice shows, the content of a corporate agreement, as well as the totality of its essential terms, still needs much greater certainty in order for each court, on currently existing legal grounds, to be able to provide real assistance to the party to the corporate agreement who has applied to the court.

5. In general, the consistent unity of modern legislative acts of the Russian Federation, however, leads to a certain difference in the interpretation of the parties to a corporate agreement, and, accordingly, the rights and interests belonging to them under this agreement. However, at the same time, it is not so much the legislation relating to the corporate agreement itself that requires clarification, but rather fundamental concepts, for example, a clearer distinction between the concepts of a founder and a participant in a business company, etc.

6. The issue of protecting the rights and interests of a party to a corporate agreement also needs additional study. In general, it will be possible to fully protect the rights and interests of a party to a corporate agreement only if the relevant domestic legislation undergoes a process of significant improvement.

7. In order to propaedeutic the emergence of a conflict of interest, it is necessary to introduce into the relevant legislation of the Russian Federation a ban on concluding more than one corporate agreement by the same participant in a business company.

8. With the progressive development of the digital economic and legal environment, all necessary provisions that in one way or another relate to the electronic form of a shareholder agreement should be enshrined in the Federal Law "On Joint Stock Companies". At the same time, the above law should provide for the execution of a corporate agreement in a remote format, which does not involve the participation of the parties, called a smart contract. Along with this, it will also be necessary to introduce into the text of this law a number of other categories of vital legal structures that will allow the rights of participants in joint-stock companies to be properly implemented and protected.

9. The practice of applying a corporate agreement on the territory of the Russian Federation shows that, for the time being, such an agreement does not yet allow us to properly protect the rights of participants in a joint-stock company. However, it should be assumed that the introduction of the above-mentioned amendments to modern legislative acts of the Russian Federation will make the corporate agreement an effective tool for protecting shareholder rights. At the same time, the very fact of its signing will act as an additional argument in favor of resolving issues related to defending the interests of this corporation.

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РАЗВИТИЕ КАДРОВОГО ПОТЕНЦИАЛА ДЛЯ ПОВЫШЕНИЯ КОНКУРЕНТОСПОСОБНОСТИ ГОСУДАРСТВЕННЫХ УЧРЕЖДЕНИЙ

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Статья посвящена вопросу повышения конкурентоспособности государственных учреждений через грамотную оценку кадрового потенциала и эффективное его развитие. Авторы статьи характеризуют главные элементы структуры кадрового потенциала государственных учреждений на современном этапе их деятельности, а также раскрывают основные методы оценки кадрового потенциала.

Ключевые слова: кадровый потенциал, конкурентоспособность, государственные учреждения.

DEVELOPMENT OF HUMAN RESOURCES TO INCREASE THE COMPETITIVENESS OF PUBLIC INSTITUTIONS

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The article is devoted to the issue of increasing the competitiveness of public institutions through a competent assessment of human resources potential and its effective development. The authors of the article characterize the main elements of the structure of the personnel potential of state institutions at the present stage of their activities, and also reveal the main methods of assessing the personnel potential.

Keywords: human resources, competitiveness, public institutions