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PROBLEME BEI DER BESTIMMUNG DES GEGENSTANDS UND DER BEDEUTUNG DER GESELLSCHAFTSVEREINBARUNG

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Zusammenfassung: In modernen Marktbeziehungen werden Unternehmensrechte häufig verwendet, die meisten juristischen Personen haben nichteigentumsrechtliche oder persönliche Nichteigentumsrechte, die mit Unternehmensbeziehungen verbunden sind, und die Zivilrechtsdoktrin umfasst Unternehmensbeziehungen als Gegenstand des Zivilrechts, Forschung zur Bestimmung der Gegenstand und Inhalt von Unternehmensverträgen. Daher ist es wichtig, die Probleme bei der Bestimmung des Gegenstands und Inhalts einer Unternehmensvereinbarung zu untersuchen**.**

Schlüsselwörter: Gesellschaftsvertrag, Vertragsgegenstand, Eigentumsrechte, Gesellschafter, genehmigtes Kapital der Gesellschaft, Gesellschafter, Dritter, aktive Verpflichtungen

PROBLEMS OF DETERMINING THE SUBJECT AND MEANING OF THE CORPORATE AGREEMENT

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Abstract: In modern market relations, corporate rights are widely used, most legal entities have non-property or personal non-property rights associated with corporate relations, and the civil doctrine includes corporate relations as a subject of civil law, research to determine the subject and content of corporate contracts. Therefore, it is important to study the problems of determining the subject and content of the corporate contract.

Keywords: Corporate contract, subject of the contract, property rights, company participants, company charter capital, company participants, third party, active obligations.

Due to some differences between civil-legal contract and a corporate agreement, the subject and the meaning of these types of agreements are understood differently. The concept of the subject of the contract does not exist in civil law, moreover, the authors of civil law books are very reluctant to give a detailed definition of this term, although, they prefer to describe it through specific examples.

The relevance of the problem of determining the subject of a corporate contract is clear, because without paying attention to this issue, it is impossible to have understanding what is included in the corporate contract, what protection methods are provided to the sides and what liability measures are taken for violating the obligations stipulated in the contract.

It is widely known that the important terms of a classical civil legal contract, except for the provision on this subject, conditions considered important or necessary for this type of contract in the law, as well as all conditions that need to be agreed upon by one of the parties (Article 364, Civil code). The subject of the contract is a system-forming factor, depending on the legal nature, type, and type of the contract, which determines the sum of rights and obligations of legal relations arising on the basis of this contract. There are different opinions about the subject of the contract in civil literature.

In our opinion, the subject of the Agreement may be the object of future legal relations arising on the basis of the concluded agreement, including things, property rights, works, services, intellectual activity results, intellectual and entrepreneurial individualization tools, intangible benefits, as well as the actions of the parties, their factual and legal actions (inaction), rights and obligations.

The subject of a corporate agreement is the action (or object) for which the relevant corporate agreement is concluded. In our oint of view, such factual and legal actions (inaction) are related to the parties to the contract on the exercise of their corporate rights in a certain way (until their exercise is fully preserved), as well as to economic societies and their internal economic management. are other agreed actions of the participants [1, 24]. The subject of the corporate agreement is the obligations of the parties on the conditions and procedures for the exercise of corporate rights, passive obligations to refrain from any actions arising from the essence of corporate relations, and (or) the exercise of their corporate rights confirmed by shares. are active liabilities (shares), rights to shares (shares).

As M.I.Braginsky [2, 315-317] pointed out, in the most elementary form, the subject is expressed in the formula "what and how much".

According to Y.N. Andreev and Y.P. Praslova, the main content (subject) of a corporate contract and, at the same time, legal consequences are not the emergence, modification, cancellation of civil (corporate) rights and obligations (as in an ordinary contract as), rather, by restricting their (subjective) corporate rights (abstaining from exercising) corporate rights, imposing obligations of an active-passive nature, determining the procedure (conditions) for the implementation of the existing subjective corporate right regarding the transfer of these restrictions in a certain way [3, 177-183].

In our opinion, such an approach is absolutely acceptable for a corporate contract, according to which participants "use these rights in a certain way or waive (refuse) to exercise them, including voting in a certain way at the general meeting of the company's participants, carry out other actions on the management of the company in an agreed manner, purchase or alienate the authorized capital (shares) of the company at a certain price or when a certain situation occurs, or undertakes to refrain from alienating its shares until the appropriate situation occurs".

Determining the subject and content is important in the legal construction of the corporate contract. The actions of the participants aimed at exercising corporate rights in a certain way, as well as the inaction of refusing to exercise these rights, do not arise from the position of the obligation of the parties as an element of the

contract that enforces the right in the context of the institution of the corporate agreement, but rather determines the essence of the agreement itself, the subject of its execution, or individualizes from the condition position on the subject of the contract.

For example, after studying the contract of sale, V.V. Vitryansky writes: "the subject of the contract, or more precisely, the subject of the obligation arising from the contract, is the action of the obligee to perform a certain action or refrain from performing the action. - the subject of the sales contract is the actions of the seller to transfer the goods to the buyer as their property and, accordingly, the actions of the buyer to accept this product and pay the specified price for it" [4, 284]. At the same time, the Roman jurists defined the object of sale - the thing (the movable or immovable property that the seller has, which the seller will acquire in the future), as well as the right to be alienated (servitude, obligation, things and rights It is worth noting that it was called plami (property and inheritance) [5, 269].

Similarity in terms of the constructive nature of the agreements - harmony of actions and unity of purpose - is more clearly visible. As for corporate contracts, we can talk about the joint exercise of rights confirmed by shares for the sole purpose of managing the company or performing coordinated actions (inaction) on the sale of shares. A constructive feature for a simple partnership agreement is the unity of actions to achieve a single goal [6, 134-141].

However, there is a contrary opinion in the legal literature. In particular, V. Kononov emphasizes the following differences: firstly, the author talks about the absence of property relations related to joint activity. Secondly, the shareholders' agreement does not focus on the emergence of legal relations involving third parties, which is also confirmed by the absence of elements necessary for representation [7, 28]. In our opinion, neither the first nor the second points of the author seem to be convincing enough. According to the first opinion of V. Kononov, the provision on the need to include the property contribution of the partners of this joint activity agreement is not present in the shareholder agreement.

The legislation does not define the type of shares, but defines the rights and powers of shareholders. At the same time, the share package of each party entering into the contractual relationship is important in the shareholding agreement, because it determines the amount of rights that the parties to the shareholding agreement will receive by performing joint activities.

Regarding the V.Kononov's second opinion, it should be noted that the effect of the shareholding agreement is indirectly applied to the company with which the shareholding agreement was concluded, as well as to other shareholders who are not parties to this agreement. At the same time, it is not necessary for all shareholders to participate in joint events, for example, a general meeting. In this case, it is sufficient to issue a power of attorney. In American corporate law, there is a special type of shareholder agreement - performance of actions on the basis of a power of attorney agreement (Proxy agreements). This agreement covers both shareholders who intend to vote in a certain way, and shareholders who present irrevocable proxies (irrevocable proxies) that give the right to vote to one or more persons with all their shares, which are also shareholders , may also be third parties.

This situation is related to a serious component of the management element inherent in corporate relations, the solution of which is aimed at concluding a shareholder agreement [8, 36-47]. This type of shareholding agreement clearly indicates that the property (shares) belonging to the parties to the agreement will be combined in order to achieve a single goal (result) in the course of relations with third parties (other shareholders) [9, 235-236].

A.A. Kuznesov also denied the unity of the shareholding agreement and the ordinary partnership agreement, saying that the only qualifying feature of the shareholding agreement is the common goal of the shareholders, which their joint efforts are aimed at achieving. From this basis, the author draws a very controversial conclusion: "...thus, an unknown agreement on joint activity between shareholders appears" [10, 10]. At the same time, the shareholder agreement is not provided for in the legislation.

If the shareholding agreement is not recognized as a unit of cause type with an ordinary company agreement, the application of the norms of one agreement on the basis of similarity to another creates serious obstacles in judicial practice, because the court can refer to the lack of inherent similarity of the agreements, may also refer to the absence of general norms applicable to institutions remaining in a separate agreement.

In foreign legal systems, it is noted that a corporate contract can be drawn up on the basis of an ordinary company model (Gesellshaften des burgerlichen Rechts) [11, 25]. However, there are other views on the nature of corporate agreements, including counter-provisions that exclude the possible classification of a corporate agreement as an ordinary partnership agreement.

In our opinion, there is no clear cut on the issue of the subject of the corporate agreement, because this type of agreement, as a rule, can have two subjects. The first, as we mentioned above, is similar to the subject of an ordinary partnership agreement and is used in cases where organizational obligations with a single purpose are defined in the agreement. The second subject of the agreement occurs in cases where the shareholders determine the procedure for the disposal of shares within the framework of the corporate agreement. Thus, it can be concluded that there is no unity of the subject of the corporate contract, because this type of contract involves mixed contracts consisting of several obligations that differ from each other in their legal nature.

It can be concluded that the main important condition of the corporate contract is its subject, because if the contract does not have clear instructions on its subject, it becomes impossible to perform it and the contract actually loses its meaning and therefore should be considered unstructured. The subject of the contract should include a certain set of parameters, including their qualitative and quantitative characteristics.

References:

1. Каржавина Н.С. Юридическая природа внутрикорпоративного договора: автореф. дис. … канд. юр. наук. 12.00.03. Москва, 2009. 24 с.
2. Брагинский М.И., Витруанский В.В. Договорное право. Книга первая: Общие положения. 2-е изд. М.: Статут, 2005. – С. 315–317.
3. Андреев Ю.Н., Праслов Ю.П. О понятии и месте корпоративных соглашений в системе гражданско-правовых соглашений // Известия Юго-Западного государственного университета. 2013. № 4. С. 177–183.
4. Витруанский В.В. Договор купли-продажи и его отделные виды. М.: Статут, 1999. – 284 с.
5. Муромцев С.А. Гражданское право Древнего Рима. – М.: Статут (Классика российской цивилистики), 2003. – 269 с.
6. Гладнева Е.П., Праслов Ю.П. Особенности предмета и содержаниуа корпоративных соглашений // Актуалные проблемы экономики и права. 2015. – № 3. – С. 134–141.
7. Кононов В. Проблемы предмета и содержания соглашения участников хозяйственных обществ по российскому праву. Ch. 1 // Корпоративный юрист. 2010. N 10. С. 28.
8. Шиткина И.С. Соглашения акционеров (договоры об осуществлении прав участников) как источник регламентации корпоративных отношений // Хозяйство и право. 2011. – № 2. – С. 36 - 47.
9. Molano-Leon R. Shareholders' Agreements in Close Corporation and their enforcement in The United States of America // Universitas. Bogota (Colombia). 2008. – № 117. – P. 235, 236.
10. Кузнецов А.А. Некоторые проблемы совместного осуществления прав акционера // Вестник Высшего Арбитражного Суда РФ. 2010. – № 10.
11. Суханов Е.А. Уставный капитал хозяйственного общества в современном корпоративном праве // Вестник гражданского права. 2012. – № 2. – С. 25.