

**THE LEGAL INSTITUTE OF THE CORPORATION IN MODERN
RUSSIAN LEGISLATION: PROBLEMS AND PROSPECTS
OF DEVELOPMENT**

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The article presents the examination of the institute of corporation in the Russian Federation. The article analyzes the current state of legislative regulation of this legal field, its problems and prospects. The work is based on the norms of the Civil Code, Federal Laws "On Joint Stock Companies" and "On Limited Liability Companies", as well as on the provisions of the Concept of the Development of Civil Legislation in the Russian Federation.

Key words: *corporation, corporate governance, Joint Stock Company, Limited Liability Company, authorized capital.*

During the existence of the USSR, its planned economy did not feel the need for such a legal institution as corporations in their modern form. Accordingly, in the Soviet years, almost all scientific research in this area was conducted in a very limited format, and those developments in the field of corporate law that developed in the pre-revolutionary period remained unclaimed.

At the same time, from the moment of independence to the present, market economic relations in the Russian Federation are in the process of continuous complication and intensification. As a result, a Russian legislator faces a lot of challenges, one of which is the need for thorough legal regulation of the institution of corporations.

Starting to analyze the current state and the role of the corporation institution in the Russian law, it seems necessary, first of all, to understand how clearly the concept of "corporation" is fixed in it. At the same time, considering this issue, it is impossible not to agree with E. A. Sukhanov that: "The construction of a legal entity – one of the main participants in civil property relations still remains the subject of various discussions in domestic civil law, and a generally recognized approach to its disclosure has not yet been created" [Sukhanov 2014: 10].

Nevertheless, in the Civil Code of the Russian Federation, paragraph 1 of Article 65.1 states that: "Legal entities whose founders (participants) have the right to participate (membership) in them and form their supreme body..." [Grazhdanskij kodeks Rossijskoj Federacii 2021].

The example of the legal definition above reveals the problems related to the legal regulation of the institution of a corporation in Russia. In particular, if the first attribute of a corporation (membership) contained in the definition does not cause discussion, then the second attribute (formation by members of the supreme governing body of the corporation) is not transparent.

Thus, it becomes obvious that the definition of the term "corporation" should be given based on its characteristic distinctive features in comparison with other legal entities.

Based on the above characteristic features and differences, the following definition of such a phenomenon as "corporate legal entities" can be given. They should be understood as: "legal entities whose founders (participants) have the right to participate (membership) in the formation of property (in the form of contributions to the authorized capital, shares, contributions) and the supreme governing body, as well as acquire corporate (membership) rights and obligations in relation to the legal entity created by them" [Zaslavskaya 2019].

At the same time, it should be clearly understood that even this definition is not ideal and may eventually become outdated and undergo revision. After all, as G. E. Avilov rightly notes: "the border between corporations and non-corporations is very conditional due to the existence of corporations of one person" [Avilov 2006].

Let's proceed directly to the analysis of the legislation of the Russian Federation, namely Federal laws: "On Joint Stock Companies"; "On limited Liability companies", etc.

The idea of domestic legislators is generally clear. With the help of narrowly focused regulatory legal acts, they want to achieve a more detailed and elaborated regulation of such an important legal institution. However, this path turns out to be fraught with problems, primarily due to the fact that in some cases the provisions of these laws come into conflict with the norms of the Civil Code, giving rise to law enforcement conflicts.

It is also worth noting the instability of the part of the legislation on corporations, which is represented by Federal Laws. Frequent changes in the provisions of the law introduce unjustified confusion in legal relations in the field of corporate law.

The reason for this is that the Civil Code and Federal Laws are based on diametrically opposite approaches. While the Law "On Joint-Stock Companies" is inspired by US legislation in this area, the Civil Code is based on samples of continental law (Germany). As a result, taking into account the changes made, a not quite successful "mixture" of poorly consistent provisions has been formed.

In the future, it seems inevitable to reduce the number of individual laws regulating corporate relations and replace them with a single act that combines their

content and eliminates contradictions between their provisions. In particular, such a goal is declared in the Concept of the Development of Civil Legislation of the Russian Federation, which states the need to: "reduce the set of laws that establish the features of the civil status of certain types of business entities" [Konceptiya razvitiya grazhdanskogo zakonodatel'stva Rossijskoj Federacii 2009].

Turning from the consideration of the general, doctrinal problems of the legislation of the Russian Federation of penitent corporations to more specific and practical ones, it seems possible for us to single out, in our opinion, two of the most important of them.

The first problem concerns the authorized capital of corporations and, considering it, we must again make a reservation that Russian legislation in this area is largely guided by the norms of Western European countries. Similarly, in the Russian Federation there is also a condition on the minimum amount of authorized capital.

According to paragraph 1 of Article 14 of the Federal Law "On Limited Liability Companies": "The size of the authorized capital of the company must be at least ten thousand rubles" [Ob obshchestvah s ogranichennoj otvetstvennost'yu: Federal'nyj zakon 2021]. In accordance with Article 26 of the Federal Law "On Joint Stock Companies": "The minimum authorized capital of a public company should be one hundred thousand rubles. The minimum authorized capital of a non-public company should be ten thousand rubles" [Ob akcionernyh obshchestvah: Federal'nyj zakon 2022].

From the above statements, it can be seen that in Russian realities, the provision on the mandatory minimum amount of authorized capital was actually leveled by its small size in order to facilitate and stimulate the process of creating such legal entities by entrepreneurs. In practice, this leads to a situation where a measure aimed at protecting against one-day firms with no guaranteed authorized capital actually does not work.

The second significant problem of the legislation on corporations can be considered the issue of corporate governance. Here again, the inconsistency of the "European" and "American" trends in Russian law, described above, made itself felt.

According to paragraph 1 of Article 47 of the Federal Law "On Joint Stock Companies": "The supreme governing body of the company is the general meeting of shareholders" [Ob akcionernyh obshchestvah: Federal'nyj zakon 2022]. However, in fact, the main body, in the American tradition, is often the board of directors, which does not often take into consideration the opinion of small shareholders (minority shareholders) in the process of carrying out economic activity and decisions.

The solution to this problem can be a clearer division of the status and powers of these bodies into the supreme (general meeting) and executive body (board of directors) proposed in the Concept. This decision will ensure that the interests of minority shareholders are taken into account in the management of the company.

Thus, having considered the main problems of the institution of corporations in the Russian Federation, in our opinion it is obvious that their cause is the uncertainty of the path along which its development should follow. The presence of features of the "American" and "European" approach to corporations in Russian legislation ultimately leads to the stagnation of this type of civil legal relations.

In our opinion, this situation can be reversed by determining which of these two general lines the Russian corporate legislation should develop along. We believe that this should be the European (German) vector as the closest to Russian law due to its entry into the same Romano-Germanic system of law.

Innovations proposed in the Concept, as we believe, would significantly improve the situation with the legal regulation of corporate legal relations.

However, unfortunately, at the moment, most of the provisions of the Concept have remained on paper, or have been adopted with reservations and in a half-hearted form.

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