УДК/UDC 347

Некоторые гражданско-правовые аспекты предмета корпоративного договора

Михайлов Александр Александрович
студент юридического факультета
Всероссийский государственный университет юстиции
г. Сочи, Россия
e-mail: tttooobana@yandex.ru

Аннотация

Предмет корпоративного договора ограничен имущественными правами на акции (доли) и правами голоса из акции (доли), поскольку порядок осуществления иных корпоративных прав участников хозяйственных обществ может быть изменен либо императивными нормами корпоративного законодательства, либо нормами устава. По-мнению автора следует разработать на федеральном уровне подзаконный акт, систематизирующий и разделяющий императивные и диспозитивные корпоративные нормы. Автором отмечается, что предметом корпоративного договора выступает обязанность участников хозяйственного общества осуществлять свои корпоративные права определенным образом.

Ключевые слова: корпоративный договор, предмет договора, правовая природа, акционерное соглашение, корпоративные права.

Some civil aspects of the subject of a corporate contract

Mikhailov Alexander Alexandrovich
student of the faculty of law
All-Russian State University of Justice
Sochi, Russia
e-mail: tttooobana@yandex.ru

Abstract

The subject of the corporate agreement is limited by property rights to shares (shares) and voting rights from the shares (shares), since the procedure for exercising other corporate rights of participants in business entities can be changed either by peremptory norms of corporate legislation or by the rules of the charter. According to the author, a by-law should be developed at the federal level that systematizes and separates peremptory and dispositive corporate norms. The author notes that the subject of the corporate contract is the obligation of participants in a business company to exercise their corporate rights in a certain way.

Key words: corporate agreement, subject of the agreement, legal nature, shareholder agreement, corporate rights.

The duality of the legal nature of the corporate contract and the lack of established practice for its application gave rise to different opinions in the science of corporate law regarding the nature of its subject. So, some authors consider the subject of a corporate contract as a purely corporate component, while others believe that the subject of a corporate contract has both corporate and civil law principles [1, 2]. For example, V. K. Andreev calls the main subject of the corporate agreement the implementation of voting on the competence of the general meeting of participants, and the agreement itself as managerial and entrepreneurial. The essence of the corporate agreement is that this agreement is aimed at exercising the corporate rights of its participants [3]. Also, in science there is an opinion that a corporate contract is not a type of contract, because it is determined through the parties and the material object, but does not have its own object [4].

In our opinion, the subject of a corporate contract is the obligation of participants in a business company to exercise their corporate rights in a certain way. Art. 2 of the Civil Code of the Russian Federation refers to relations governed by civil law relations associated with participation in corporate organizations and management, further the legislator calls these relations "corporate relations". As can be seen from this concept, corporate

relations are understood in a broad sense - that is, relations associated with participation and management in corporations.

According to M. A. Egorova's corporate relations differ significantly from a property relationship, the content of which is determined by the possession, use and disposal powers, as well as from a commitment relationship, the elements of which are the creditor's claim power and the corresponding debtor's obligation [5].

In order to determine whether corporate relations belong to civil relations, we analyze the signs of "participation"and "management"in the corporation. First: corporate relations arise between participants (founders) of a corporate legal entity. Art. 65.1 of the Civil Code of the Russian Federation divides all legal entities into corporate and unitary organizations. In accordance with paragraph 1 of this article, corporate organizations are legal entities whose founders have the right to participate (membership) in them and form their highest executive body.

Secondly, the moment of the emergence of corporate relations will be the appearance of the legal capacity of these legal entities after passing through the state registration of a legal entity in the administration of the Federal Tax Service. As M. A rightly notes. Egorova: "Participants in corporations have the right with respect to the legal entity itself, and not with respect to its property" [6].

Thirdly, management in corporations implies the presence of a manager and a subordinate person, while the subordinate person has a framework obligation to execute the power orders of the manager in accordance with the size of the share (contribution, share) of the subordinate.

According to E. A. Sukhanova, if the authorized person is opposed by a strictly defined obligated person, then such civil legal relations are relative. T. e. in the event of a violation of the law, only a strictly defined person may be obliged, by his actions, to satisfy the interests of the authorized [7]. So, in accordance with Art. 67.2 of the Civil Code of the Russian Federation, liability follows from the contents of the memorandum of association, charter, corporate agreement.

Thus, the concept of "managerial legal relationship"is reflected. According to this concept, any legal entity, regardless of its relationship to property under the right of ownership, operational management and economic management, value in assessing the content of corporate legal relations should be given to management relations, and not property relations.

Summarizing the foregoing, corporate participation and corporate governance can be distinguished. We consider it appropriate to develop and adopt a subordinate act in which it is desirable to reflect the concepts of corporate "participation"and corporate "management"and state them in the following version proposed by the authors: "a) the right to corporate participation is an absolute non-property right, which is (for an economic company); b) the law of corporate governance is a relative obligation law arising between the manager and subordinate person in connection with the management of the corporation by means of. ”

Thus, corporate relations are relations of corporate participation and management. However, the openness of the list of corporate relations in the general provision on a corporate contract and the blurring of the distinction between contractual obligations and the corporate component may give rise to many ambiguities regarding its subject. In contrast to Russian law, the legal doctrine of joint-stock companies of Germany in the corporate agreement identifies two levels of legal relations of the company’s participants with each other and with the business company.

The first level regulates corporate relations that arise in connection with the participation of shareholders in the company. The source of these relations is the Federal Law "On Joint-Stock Companies"and the charter of the joint-stock company. This level of legal relationship determines the status of the participant for all other participants of the joint-stock company and third parties. The second level contains the relations of the AO participants, which are governed by the general provisions of the contract law of Germany. Such relationships are the basis for the occurrence of the obligation to commit (abstention from committing) a certain action [8]. Thus, the corporate

relations of Germany are based on two constituent provisions - reflected directly in the charter of the joint-stock company and subject to the rules of publicity, as well as the process of amending it, or the provisions formed by the participants of the joint-stock company not included in the charter of this joint-stock company [9].

When deciding whether to include additional regulation in the charter or to draw it up as an agreement of the company's participants, the parties have the freedom of their own discretion, since these provisions cannot be included exclusively in the charter [10]. Such a systematic nature of corporate relations allows us to separate corporate relations, which are exclusively reflected in the law and the constituent document, and relations, which are fixed directly in the corporate agreement. Moreover, the terms of the corporate agreement should not contradict the law and the constituent document.

This approach to understanding the subject of a corporate contract is more correct, because he separates the mandatory provisions of the law and the charter from the dispositive provisions of the corporate contract. The German nature of the corporate contract classifies it as a type of civil law contract, which means that it excludes a number of possible disagreements in judicial practice and the science of corporate and civil law [11]. It is worth agreeing with the judgment of E. A. Sukhanova, that the continental legal system is dominated by the understanding of a corporate agreement as ordinary civil law transactions of share holders to dispose of their property that do not generate a legal effect [12].

Thus, in view of the fact that Art. 2 of the Civil Code of the Russian Federation, corporate relations are classified as civil, it is advisable to assume that the subject of the corporate agreement has exclusively civil law component. In addition, the subject of the corporate contract, along with those specified in the law, should also include: the right to receive dividends, which participants are entitled to refuse in favor of a third party, resolution of deadlocks ("stalemate situations"), provisions on corporate control, the obligation of participants not to violate the maximum share in the authorized

capital and a number of other provisions. The subject of the corporate agreement is limited by property rights to shares (shares) and voting rights from the shares (shares), since the procedure for exercising other corporate rights of participants in business entities can be changed either by peremptory norms of corporate legislation or by the rules of the charter. In our opinion, a by-law should be developed at the federal level that systematizes and separates imperative and dispositive corporate norms.

Список литературы

1. Степанов Д. И., Фогель В. А., Шрамм Х. -И. Корпоративный договор: подходы российского и немецкого права к отдельным вопросам регулирования // Вестник ВАС. 2012. № 10. С. 24-25.

2. Усенко А. С., Руденко Е. Ю. К вопросу о правовой природе корпоративного договора // В сборнике: ВЕСТНИК НАУЧНО-ТЕХНИЧЕСКОГО ТВОРЧЕСТВА МОЛОДЕЖИ КУБАНСКОГО ГАУ В 4-х частях. Составители А. Я. Барчукова, Я. К. Тосунов; под редакцией А. И. Трубилина, отв. ред. А. Г. Кощаев. 2016. С. 89-91.

3. Андреев В. К. Об ответственности по корпоративному договору / В сборнике: Право и бизнес: конвергенция частного и публичного права в регулировании предпринимательской деятельности. Москва, 2015. С. 34-42.

4. Суворов Е. Д. Договоры об осуществлении корпоративных прав // Вестник ВАС РФ. 2011. № 10. С. 45-46.

5. Усенко А. С. К вопросу о предмете корпоративного договора // В сборнике: Актуальные проблемы современного частного права Сборник научно-практических статей Всероссийской научно-практической студенческой конференции. 2016. С. 78-80.

6. Егорова М. А. К вопросу о содержании корпоративных правомочий // Гражданское право. 2014. № 4. С. 1-5.

7. Суханов Е. А. Сравнительное корпоративное соглашение // Справочно-правовая система «Консультант Плюс».

8. Закон об акционерных обществах Германии. Параллельные русский и немецкий тексты = Aktiengesetz. Paralleler russischer und deutscher Text. М.: Вольтерс Клувер, 2009.

9. Могилевский С. Д. Корпоративная защита как отражение сущности корпоративных прав. // Гражданское право. 2005. № 1 С.3-7.

10. Руденко Е. Ю., Усенко А. С. Правовая природа корпоративного договора в российском праве // Политематический сетевой электронный научный журнал Кубанского государственного аграрного университета. 2016. № 118. С. 386-396.

11. Trolitzsch in: Ziemons/Jager, Beck'scher Online-Kommentar GmbHG, Gesellschaftervereinbarungen, Rz. 1, Stand 1.6.2012.

12. Суханов Е. А. Уставный капитал хозяйственного общества в современном корпоративном праве // Вестник гражданского права. 2012. № 2. С. 4-35.

References

1. Stepanov D. I., Vogel V. A., Schramm H. -I. Corporate agreement: approaches of Russian and German law to individual regulatory issues // VAS Bulletin. 2012. No. 10. Pp. 24-25.

2. Usenko A. S., Rudenko E. Yu. To the question of the legal nature of a corporate agreement // In the collection: NEWSLETTER OF SCIENTIFIC AND TECHNICAL CREATIVITY OF YOUTH KUBAN GAU IN 4 parts. Compiled by A. I. Barchukova, Y. K. Tosunov; edited by A. I. Trubilin, otv. ed. A. G. Koshchaev. 2016.Pp. 89-91.

3. Andreev V. K. On liability under a corporate agreement / In the digest: Law and business: convergence of private and public law in the regulation of entrepreneurial activity. Moscow, 2015.Pp. 34-42.

4. Suvorov E. D. Contracts on the exercise of corporate rights // VAS Bulletin of the Russian Federation. 2011. No. 10. Pp. 45-46.

5. Usenko A. S. On the subject of a corporate contract // In the collection: Actual problems of modern private law Collection of scientific and practical articles of the All-Russian scientific and practical student conference. 2016. Pp. 78-80.

6. Egorova M. A. On the content of corporate competencies // Civil Law. 2014. No. 4. Pp. 1-5.

7. Sukhanov E. A. Comparative corporate agreement // Reference Legal System Consultant Plus.

8. Law on joint stock companies in Germany. Parallel Russian and German texts = Aktiengesetz. Paralleler russischer und deutscher Text. M .: Volters Kluver, 2009.

9 Mogilevsky S. D. Corporate protection as a reflection of the essence of corporate rights. // Civil law. 2005. No. 1 Pp.3-7.

10. Rudenko E. Yu., Usenko A. S. The legal nature of the corporate agreement in Russian law // Political Internet electronic scientific journal of the Kuban State Agrarian University. 2016. No. 118. Pp. 386-396.

11. Trolitzsch in: Ziemons / Jager, Beck'scher Online-Kommentar GmbHG, Gesellschaftervereinbarungen, Rz. 1, Stand 1.6.2012.

12. Sukhanov E. A. The authorized capital of a business company in modern corporate law // Civil Law Bulletin. 2012. No. 2. Pp. 4-35.