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WAYS TO PROTECT CORPORATE RIGHTS: SOME QUESTIONS

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Abstract: The article analyzes the current state of corporate rights and the practice of their protection. The main attention is paid to such a new institution of procedural law as class actions, including the recovery of damages from unlawful actions of corporate management bodies. The problem of providing information to a member of the corporation and the procedural and legal consequences of refusing to provide it is highlighted separately. The features and grounds for the application of special measures to protect corporate rights are revealed.

Keywords: corporation, corporate relations, corporate rights, methods of protection, class actions

The very concept of "corporate rights" is a product of scientific activity, and is used to denote the rights of participants of legal entities - corporations. One of the numerous changes made to the section on legal entities is related to the legal introduction of the division of legal entities into corporate-type organizations and unitary organizations (Article 65.1 of the Civil Code of the Russian Federation). The law recognizes a corporation as a legal entity whose founders (participants) have the right to participate in them and form their supreme body. These currently include both the majority of commercial organizations (business partnerships and societies, business partnerships, production cooperatives) and some non-profit (consumer cooperatives, public organizations, unions, partnerships of real estate owners).

It should be noted that scientific ideas about corporations are far from uniform: there are different opinions about the concept and characteristics of corporations and legal entities that fall under this concept. Nevertheless, it is possible to distinguish some common features of corporations:

- created by founders who become participants (members) of a legal entity;
- are the owners of the property belonging to them, as opposed to unitary type organizations;
- the authorized (pooled) capital is divided into shares (deposits);

- management is carried out through a system of bodies, one of which is the general meeting of participants;
- the existence of a corporation does not depend on the existence and composition of its members;
- the presence of group interests, including interest related to the extraction of direct income (dividends) or income in the form of an increase in the value of the participation interest;
- the presence of several social groups: participants, labor collective, management of the organization. In turn, the membership of the organization is heterogeneous, because the participation shares may be different, which is manifested in the management of the corporation (majority and minority shareholders).

The fact of a person's participation (membership) in such an association generates organizational, property legal relations that are closely intertwined and are designated as membership (intra-corporate). With the emergence of membership relations, the founders (participants) of the corporation have various rights, the legal nature of which is difficult to determine unambiguously. These include: the rights to manage the affairs of the corporation, election to the management bodies of the corporation, appeal against their actions and decisions, participation in the property results of its activities, the right to information about the activities of the organization.

Corporate relations have a lasting stable character, consist of a set of many corporate rights and obligations, often counter, interrelated with each other. The rights are realized by the participants' own actions, their implementation depends not only on the corporation, but also on other participants.

Despite the lack of an unambiguous understanding of the essence of corporate rights, it should be recognized that there are certain features that determine the specifics of the protection of corporate rights.

The procedural form of expressing claims for the protection of corporate rights in most cases is a lawsuit. At the same time, the law takes into account the existence of common interests of the corporation's participants and provides for the possibility of filing so-called class actions – one or more participants make a claim against a legal entity, the management bodies of an organization to protect the rights of a group of persons (other shareholders). At the same time, such a participant enjoys the procedural rights of the plaintiff, and other participants can join the stated claim [4].

Another special type of claim in defense of corporate rights is a claim of a participant of a legal entity for damages caused to a legal entity as a result of improper

performance of duties by the management of the organization (Article 53.1 of the Civil Code of the Russian Federation). Such claims have received the name "indirect claims"[1] in the literature, since in case of its satisfaction, the business company itself becomes the direct beneficiary, and its participants who have filed a similar claim with the court receive indirect benefits due, for example, to an increase in the exchange value of their shares.

Due to the specifics of the object of protection - corporate rights - the use of traditional methods of protection acquires certain features. Thus, it becomes possible to hold accountable management bodies that are not independent entities, but are involved in corporate relations. Challenging the organization's transactions is possible not only on general grounds (defect in the form of transactions, subject composition), but also on additional grounds (challenging large transactions and related party transactions) [2].

In addition, the law provides for special means of protection aimed at the enforcement or restoration of corporate rights (recognition of decisions of the management bodies of the organization as invalid, restoration of an entry in the register of shareholders, the return of a share of participation that a member of the corporation was unlawfully deprived of) [5].

Considering that corporate rights are a collective concept that includes a set of possibilities of various legal nature, we will consider the methods of protection applicable in case of violation of the fundamental rights of the corporation's participants.

Among all corporate rights, the participant's right to information is of particular importance, which is provided for by the Civil Code, laws regulating the activities of individual legal entities. This right means that a participant can receive information about the company's activities, get acquainted with the contents of accounting books and other documentation in accordance with the procedure established by the constituent documents. The significance of this right lies in the fact that its implementation directly affects the exercise of other rights of a member of the corporation – to participate in management (including the right to convene, prepare and hold a general meeting of shareholders, the right to vote, the right to challenge the decision of the general meeting), as well as the ability to protect their interests in case of violation by the company itself or third parties. The right of the participant to information corresponds to the obligation of the organization to provide it (to ensure access to it), the failure of which is the basis for compulsory execution by a court decision (award to perform the duty). But since the enforcement procedure is not regulated by law, there was a need to develop uniform decisions on the protection of the right to information, which were summarized by you in an information letter dated

18.01.2011. No. 144 "On some issues of the practice of consideration by arbitration courts of disputes on the provision of information to participants of business companies"[3].

A participant of a business company may be refused a request for information if it is proved that his right to information has not been violated by the company. This may be evidenced, in particular, by the following circumstances: repeated application of requirements for the provision of the same documents or copies thereof, provided that the first of such requirements was duly satisfied by the company; a statement by a participant of a request for the provision of information and documents relating to the past periods of the business company's activity, and clearly not representing values from the point of view of their analysis.

In case of satisfaction of the participant's claim on the obligation of the business company to provide information, the court must specify in the operative part of the decision exactly what actions and within what time period the company should perform.

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КОРПОРАТИВТІК ҚҰҚЫҚТАРДЫ ҚОРҒАУ: БІРҚАТАР МӘСЕЛЕЛЕРІ

Түйін: Мақалада корпоративтік құқықтардың қазіргі жағдайы мен оларды жетілдіру тәжірибесі талданады. Басты назар топтық іс-әрекеттер сияқты жаңа процессуалдық құқық институтына, оның ішінде корпоративтік басқару органдарының заңсыз әрекеттерінен залалды өндіру мәселелерін зерттеуге бағытталған. Корпоративтік басқару субъектілері, ақпаратпен қамтамасыз ету мәселесі және оны беруден бас тартудың процессуалдық және құқықтық салдары қарастырылған. Корпоративтік құқықтарды қорғаудың арнайы шараларын қолданудың ерекшеліктері мен негіздері зерттелген.

Кілт сөздер: корпорация, корпоративтік қатынастар, корпоративтік құқықтар, қорғау әдістері, топтық әрекеттер.

СПОСОБЫ ЗАЩИТЫ КОРПОРАТИВНЫХ ПРАВ: НЕКОТОРЫЕ ВОПРОСЫ

Аннотация: В статье проведен анализ современного состояния корпоративных прав и практики их защиты. Главное внимание уделено такому новому институту процессуального права как групповые иски, в том числе по взысканию ущерба от неправомерных действий органов управления корпорацией. Отдельно выделена проблема предоставления члену корпорации информации и процессуально-правовые последствия отказа в ее предоставлении. Выявлены особенности и основания применения специальных мер по защите корпоративных прав.

Ключевые слова: корпорация, корпоративные отношения, корпоративные права, способы защиты, групповые иски.