

Legal Aspects of Corporate Governance in Russia

By Vladimir Orlov*

Corporate governance in Russia is subject to the present civil law provisions, contained in the Civil Code and laws regulating different forms of corporations, including companies, enacted in accordance with it, which concern governing bodies and decision-making procedures. The supreme governing body of the company is the general meeting of its participants, and the issues, which are within its exclusive authority, are enlisted in the law. A company must have an executive body that represents it. It may have also a collegiate executive body and a collegiate governing body for controlling the executive bodies. The members of the governing bodies are presupposed to act in good faith and reasonably, and they bear liability for negligence. The liability is personal as well as solidary (joint and several), but the persons who did not take part in the administration (or voted against) are not to bear liability. Characteristic for the liability of executives and representatives of company is, that their liability is to be realised simply at the moment when their duty to act in good faith and reasonably is violated.

Keywords: Civil Law; Company; Governing Body; General Meeting; Decision-Making; Liability

Introduction

The issues related to corporate governance belong to the scope of corporate law in Russia¹, and are subject to the provisions of the Civil Code on governance in a corporation (Article 65³) as well as the provisions of the Joint Stock Company (JSC) Law on general meeting of shareholders (Chapter VII) and on board of directors (supervisory board) of a company and the executive body of a company (Chapter VIII) and the Limited Liability Company (LLC) Law on governance of a company (Chapter IV). Important are also the rules of the Civil Code on decisions of meetings (Chapter IX¹) and invalidity of transactions, particularly, Article 174 on the consequences of the improper execution of authorisation, as well as the rules on liability of the corporate executives contained in the Civil Code (Article 53³) and in the JSC law (Article 71).

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¹For more on the subject see Orlov (2015), Orlov (2011) and the material cited therein as well as Dedov & Molotnikov (2017); Zhevnyak, Shablova, Ryzhkovskaya & Tihovskaya (2019); Lomakin (2020) and Popondopulo (2016).

General Rules

The issues related to corporate governance are basically subject to the provisions of the Civil Code on juristic persons (Article 49) and governance in a corporation² (Article 65³) as well as the provisions of the JSC law on general meeting of shareholders (chapter VII) and on board of directors (supervisory board) of a company and the executive body of a company (chapter VIII) and the LLC law on governance of a company (Chapter IV).

All entities that are directly allowed to exercise entrepreneurial activities, or commercial organisations in Russia, are listed in the Civil Code, and they are provided with the (registered) juristic personality to enter transactions and take responsibility for their obligations in their own name. They exercise their legal capacity through their legislatively defined governance mechanisms that are charter-based or contractual.

Charter-based governance is common for corporations. The charter, confirmed by the founders of the enterprise, is a local normative act validated by registration, which specifies the legal status of the established (incorporated) enterprise, and is binding for the established enterprise and its participants. The charter provisions are constantly valid until changed. Contractual governance based on free disposal or consent of the parties is also known in corporate law. Contractual arrangements are characteristic for the governance of partnerships.

Charter-based governance is usually represented by companies that are highly regulated corporations. Detailed legal rules concern without particular exceptions decision-making in their governing bodies. The supreme governing body of the company is the general meeting of its participants, and the issues, which are within its exclusive authority, are enlisted in the law. A company must have an executive body that represents it. It may have also a collegiate executive body and a collegiate governing body for controlling the executive bodies.

The most highly regulated corporations are public joint-stock companies. The general meeting of shareholders of a public company is not, for instance, entitled to consider and adopt resolutions on the issues that do not fall within its competence. Furthermore, the council of directors (supervisory council) is obligatory for a public joint-stock company.

In turn, not-public joint-stock companies are less regulated than the public ones. The charter of a non-public company may provide the issues that are not in accordance with the law under the competence of the general meeting of shareholders as being subjected to this. Moreover, in the general meeting of the non-public company all shareholders are entitled to make decisions on issues not included in the agenda of the meeting and even may change the agenda.

Lesser than joint-stock companies regulated are limited liability companies. For instance, the minimum requirement for a limited liability company is two-level system of governing bodies consisting of the general meeting and the executive body. However, the general meeting of also the limited liability company may adopt decisions with regard to issues not included on the agenda of the meeting if all the members of the company are present at it. Moreover,

²Russian Civil Code, art. 65³.

decisions are to be adopted by a majority of votes of all members of the limited liability company, whereas the votes of the shareholders participating in the general meeting of the joint-stock company are of decisive significance. There are also entrepreneurial entities that are outside of the scope of the corporate law regulation.

Juristic Person

Juristic person³ is the basic concept of a collective association that is subject of law. The legal forms of juristic persons practising entrepreneurial activities⁴ are listed exhaustively in the Civil Code. According to Article 48 of the Civil Code, juristic persons in Russian law are distinguished into corporate entities (organisations) and unitary entities (enterprises and also institutions) as well as into commercial and non-commercial (non-profit) organisations. Commercial corporate entities include (general and limited) partnerships, business (limited liability) partnerships and companies as well as production cooperatives and farms. In turn, companies are distinguished into (public and non-public) joint stock companies and limited liability companies. Limited liability companies, partnerships, and production cooperatives are governed by the general provisions of the Civil Code concerning those as juristic persons⁵, corporate entities⁶, and commercial organisations: business partnerships and companies⁷.

According to Article 53 of the Civil Code on the (governing) bodies of juristic person, a juristic person is to acquire civil law rights and engage with civil law obligations via its bodies operating in accordance with the law, other legal acts and the constituent document. In the cases provided by the Civil Code⁸, the juristic person is to have the right to acquire the civil law rights and to engage with civil law obligations through its participants. The procedure for the formation of, and the scope of competence of, the bodies of a juristic person are to be defined by the law and constituent document. The constituent document may provide that the power to act in the name of the juristic person is granted to several persons who act jointly or separately from each other. Information on it ought to be submitted to the (state) Register of juristic persons.

³For more on the subject see, for instance, Lomakin (2020) at 4–5 and 10–12.

⁴Entrepreneurship (business activity) may be practised in Russia by forming or without forming a juristic person (legal entity), but in both cases it requires registration. According to the Civil Code, if a physical person intends to be engaged into entrepreneurship without forming a juristic person, he is obliged to be registered as an individual entrepreneur (sole trader).

⁵Id. at arts. 48–65.

⁶Id. at arts. 65²–65³.

⁷Id. at arts. 66–68.

⁸Id. at art. 53.2.

Governing Bodies

According to the Civil Code⁹, the supreme governing body of the corporate entity is the general meeting of its participants, except for production cooperatives and non-commercial organisations with more than 100 participants where some other collective representative body, for instance, the assembly or conference could act as the supreme authority. Unless otherwise provided for by the Civil Code or other law, the issues, which are within the exclusive authority of the supreme governing body of the corporate entity, include:

- the determination of the priority directions for the activity and the principles for formation and use of property of the entity;
- the approval of the charter and its amendments;
- the determination of the order for entry and dismissal of participants except for the cases established by the law;
- the formation of the other bodies of the entity and early termination of their powers, and
- the approval of annual reports, bookkeeping balance sheets, as well as
- decisions on the establishment of or participating in other juristic persons and on the establishment of branch and representative office, unless such matters fall under the charter in accordance with the law to the authority of the other collegial bodies;
- decisions on the reorganisation and liquidation of the entity, and
- the election or the appointment of the audit body, as well as
- other issues determined by the law or constituent documents.

A corporate entity must have one or several one-person executive body (the director, the director general, the president), and it may be also a juristic person. The executive power of the entity may rest, in the cases provided by the law or charter, with a collegiate executive body (the board, directorate). The law or charter may provide additionally under the Civil Code¹⁰ for the foundation of a colligate governing body for controlling the executive bodies.

Decisions of Meetings and Invalidity

The rules of the Civil Code on decisions of meetings (Chapter IX¹) are, according to the Article 181¹ of the Civil Code, (generally) applicable, unless otherwise is established by the law or in the order determined by it. Accordingly, the decision of a meeting that has civil law effects under the law is to cause its aimed legal effects, for all the persons who have been entitled to take part in the given meeting (participants of a juristic person, co-owners, creditors in case of bankruptcy and other participants of a civil law community), as well as for other persons, if it is established by the law or results from the nature of relations.

⁹Id. at art. 65³.

¹⁰Id. at art. 65³.4.

A meeting's decision is to be deemed adopted, under the Civil Code¹¹, if the majority of the meeting's participants have voted for it and at least fifty per cent of the total number of participants of an appropriate civil law community have taken part in it. The session of the meeting may be attended remotely using the electronic or other hardware, if the participants may be identified, and the decision can be adopted without a session (absentee voting) through sending the documents containing the information of their voting by at least 50 percent of the total number of the participants. In the event that the agenda of a meeting contains several issues, an independent decision ought to be adopted on each of them, unless otherwise is unanimously established by the meeting's participants. The session of the meeting and the voting results in it are to be recorded in the minutes.

According to the Civil Code¹², a meeting's decision ought to be deemed invalid, on the grounds established by the law, by virtue of declaring it as such by the court (disputable decision) or irrespective of such declaring (void decision). An invalid decision is disputable, unless it follows from the law that the decision is (null and) void. In the event the decision is published, a report on declaring it invalid by the court ought to be published in the same publication on account of the person determined in accordance with the procedural rules.

A meeting's decision may be declared by the court invalid, according to the Civil Code¹³, if it is failed to meet the law requirements, including the cases of

- 1) the essential breach of the procedure for decision making that affected the expression of the will of the participants of a meeting;
- 2) deficiency of the authority of the person who spoke on behalf of the meeting's participant;
- 3) the breach of equality rights of the participants and
- 4) the essential breach of the rules on drawing the minutes.

However, a meeting's decision may not be recognised by the court as invalid on the grounds connected with failure to follow the procedure for adopting the decision, if it is confirmed by the successive decision of the meeting adopted in the established procedure prior to rendering a court decision.¹⁴

According to the Civil Code¹⁵, a participant of an appropriate civil law community who has not attended the session or absentee voting or has voted against the adoption of the disputable decision is entitled to dispute the meeting's decision with the court. In turn, a meeting's participant, who has voted for adoption of a decision or has abstained from voting, is entitled to dispute with court the decision if his expression of will was broken in the course of voting. But a meeting's decision may not be declared invalid by the court if the voting of a person whose rights are affected by the disputable decision could not influence its

¹¹Id. at art. 181².

¹²Id. at art. 181³.

¹³Id. at art. 181⁴.

¹⁴Id. at art. 181⁴.2.

¹⁵Id. at art. 181⁴.3.

adoption and the meeting's decision did not entail any essentially unfavourable consequences for this person.

Under the Civil Code¹⁶, a meeting's decision may be disputed in the court within six months from the date when the person whose rights were violated by the adoption of the decision *became known or should have become known* about it but at the latest two years from the date when data on the adopted decision became generally accessible for the participants of an appropriate civil law community. The person disputing a meeting's decision must notify in advance in writing the participants of an appropriate civil law community on his intention to make the claim and to provide them with other information related to the case. The participants of an appropriate civil law community that have not joined the claim, in particular those, who have other grounds for disputing the given decision, are not entitled afterwards to dispute the decision, unless the court finds the reasons for the claim valid.¹⁷ The invalidity of the decision declared by the court as invalid starts from the moment of its adoption.¹⁸

According to the rules on the nullity of a meeting's decision of the Civil Code¹⁹, unless otherwise provided for by the law, a meeting's decision is to be deemed null and void, if it:

- 1) is adopted on an issue that is not included into its agenda, except if all the participants of an appropriate civil law community have attended the session or absentee voting;
- 2) is adopted in the absence of the required quorum;
- 3) is adopted on an issue that is not within the scope of the meeting's authority; or
- 4) is contrary to the basics of legal order or morals.

Also, the provisions of the Civil Code on the invalidity of transactions contain the rules that concern the corporate governance. According to the Article 174 of the Civil Code on the consequences of the improper execution of authorisation, a transaction made by the governing body of a juristic person, which exceeds the limits of its legal capacity, may be recognised by a court as invalid upon the claim of the juristic person, only in those cases, when it is proven that the other party to the transaction knew or should have known of the restrictions.²⁰ However, in the case where the body of the juristic person acts in the name of this for the damage to the interests of the juristic person, the transaction concluded by it may be recognised, according to the Civil Code²¹, by a court as invalid upon the claim of the juristic person, and in cases provided for by the law, upon the claim of another person or body filed in the interest of those, provided that the counterparty to the transaction knew or should have known of the obvious damage to the juristic

¹⁶Id. at art. 181⁴.7.

¹⁷Id. at art. 181⁴.8.

¹⁸Id. at art. 181⁴.9.

¹⁹Id. at art. 181⁵.

²⁰Restrictions may also be provided by the special act of the juristic person.

²¹Russian Civil Code, art. 174.2.

person, or in case of the existence of circumstances obviously testifying to the fact that there has been a bad-faith agreement or joint acts of the juristic person's body with the counterparty of the transaction for the damage to the interests of the juristic person.²²

Liability

According to the general provisions of the Civil Code on liability of the corporate executives²³, the person who by force of the law or of the juristic person's constituent document comes out on its behalf, or use the representative power in the name of the company is expected to act in the interests of the juristic person it represents in good faith and reasonably; the same duty is extended also to the members of the collegiate executive body of the juristic person. In case of non-observance of these as well as the customary requirements such a person is obliged, upon the demand of the juristic person, or the founders (the participants) acting on behalf of this, to compensate the damages caused by his fault²⁴ taking into account ordinary business practices and risks, which ought to be proved²⁵. However, the members of the collegiate executive body, who voted against the adoption of the decision or did not take part in the voting concerning the issue²⁶, are excepted from the liability for the decision. In the event of jointly caused damages the liability is solidary²⁷. Furthermore, the Civil Code²⁸ expressly provides that an agreement on the restriction or elimination of the executives' liability is null and void.²⁹

Business Companies

Charter-based governance is usually represented by companies that are highly regulated corporations. Detailed legal rules concern without particular exceptions decision-making in their governing bodies. The supreme governing body of the company is the general meeting of its participants, and the issues, which are within its exclusive authority, are enlisted in the law. A company must have an executive body that represents it. It may have also a collegiate executive body and a colligate governing body for controlling the executive bodies.

²²Orlov, Popondopulo 2016: 177–178.

²³Russian Civil Code, art. 53.3.

²⁴Id. at art. 53¹.

²⁵Id. at art. 53¹.1.

²⁶Id. at art. 53¹.2.

²⁷Id. at art. 53¹.4.

²⁸Id. at art. 53¹.5.

²⁹Id. at art. 53¹.

*Joint Stock Company*³⁰

The supreme governing body of the joint stock company is, according to the JSC Law³¹, the general meeting of its shareholders. In certain cases, the personal participation of the shareholders in the general meeting is not required. However, a general meeting of shareholders, the agenda of which includes issues related to the election of the council of directors (supervisory board) of the company or the audit commission (inspector) of the company, and approval of the company auditor, as well as approval of the annual report and annual accounting (financial) statements of the company, unless these issues are subjected in accordance with the charter to the competence of the council of directors (supervisory board) of the company, may not be held in the form of absentee voting (Article 50). And if all voting shares in a company are held by one shareholder, decisions on the issues subjected to the competence of the general meeting are to be made solely by this shareholder and documented in writing³².

The election of members of the council of directors (supervisory council) and auditors as well as the approval of annual reports, bookkeeping balance sheets, and the profit and loss accounts of the company, and the distribution of its profits and losses, are exclusively within the authority of the annual meeting, where also other issues falling within the competence of the general meeting of shareholders may be resolved. Other general meetings than annual meetings are regarded extraordinary³³, as provided for by the JSC Law³⁴.

The issues falling within the authority of different governing bodies of the joint stock company are detailed in the JSC Law. According to its Article 48.1 the following issues fall within the competence of the general meeting of shareholders:

- 1) Introduction of changes and amendments to the company's charter or approval of the company's charter in a new version;
- 2) Company reorganisation;
- 3) Liquidation of the company, appointment of a liquidation commission, and approval of interim and final liquidation balance sheets;
- 4) Determining the number of members of the council of directors (supervisory board) of the company, election of its members, and early termination of their powers;
- 5) Determining the quantity, par value, and category (type) of declared shares and the rights granted by them;

³⁰ A joint stock company is, under the Civil Code (Article 96) and the Joint Stock Company Law (Article 2.1), a company whose charter (authorised) capital is divided into a definite number of shares (of stock) certifying rights of obligations of the participants or shareholders (stockholders) to the company (Article 2.1). For more on the subject see, for instance, Lomakin (2020) at 39–58.

³¹ Joint Stock Company Law, art. 47.1.

³² *Id.* at art. 47.3.

³³ Shareholders owning not less than 10 percent of voting shares as well as the auditors of the company are entitled to require the convocation of an extraordinary general meeting According to the Article 55 of the Joint Stock Company Law.

³⁴ *Id.* at art. 47.1.

- 6) Increase of the charter capital by increasing the nominal value of shares or by placing additional shares unless this issue is subjected in accordance with the law to the competence of the council of directors (supervisory board) of the company;
- 7) Decrease of the charter capital of the company through the reduction of the par value of shares, the acquisition of a part of shares by the company to reduce their total number, or the redemption of shares acquired or repurchased by the company;
- 8) Formation of the executive body of the company and early termination of its powers, unless such issues fall, according to the charter, to the authority of the council of directors (supervisory board), as well as the cases when the council of directors (supervisory board) has not made the decision on formation of the sole executive body³⁵ and the decision on early termination of the powers of the sole executive body³⁶;
- 9) Election of members of the audit commission of the company and early termination of their powers, if the audit commission is according to the charter obligatory for the company;
- 10) Approval of the company's auditor;
 - 10.1) Payment (declaration) of dividends following the results of the first quarter, six months, or nine months of the reporting year;
- 11) Approval of the annual report and annual accounting (financial) statements of the company, unless these issues are subjected in accordance with the law to the competence of the council of directors (supervisory board) of the company;
 - 11.1) Allocation of profit (including payment (declaration) of dividends, except for payment (declaration) of dividends following the results of the first quarter, six months, or nine months of the reporting year) and loss of the company following the results of the reporting year;
- 12) Determining the procedure for holding the general meeting of shareholders;
- 13) Election of members of the tally commission and early termination of their powers;
- 14) Splitting and consolidation of shares;
- 15) Decisions on the approval or subsequent approval of interested party transactions body³⁷;
- 16) Decisions on the approval or subsequent approval of large-scale transactions³⁸;
- 17) the acquisition by the company of placed shares;
- 18) Decisions on participation in financial and industrial groups, associations, and other groups of commercial entities;
- 19) Approval of internal documents regulating the activities of company bodies (including decisions concerning the listing and delisting of the company shares and other securities;
- 20) Resolution of other issues stipulated by the law.

³⁵ Id. at art. 69.6.

³⁶ Id. at art. 69.7.

³⁷ Id. at art. 83.

³⁸ Id. at art. 79.

According to the Article 48.2 of the JSC Law issues falling within the competence of the general meeting of shareholders are not to be transferred for resolution to the executive body of the company, unless otherwise provided for by the law, nor for resolution to the council of directors (supervisory board) of the company, except for the issues provided for by the law, and in this case, shareholders are not entitled to demand redemption of the shares³⁹.⁴⁰ However, the charter of a non-public company may provide for the transfer of the issues, subjected under the law to the competence of the general meeting of shareholders, to the competence of the council of directors (supervisory board) of the company, except for the issues stipulated hereby⁴¹. Provisions related to such transfer may be included in the charter, or amended to or removed from it by the decision made at the general meeting by all of the company's shareholders unanimously⁴².

It is expressly provided in Article 48.3 of the JSC Law that the general meeting of shareholders of a public company is not entitled to consider and adopt resolutions on the issues that do not fall within its competence. However, the charter of a non-public company may provide the issues that are not, in accordance with the law, under the competence of the general meeting of shareholders as being subjected to this. The respective provisions may be included in the charter, or amended to or removed from it by a decision made at the general meeting by all of the company's shareholders unanimously.⁴³

According to the JSC Law, notice of the general meeting of shareholders ought to be communicated to the persons entitled to participate in the general meeting of shareholders and registered in the register of company shareholders⁴⁴. The general meeting is competent (have a quorum) if shareholders owning in total more than half of the votes under the company's authorised voting shares have taken part in it⁴⁵. The quorum for a new general meeting convened in place of the unconstituted meeting is at least 30 percent, and even a smaller quorum may be provided for by the charter of the company whose number of shareholders is greater than 500,000⁴⁶.

In general, a resolution of the general meeting on an issue put to a vote is to be made by the majority vote of shareholders owning voting shares of the

³⁹Id. at art. 75.

⁴⁰Redemption of the shares may be provided in cases of the general meeting's decision on the reorganisation of the company or on the approval of large-scale transaction.

⁴¹Accordingly, transferable are the increase and decrease of the charter capital; formation of the executive body of the company and early termination of its powers; election of members of the audit commission of the company and early termination of their powers; approval of the company's auditor; payment (declaration) of dividends following the results of the first quarter, six months, or nine months of the reporting year; approval of the annual financial documents; the procedure for conducting the general meeting; splitting and consolidation of shares; approval or subsequent approval of interested party transactions; acquisition by the company of placed shares and participation in financial and industrial groups and other organisations as well as resolution of other issues stipulated by the law.

⁴²Joint Stock Company Law, art. 48.2¹.

⁴³Id. at art. 48.4.

⁴⁴Id. at art. 52.

⁴⁵Id. at art. 58.1.

⁴⁶Id. at art. 58.3.

company who take part in the meeting, unless otherwise established by the Law. Moreover, only a separate (independent) decision may be made on each issue put to a vote.

A decision of the general meeting regarding, for instance:

- the reorganisation of the company;
- an increase in charter capital by increasing the nominal value of shares or by placing additional shares;
- splitting and consolidation of shares;
- interested party and large-scale transactions;
- the acquisition by the company of placed shares;
- participation in financial and industrial groups and other organisations, and
- approval of bylaws for the regulation of the internal affairs of the company, requires under the JSC law the proposal by the council of directors, unless otherwise provided for by the charter.

A decision with regard to the:

- amendments to the charter of the company;
- reorganisation of the company;
- liquidation of the company;
- determination of the amount, types and par value of the declared shares as well as rights granted by them;
- acquisition by the company of placed shares; and in some other cases, concerning, for instance, large-scale transactions must be adopted according to the JSC Law by the general meeting by a qualified majority (a majority of three-quarters of the votes of the shareholders participating in the general meeting), unless otherwise provided for by the charter^{47, 48}.

Under the JSC law⁴⁹ the general meeting is not entitled to make decisions on issues not included in the agenda of the meeting, nor to change the agenda, except when all shareholders of the non-public company are present at making a decision on the issue not included in the agenda or at changing the agenda of the general meeting. The agenda of the general meeting is usually prepared by the council of directors⁵⁰. The shareholders (shareholder) owning in aggregate not less than 2 percent of voting shares are entitled within a defined period to submit proposals for the agenda of the annual general meeting, including nomination of candidates for the governing bodies. The council of directors may refuse the agenda proposals, however, only if the terms for making proposals are not observed, in which case the shareholder is entitled to demand in the court that the company

⁴⁷Id. at art. 49.4.

⁴⁸Decisions concerning other issues are to be adopted by an ordinary majority.

⁴⁹Joint Stock Company Law, art. 49.6.

⁵⁰Id. at art. 54.

shall include the proposed issue in the agenda of the general meeting or include the candidate in the list of candidates for voting⁵¹.

According to the Article 64 of the JSC Law, the council of directors (supervisory council), which is, in accordance with the Article 97.3 of the Civil Code, obligatory for a public joint-stock company, executes the general management of the company's activities, except for deciding issues relegated to the authority of the general meeting. Also in other cases, a collective managerial body of the company may be established. And in the event that the number of shareholders owning voting shares is less than 50, the company's charter may provide, in accordance with the JSC Law⁵², that the functions of the council of directors of the company (supervisory board) ought to be performed by the general meeting of shareholders. In such a case, the charter of the company is to indicate the person or body of the company to whose competence the issue of holding the general meeting of shareholders and approving its agenda is reserved.

According to the JSC law⁵³, members of the council of directors of a company are elected by the annual general meeting. As a member of the council of directors, only a physical person, not necessarily a shareholder, may be elected. Members of a collegial executive organ of the company can be members of the council of directors, but they may not comprise more than one-quarter of it; however, the person effectuating the functions of a one-man executive organ may not be simultaneously the chairman of the company. Furthermore, the council of directors of a public company must have not fewer than five members, and non-public company—three members, unless a larger number of members is provided for by the charter or the general meeting's decision. In turn, in a company whose number of shareholders is more than 1,000 at least seven persons must form the council of directors, unless a larger number of members is provided for by the charter or the general meeting's decision. Members of the council of directors of the company ought to be elected by way of cumulative voting⁵⁴. The candidates who receive the greatest number of votes are to be deemed elected to the council of directors of the company.

Within the authority of the council of directors, is, according to the Article 65 of the JSC Law, determination of the priority directions of activity of the company, except for the issues subjected to the authority of the general meeting⁵⁵. Also, formation of the executive body of the company and early termination of its powers and establishing of committees of the council of directors as well as determination of the principles of the risk management as well as internal control and audit are within the authority of the council of directors. The council of directors also makes decisions on the convocation of the annual and extraordinary general meeting and on the confirmation of its agenda as well as other questions regarding its conduct. It decides on placement of additional shares and issue of

⁵¹Id. at art. 53.

⁵²Id. at art. 64.1.

⁵³Id. at art. 66.

⁵⁴In cumulative voting each share corresponds to as great a number of votes as the number of members on the council of directors, and the votes may be either given to one candidate or divided between several candidates (Joint Stock Company Law, art. 66.4).

⁵⁵Id. at art. 64.1.

bonds and other securities as well as on the approval or subsequent approval of large-scale transactions⁵⁶⁵⁷. The council of directors also determines the price (monetary value) of assets of the company. The authority of the council of directors also includes other issues provided for by the Law and by the company's charter. The issues relegated to the authority of the council of directors may not be delegated for decision to executive bodies.⁵⁸

According to the JSC Law, if a decision on the formation of the sole executive body of the company⁵⁹ or a decision on the early termination of the powers of the sole executive body of the company⁶⁰ as well as decisions on the approval of an interested party transaction or of a large-scale transaction have not been made by the council of directors (supervisory board), the law empowers measures for convening of the extraordinary general meeting of shareholders to resolve the issue at question, including the right to demand it in the court⁶¹.

According to the Article 69.1 of the JSC Law, management of the company's daily activity is to be executed by the sole executive body of the company (director, general director), or it may be collegiate, executed by the board (directorate) together with a one-person executive body. The executive bodies are accountable to the board of directors (supervisory board) of the company and to the general meeting of shareholders. The executive body of the company decides on all the issues which are not within the authority of the other governing bodies.

Under the JSC Law the decision on the formation of the executive body may be adopted not only by the general meeting but also by the council of directors, if this is provided for by the charter⁶². The executive body of the joint stock company may be collegiate (the board, directorate) and/or one-person (director, director general). The simultaneous existence of both the one-person and collegiate executive body must be provided for by the charter, which must also determine the authority of the latter. In this event, the one-person executive body must also effectuate the functions of chairman of the collegial executive body.⁶³ However, the member of the one-person executive body (director) may not be, as previously noted, simultaneously the chairman of the council of directors, whereas the members of a collegial executive body may comprise at most one-quarter of the council of directors⁶⁴. By decision of the general meeting, the powers of the executive body of the company may be transferred, according to the JSC Law⁶⁵, under a contract to another commercial (managing) organisation or even to an individual entrepreneur (manager).

⁵⁶Id. at art. 79.

⁵⁷Also establishing of committees of the council of directors and determination of the principles of the risk management as well as internal control and audit are within the authority of the council of directors.

⁵⁸Joint Stock Company Law, art. 65.

⁵⁹Id. at art. 69.6.

⁶⁰Id. at art. 69.7.

⁶¹Id. at art. 55.8.

⁶²Id. at art. 65.

⁶³Id. at art. 69.1.

⁶⁴Id. at art. 66.2.

⁶⁵Id. at art. 69.1.

The rights and duties of the executive body (and its members) are defined, in accordance with the JSC law, by the law and contract concluded with each member⁶⁶. The general meeting or the council of directors, if the authority to form the executive bodies is delegated to it, may decide on the termination of the authorities of the executive body or its members at any time. The general meeting also has the right to terminate the authorities of the managing organisation or manager. The charter may provide the council of directors with the power to suspend authorities of the one-person executive body and delegate them to a provisional body.⁶⁷

In accordance with the Article 85 of the JSC Law, the (internal) audit commission is established in a non-public company, unless its charter provides the absence of it, whereas in a public company its establishing ought to be required by the charter. In turn, the (external) financial and economic activity of the company ought to be audited by the auditor (an individual or an audit organisation) that is approved by the general meeting of shareholders⁶⁸. A public company is also obliged to arrange its risk management and internal control, and is required to execute an internal audit for evaluating the reliability and efficiency of it⁶⁹.

A company is obliged, under the JSC Law⁷⁰, to keep the bookkeeping report and to submit the financial documents (to the public authorities) in accordance with the legal requirements, for which the executive body of the company is responsible. The reliability of the data contained in the financial documents must be confirmed by the audit commission (auditor) of the company, if this is provided by the charter. The annual report of the company is subject to preliminary confirmation by the council of directors or, in the absence of this, by the one-person executive body not later than 30 days before the date of conducting the annual general meeting. In the event that the approval of the annual report falls within the competence of the council of directors (supervisory board), it ought to be approved in the same time period. A company is obliged to store its important documents and grant information concerning it, in accordance with the law requirements, to the public authorities and third persons as well as shareholders.⁷¹

A public company must disclose its annual report and annual accounting (financial) statements and also the prospectus concerning the issue of securities and the notices of general meetings of shareholders as well as other information determined by the Bank of Russia; also, a non-public company, if it has over 50 shareholders, must disclose its annual report and annual accounting (financial) statements⁷². The disclosure duty of the company arises not only in connection with the requirements concerning the company's activity information established by the JSC Law but also in accordance with the public law provisions empowering certain authorities to demand certain information from companies. Empowered to

⁶⁶Id. at art. 69.3.

⁶⁷Id. at art. 69.4.

⁶⁸Id. at art. 86.

⁶⁹Id. at art. 87¹.

⁷⁰Id. at art. 88.

⁷¹Id. at arts. 89–91.

⁷²Id. at art. 92.

demand information are tax, custom, antimonopoly, finance, statistics, and investigation (police) authorities as well as judicial bodies.⁷³

The liability of the members of the governing bodies of the company that is provided by the Joint Stock Company Law is based on the general company law rules on liability of the Civil Code⁷⁴ and means in general the liability for negligence. Under the Article 71 of the Joint Stock Company Law, the members of the governing bodies⁷⁵ are presupposed to act in good faith and reasonably, and are liable to the company for losses inflicted to it by their wrongful actions (inaction), including violation of the procedure established for acquiring company shares, unless other grounds for liability are established by the law. In determining the grounds and extend of the liability of the corporate executives, however, ordinary business practices and other relevant considerations must be taken into account. The executives' liability is personal as well as solidary (joint and several), but the persons who did not take part in the administration (or voted against) is not to bear liability; in this case the company or shareholders owning not less than 1 percent of the common shares of the company have the right to apply to a court with a suit. In the event of violation of the rules on acquisition of company shares such a right is provided to a shareholder without limitations on ownership.⁷⁶ Thus, characteristic for the liability of executives and representatives of company is, that their liability is to be realised simply at the moment when their duty, determined through the value concepts⁷⁷, to act in good faith and reasonably is violated, provided that it has caused damages⁷⁸.

Limited Liability Company

The minimum requirement for a limited liability company⁷⁹ is two-level system of governing bodies consisting of the general meeting and the executive body. However, the charter may provide additionally under the LLC law⁸⁰ for the foundation of a council of directors (supervisory council).

⁷³Id. at art. 90.

⁷⁴Russian Civil Code, art. 53.3.

⁷⁵namely, members of the board of directors (supervisory board), the sole executive body of the company (director, general director), the temporary sole executive body, members of the collective executive body (management board, directorate), as well as a management company or a manager, as well as representatives of the state or the municipality in the board of directors.

⁷⁶Id. at art. 71.5.

⁷⁷The growing use of the value concepts and the value norms in Russian civil law indicates its development towards the growing role of the judicial discretion and consequently the approval of the significance of the judicial practice.

⁷⁸The damages caused by the acts of the director are regarded as the requirement of the director's liability.

⁷⁹A limited liability company is, under the Civil Code (Article 87) and the Limited Liability Company Law (Article 2), a company established by one or several persons, the charter capital of which is divided into (ideal) shares (parts) or membership interests or member's ownership interests. For more on the subject see, for instance, Lomakin (2020) at 26–38.

⁸⁰Limited Liability Company Law, art. 32.2.

The supreme governing body of a limited liability company is, according to the LLC law⁸¹, the general meeting of its members, and its authority is determined by the charter in accordance with the law. Among the issues which are within the authority of the general meeting of members, in accordance with the LLC law⁸², are:

1. general direction over the activity of the company;
2. approval of the charter and its amendments;
3. formation of the executive bodies or transfer of the executive body powers to an external manager (organisation), and
4. formation of the audit commission (auditor) of the company;
5. approval of annual reports and bookkeeping balance sheets as well as bylaws for the regulation of the company's internal affairs;
6. the distribution of net profits;
7. the issuing bonds and other emission securities of the company;
8. decisions on the reorganisation and liquidation of the company as well as
9. other decisions provided by the law and charter.

Approval of the annual results of the activities of the company is within the authority of the annual meeting; general meetings other than annual meetings are extraordinary⁸³.

Participation of a member in voting at the general meeting requires his registration under the LLC law⁸⁴. The general meeting is not permitted to adopt decisions with regard to issues not included on the agenda of the meeting unless all the members of the company are present. In general, decisions are adopted by a majority of votes of all members of the company, but decisions with regard to the amendments of the charter and in some other cases must be adopted at the general meeting by a qualified majority (a majority of not less than two-thirds of the votes of the members).⁸⁵ However, amendments to the charter allowing withdrawal from the company⁸⁶ and decisions with regard to the reorganisation and liquidation of the company must be made, under the LLC law, by the members unanimously.⁸⁷

Unanimous decisions of the general meeting are required also for the monetary valuation of property contributed to the charter capital⁸⁸. Furthermore, according to the LLC law, the amendments concerning the additional rights⁸⁹ and duties⁹⁰ and the restrictions on the size of a membership interest⁹¹ or proportion of

⁸¹Id. at art. 32.1.

⁸²Id. at art. 33.2.

⁸³Id. at arts. 34 and 35.

⁸⁴Id. at art. 37.2.

⁸⁵Id. at art. 37.8.

⁸⁶Id. at art. 26.1.

⁸⁷Id. at art. 37.

⁸⁸Id. at art. 15.2.

⁸⁹Id. at art. art. 8.

⁹⁰Id. at art. 9.

⁹¹Id. at art. 14.3.

the interests (as well as votes and dividends) also require unanimous decisions; however, if such a change concerns a certain member, the decision can be made by a vote of two-thirds of the members with the consent of such a person⁹². Amendments to the charter providing a fixed price for the interest as well as the order of the preemptive acquisition requires unanimity of the general meeting; however, the elimination of such provisions may occur by its qualified majority decision⁹³.

A decision of the general meeting may, under the LLC law⁹⁴, be adopted by means of conducting external voting (poll) excepting the approval of annual reports and bookkeeping balance sheet. Cumulative voting with regard to the election of the members of the council of directors, executive body, and audit commission may also be established by the charter⁹⁵. In a single limited liability company, the decisions of its member in regard of the issues provided for the authority of the general meeting must be completed in writing and by his requests notarially certified⁹⁶.

An extraordinary general meeting must be held, according to the article 35 of the LLC law, in those cases provided for by the charter, and also in any other cases if it is necessitated by the interests of the company and its members. The meeting must be convened by the executive body of the company and this also may be required by the council of directors, the auditors as well as members holding not less than 10 percent of the all votes in the company.

Under the LLC law, the one-person executive body of the company (director general, president) must be elected by the general meeting, and he must be a physical person. The powers of the one-person executive body of the company may be transferred under a contract to an external manager. The activity and decision-making of the one-person executive body is defined in the LLC law and they may be detailed by the charter and other internal documents of the company as well as by the contract concluded with the person executing the functions of the one-person executive body. The executive body of the company may be collegiate (the board, directorate) and one-person, if it is provided by the charter. Also, members of the collegiate executive body must be elected by the general meeting and they are to be physical persons, but not necessarily members of the company. The activity and decision-making of the collegiate executive body is to be established by the charter and internal documents of the company.⁹⁷

In the case of the foundation, under the charter, of the council of directors (supervisory council), many of the issues listed above as those to be within the authority of the general meeting of members may be transferred to its authority in accordance with the LLC law⁹⁸. Among the issues which are under the exclusive competence of the general meeting and not transferable to the council of directors are:

⁹²Id. at arts. 21.4 and 27.

⁹³Id. at art. art. 21.4.

⁹⁴Id. at art. 38

⁹⁵Id. at art. 37.9.

⁹⁶Id. at art. 39.

⁹⁷Id. at arts. 40–42.

⁹⁸Id. at art. 32.2¹.

- approval of the charter and its amendments;
- formation of the audit commission (auditor) of the company;
- approval of annual reports and bookkeeping balance sheets of the company;
- distribution of the net profits, as well as
- decisions on the reorganisation and liquidation of the company.

The charter may provide, in addition to issues transferred from the authority of the general meeting, that decisions on the organisation of general meetings are delegated to the council of directors⁹⁹ and in such a case the executive body of the company is furnished with the right to demand an extraordinary general meeting¹⁰⁰.

In accordance with the Articles 32 and 47 of the LLC Law, the (internal) audit commission is to be established if it is required by the charter, or if the company has over 50 members. In turn, the (external) financial and economic state of the company may be audited by the professional auditor.¹⁰¹

According to the LLC law, a limited liability company must publish every year an annual report and a balance sheet and disclose the information on its activities in cases of the public placement of its bonds and other securities. A company is obliged to store its important documents and grant information concerning it, in accordance with the law requirements, to the public authorities and members of the company¹⁰².

Alternatives to Highly regulated Corporations

General Partnership and Limited Partnership

In accordance with the Civil Code¹⁰³ the general partnership¹⁰⁴ is to have the right to acquire the civil law rights and to engage with civil law obligations through its participants. Thus, management in the general partnership is to be carried out by mutual agreement of all the partners, or it is based on the principle of consensus, but the constituent agreement may also indicate the cases when the majority decision is sufficient in decision-making. Every partner has one vote, but the constituent agreement may include other rules. Partners also have the right to operate on behalf of the partnership, unless the constituent agreement provides that this must be done jointly or by one of them, in which case other partners must have a power of attorney to conclude any transaction in the name of the partnership. The management rights granted to one or several partners may be terminated by the court on the demand of another (or other) partner, provided there

⁹⁹Id. at art. 32.2.

¹⁰⁰Id. at art. 32.2².

¹⁰¹Id. at art. 48.

¹⁰²Id. at arts. 49 and 50.

¹⁰³Russian Civil Code, arts 53.2 and 71.

¹⁰⁴General (full) partnership is defined, under the Civil Code (Article 69), as a commercial organisation (partnership) the participants of which (general partners) are engaged, in conformity with the agreement signed between them, in business activities on behalf of the partnership and bear liability for its obligations with their property, however subsidiary.

are serious grounds for this, such as a gross violation of the duties or incapability to provide sensitive management.¹⁰⁵

Management in the limited partnership¹⁰⁶ is to be carried out by its general partners in accordance with the rules on the general partnership of the Civil Code. The silent partners (investors) have not the right to take part in the management of the limited partnership or to come out on its behalf other than by a warrant. Neither they have the right to dispute the actions of the general partners involved in the management of the partnership.¹⁰⁷

Limited Liability Partnership

Contrary to the general and limited partnership that acquire the civil law rights and engage with civil law obligations through its participants, a business partnership or a limited liability partnership¹⁰⁸ is to acquire civil law rights and engage with civil law obligations via its bodies that is similar to the (business) companies.

According to the general rules provided for by the Business Partnership Law, the constituent document of a business partnership is the charter (Article 8), and it must contain the name, the objects and fields of activities and the location of the partnership; the amount and composition of its joint capital; the term and order of the election of the one-person executive body that is obligatory for the partnership, as well as the information on the management agreement and on the notary who authenticates the management agreement and stores this.

According to the general rules provided for by the Business Partnership Law (Article 5.3), the (business) partnership is governed by its partners in proportion to their share, unless otherwise provided for by the management agreement. According to the Business Partnership Law (Article 18), the system, structure, and authorities of the partnership's governing bodies as well as the order of their formation and activities are subject to the terms of the management agreement given the provisions of the Business Partnership Law, whereas the charter contains only general stipulations concerning the order and term of the election of the (obligatory) one-person executive body. Thus, the business or limited liability partnership is, though the charter is its constituent document, subject to contractual governance.

Production Cooperatives

¹⁰⁵Id. at art. 72.2.

¹⁰⁶A limited (special) or commandite (*in commendam*) partnership is defined under the Civil Code (Article 82) as such a partnership in which, alongside the general partners (who have the status of the partner of the general partnership), there is (are) also one or several participants-investors (silent partners, commanditaires). For more on the partnerships see, for instance, Lomakin (2020) at 18–25.

¹⁰⁷Id. at art. 84.

¹⁰⁸As a limited liability or business partnership is recognized, under the Article 2 of the Business Partnership Law, a commercial organisation, established by two or more (max 50) physical and (or) juristic persons, in the governance of which participants are, according to the law, the partnership members and also other persons within the limits and extend provided by the management agreement. For more on the subject see, for instance, Lomakin (2020) at 71–74.

According to the provisions of the Civil Code on the peculiarities of management in a production cooperative¹⁰⁹ the executive bodies of a production cooperative is its chairman and board, if its formation is provided for by the law or charter¹¹⁰. Only members of a production cooperative may be members of the board and the chairman of the cooperative. Furthermore, each member of the cooperative has one vote at its general meeting¹¹¹.

Employee-owned Enterprise

Employee-owned¹¹² or people's enterprises or joint stock companies that are familiar in Russia¹¹³ are subject, in addition to the general rules, also to the special law (1998) provisions on them. Special rules of the Law on Peculiarities of the Legal Status of Employee-owned Joint Stock Companies concern decision-making in the company where, in particular, the status of employees is safeguarded. The non-shareholders may participate in the general meeting (with consultative vote) and even, in certain cases, be represented in the supervisory council, if this is established. In respect of the main part of the issues that are under the exclusive authority of the general meeting, each shareholder has one vote in the general meeting.¹¹⁴

Non-commercial Corporations¹¹⁵

In addition to business entities, Russian law also recognises non-commercial or non-profit organisations as (registered) juristic persons that have limited civil law capacity to make transactions connected with the objects of their primary

¹⁰⁹A production cooperative is defined in the Civil Code (Article 106¹) as a voluntary association of citizens on the basis of membership for joint production or other economic activities, and which requires their personal labour and other participation together with the property share contributions of its members (participants). For more on the subject see, for instance, Lomakin (2020) at 74–78.

¹¹⁰Russian Civil Code, art. 106⁴.

¹¹¹Id. at art. 106⁴.3.

¹¹²For more on the subject see, for instance, Lomakin (2020) at 61–63.

¹¹³An employee-owned company may be founded only by means of reorganisation of an existing enterprise, where employees possess less than 49 percent of shares. The foundation of such an enterprise requires the consent of three-fourths of the participants and all of the employees of the reorganizing organisation. In the employee-owned company, the number of shareholders is not to exceed 5,000, and the minimum number of employees is not to be less than 51, among which the maximum share of non-shareholders ought to be 10 percent of all employees. Moreover, the employees are to have in their possession more than 75 percent of shares. Furthermore, the status of a shareholder in an employee-owned company is directly connected with working in the company — dividends are to be paid to the shareholder in proportion to his labour contribution. As the constituent document, the charter of an employee-owned company must contain, among other, the provisions on the maximum amount of the shares (size of the membership interest) that is allowed to be in possession of the non-employees in total, as well as a single employee (maximum 5 percent).

¹¹⁴Russian Civil Code, art. 10.

¹¹⁵For more on the subject *see*, for instance, Gubin & Lahno (2020) at 376–378.

activities. Such organisations, including consumer cooperatives¹¹⁶, societal organisations¹¹⁷, associations (unions)¹¹⁸, partnerships of real estate owners¹¹⁹ and Cossack societies¹²⁰, are listed in the same way as commercial organisations in the Civil Code. Charter-based governance is common also for non-commercial or non-profit organisations, whose founders are granted with the membership including the right to form the supreme governing body of the organisation.

The peculiarities of governance in Russian non-commercial organisations are that

- the charter of a consumer cooperative ought to contain provisions on the composition and competence of the bodies of the cooperative and the procedure for them to take decisions, including the issues on which decisions are taken unanimously or by a qualified majority of votes, as well as provisions on the procedure for the cooperative's members to cover the losses incurred by it.
- In a societal organisation, as well as in an association, a sole executive body (chairman, president, etc.) ought to be set up and permanent collective executive bodies (council, board, presidium, etc.) may be set up. Furthermore, by a decision of a general meeting of members of the organisation the powers of its body may be terminated before the due date in the event of that body's gross violation of its duties, discovery of inability to properly conduct business or if there are other serious grounds; the similar rule concerns also partnerships of real estate owners.

¹¹⁶A consumer cooperative is defined in the Civil Code (Article 123².1), as a membership-based voluntary association of physical persons or physical and juristic persons for the purposes of meeting their material and other needs realised by means of the pooling of property participatory share contributions by its members.

¹¹⁷Societal organisations are, under the Civil Code (Article 123⁴.1) voluntary associations of physical persons, who, in the law-established order, have joined on the basis of common interests to meet spiritual and other non-material needs for the purposes of representation and protection of common interests and for attainment of other objectives not contravening a law.

¹¹⁸An association (union) is, under the Civil Code (Article 123⁸.1), an organisation of juristic persons and/or of physical persons based on voluntary or, in the law-established cases, on mandatory membership and formed for the purposes of representation and protection of common, including professional interests, attainment of socially useful goal and also other objectives that do not contravene the law and are of non-commercial nature.

¹¹⁹A partnership of real estate owners is, under the Civil Code (Article 123¹².1), a voluntary association of the owners of immovable property (premises in a building, for instance in a block of flats, or in several buildings, dwelling houses, garden houses, gardening or truck-farming land plots, etc.) established by them for joint possession, use, and, within the law-established limits, for disposition of the property (things) that is by virtue of the law in their common ownership or use, and also for the attainment of other objectives provided by the law.

¹²⁰As Cossack societies are recognised, according to the Civil Code (Article 123¹⁵.1), the societies included in the Russian State Register of Cossack societies that are established for the purposes of conserving the traditional lifestyle, economic activities and culture of the Russian Cossacks, and also for other purposes provided by the law, who have voluntarily undertaken in the law-established procedure the state service or another service duty.

Other Entrepreneurial Entities

There are also entrepreneurial entities in Russia that are outside of the scope of the corporate law regulation. They include small and medium-sized enterprises¹²¹ and social enterprises.

The term small and medium-sized enterprises or SME covers a group of entrepreneurial entities that are subjects to favouring them public law regulation contained in the special law norms¹²², however, remaining as subjects of civil law. The list of the recognised subjects of small and medium-sized entrepreneurship that is contained in the law includes business companies and partnerships, including limited liability partnerships, as well as production and consumer cooperatives, farms and individual entrepreneurs¹²³. A SME ought to be registered in the Register of small and medium-sized enterprises after meeting the criteria determined by the law, including those that are related to the number of employees and the income from business activity.¹²⁴ In turn, social entrepreneurship is understood in Russia as socially oriented activities of the small and middle-sized enterprises aimed at the achievement of the socially beneficial aims, particularly targeted for solution of the social problems of people and society, including the support of persons who live in difficult life situation. Social enterprises belong to the subjects of small and medium-sized entrepreneurship practicing its activities in the sphere of social entrepreneurship, and they are under the scope of application of the rules regulating small and medium-sized entrepreneurship.

Economic activities may be practised also by physical persons separately as individual entrepreneurs or self-employed persons¹²⁵, and they are distinguished in the tax law: through the registration they may obtain special tax regime. Physical persons may practice other than entrepreneurial activities also as jointed in the simple partnership that is purely contractual form provided for by the law as a type of contract¹²⁶.

Russian legal literature is familiar also with family enterprises and there are even some legislative initiatives on the issue where attention is paid to the family enterprise peculiarities related to family, corporate and labour relations as well as taxation.¹²⁷

Legal Reality v. Actual Reality¹²⁸

It is common for the Russian corporate law that the legal reality does not properly correspond to the actual reality. The charter documents of companies are often only façade for the real corporate governance arrangements securing the autocratic management in the company; particularly it concerns private companies

¹²¹For more on the subject *see*, for instance, Gubin & Lahno (2020) at 332–356.

¹²²Law no 209-FZ of July 24, 2007 on Development of Small and Medium Businesses in Russia.

¹²³For more on the subject *see*, for instance, Gubin & Lahno (2020) at 215–222.

¹²⁴Laws no 222-FZ of June 5, 2016 and no 313-FZ of August 3, 2018.

¹²⁵For more on the subject *see* Chesalina (2020).

¹²⁶Russian Civil Code, arts. 1041–1054.

¹²⁷For more on the subject *see* Mokina (2019) at 88–97.

¹²⁸For more on the subject *see*, for instance, Verbitsky (2019) at 27–37 and Verbitsky (2020) as well as Trofimova (2020) at 70–74.

created as a result of privatisation. A Russian company may be actually ruled by the owner or a majority shareholder instead of the quasi-elected board of directors. Moreover, it is not exceptional for Russian companies that the same person is the owner, the general director and the chairman of the board of directors in the same time.

In general, actually dominating in Russia family business culture is reflected in the plenty of enterprises established by relatives and friends, they are, however, practically outside of the juridical concern. In turn, small and medium-sized as well as social entrepreneurship has deserved its own legislation in the country.

In any case, the introduction of elements of the modern corporate governance is rather facultative in Russian non-public companies. It does not represent strict requirements of following the international standards, and usually is based on their practical expediency. Moreover, following the best business practices has become less attractive at present, in Russia, particularly due to the actualizing tendencies to nationalisation of private enterprises.

In general, the development of the modern corporate governance is burdened by the actualised scarcity of resources problem that the exhausting possibilities of the customised commercial or market capture and, particularly, maintenance of natural resources demonstrates. It is followed by the strengthened attempts of the power capture of resources that are not supported by real ideas of sustainable entrepreneurial (business) solutions of the scarcity of resources problem where economic rationality and ethical acceptability are required. In particular, it means to follow the new economic paradigm that better corresponds to the conditions for the existence of nature and further societal development, however, without necessarily abandoning the historically developed corporate structures and culture.

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