

ПРОБЛЕМЫ ГОСУДАРСТВЕННОГО РЕГУЛИРОВАНИЯ ЗАЩИТЫ ПРАВ УЧАСТНИКОВ КОРПОРАЦИИ ПРИ ПОЛУЧЕНИИ ДОКУМЕНТОВ И ИНФОРМАЦИИ О ЕЕ ДЕЯТЕЛЬНОСТИ

Андрей Игоревич Гаврилов^а

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а Московская коллегия адвокатов «Буторин, Гаврилов и партнеры»

Аннотация: В статье рассматриваются основные проблемы государственного регулирования прав миноритарных участников корпорации при получении информации и документов о финансово-хозяйственной деятельности компании, а также практики их применения. В своей работе автор использовал сравнительно-правовой, формально-правовой, логический, диалектический и системный методы исследования. В данной статье автор исходит из того, что на практике корпорации зачастую, а в условиях корпоративного конфликта – в подавляющем большинстве случаев, независимо от принятых судебных актов, уклоняются от их исполнения. Миноритарные акционеры не могут получить необходимую им информацию в течение длительного времени и в результате не успевают пресечь правонарушения и предотвратить существенный ущерб корпорации, наносимый мажоритарными акционерами. Автор приходит к выводу, что регулирование корпоративных отношений в части прав миноритарных акционеров корпорации на получение информации должно быть усилено государством через принятие различных мер, в том числе новых, не имеющих аналогов. Подобное регулирование стабилизирует отношения внутри организации, снизит риски использования компании исключительно в интересах мажоритарных участников и, как следствие, повысит инвестиционную привлекательность корпораций.

Ключевые слова: корпоративное право, защита прав миноритарных участников, получение информации о деятельности корпорации, государственное регулирование, усиление роли государства, повышение инвестиционной привлекательности корпорации

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PROBLEMS OF STATE REGULATION FOR PROTECTING THE RIGHTS OF THE CORPORATION PARTICIPANTS TO OBTAIN DOCUMENTS AND INFORMATION ABOUT ITS ACTIVITIES

Andrey Igorevich Gavrillov^a

RESEARCH ARTICLE

a Moscow Bar Association "Butorin, Gavrillov and Partners"

Abstract: The article deals with the main problems of state regulation for the rights of minority participants in the corporation to obtain information and documents on the financial and economic activities of the corporation. It assesses the problems of state regulation and the practice of its application. The methods of research used by the author are comparative-legal, formally-legal, logical, dialectical and systemic. In this article, the author proceeds from the fact that in practice, corporations often, and in the context of a corporate conflict, in the overwhelming majority of cases, regardless of the adopted judicial acts, evade their execution. Minority shareholders cannot obtain the information they need for long periods of time, as a result of which they often do not have time to stop the offenses committed by the majority shareholders and prevent significant damage to the corporation. The author concludes that the regulation of corporate relations in terms of the rights of minority shareholders of the corporation to receive information should be strengthened by the state through various measures, including new measures that have no analogues. Such regulation will balance relations within the corporation, reduce the risks of using the corporation solely in the interests of majority participants and, as a result, increase the investment attractiveness of corporations.

Keywords: corporate law, protection of the rights of minority participants, obtaining information about the activities of the corporation, state regulation, strengthening the role of the state, increasing the investment attractiveness of the corporation

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Introduction

Contemporary trends indicate that, in the current stage of corporate legislation development, the role of the state will not only grow, but it may eventually become the primary participant in corporate relations. It is important to be prepared for this potential development, not only from the perspective of the state's availability of legal instruments to regulate corporate relations, but also for minority shareholders who will engage in legal interactions with the state.

Dedicating separate efforts to preparing the state apparatus for possible scenarios where it becomes the majority participant in corporations is crucial. This preparation involves addressing numerous details regarding participation and interactions with other entities.

In this article, we believe it is necessary to discuss the state's role in regulating the protection of minority shareholders' rights to access documents and information about a corporation's financial and economic activities. Strengthening the state's involvement in regulating this matter is essential, as current regulatory methods do not adequately enable minority shareholders to fully exercise their rights to obtain information.

The need for clear legal regulation to allow minority shareholders in corporations to exercise their rights justifies the relevance of this issue. Currently, the shortcomings in the legal regulation and the process of exercising the rights of minority shareholders lead to situations where they are unable to actually exercise their fundamental rights.

Although there has not been an increase in the number of corporate disputes considered by arbitration courts in recent years, and the number of disputes regarding information and document provision is insignificant compared to other corporate litigations, the timely realization of the right to receive information about the corporation's activities is crucial in determining the effectiveness of mechanisms to protect the rights of minority shareholders.

The viability of corporate associations depends not only on legally recognizing the rights of corporate entities but also on their ability to implement these rights quickly and cost-effectively. Legal guarantees and existing mechanisms for implementing these rights, such as receiving timely information about the corporation's activities, contribute to stabilizing civil turnover and increasing investment attractiveness in corporations.

Given the constantly changing economic situation and foreign policy challenges, it is important to establish stable foundations for legal regulation. Ensuring a balance of interests for all participants, particularly in corporations, is crucial for the stability of legal regula-

tion. Identifying and solving problems with enforcing rules that protect the rights of corporate participants to receive information will enhance the stability of legal regulation and increase confidence in the legal system as a whole. This is vital for maintaining and developing a favorable investment climate.

Exercising the rights of the corporation participants

The right to receive information about the activities of the corporation can be attributed to the non-property rights of a member of the corporation [Shitkina, 2017].

This right is closely connected to other rights, such as the right to challenge decisions made by the corporation's management and transactions conducted by the corporation, as well as the right to seek compensation from individuals in management positions.

Currently, the state ensures the protection of minority shareholders' right to access information and documents regarding the corporation's financial and economic activities through laws like the Civil Code of the Russian Federation Part One No. 51-FZ of November 30, 1994 (hereinafter referred to as the Civil Code of the Russian Federation) and industry laws, for example, in the Federal Law No. 208-FZ of December 26, 1995 «On Joint Stock Companies» (hereinafter referred to as the Federal Law «On Joint Stock Companies»), Federal Law No. 14-FZ of February 8, 1997 «On Limited Liability Companies» (hereinafter referred to as the Federal Law «On Limited Liability Companies»).

The current process for exercising this right involves a corporation participant requesting relevant information from the corporation, and if the corporation fails to provide it, the participant has the option to seek legal recourse in court to safeguard their violated right.

The court can enforce the protection of a violated right by ordering the corporation to provide requested information and documents within a specified timeframe. However, in order to receive this protection from the state, a corporate shareholder must follow the arbitration procedural legislation and demonstrate that they were unable to obtain the documents independently.

Currently, regulations require a company shareholder to individually request information about the company's activities. The corporation is given five days to voluntarily comply with the request. If they fail to do so within this period, the shareholder can seek assistance from the court. However, these actions not only take time but also create uncertainty for the shareholder, as there is no guarantee that all

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requested documents will be provided without any alterations by the corporation.

As a result, the current judicial system in the Russian Federation is not efficient or timely enough to address violations of the rights of minority shareholders or the company's stakeholders in terms of accessing information.

From a logical and theoretical standpoint, such a mechanism should be sufficient to protect the rights of minority shareholders and give them the actual opportunity to access documents and information about the corporation's activities. However, in practice, exercising the right to receive information and documents about the corporation's activities poses significant challenges for minority shareholders.

Firstly, it should be noted that if the corporation refuses to provide documents upon request, the shareholder is compelled to invest time in obtaining a court decision to push the corporation to provide the requested documents. On average, these trials take five to six months, but there are cases where litigation in such disputes can last up to a year. Naturally, the importance of information diminishes over time, especially when a corporation and its majority participants engage in unfair behavior. This allows for actions to be taken that make it incredibly difficult to protect the rights of minority participants.

In the event of a conflict within the corporation, the effectiveness of protecting the rights of all participants depends on how quickly this protection is implemented. Prolonged protection of a member's rights in a corporation renders it ineffective and may eventually lead the participant to take actions to defend their rights that may not align with current laws.

The urgent need for swift judicial protection of minority participants' rights is a crucial matter that the state, as the guarantor of protecting the rights of all participants in legal relationships, must address.

The current legislation on arbitration procedures includes a rule for expediting the consideration of corporate dispute cases, but this rule is rarely followed in practice. It appears that certain cases involving corporate disputes, specifically those related to the provision of financial and economic information by a corporation's member, could be resolved in a single court session.

Implementing such an arrangement would not only streamline the handling of less complex cases, but also encourage parties involved in disputes to thoroughly prepare for the proceedings. This would ultimately improve the quality of case consideration.

It is important to expedite the consideration of cases in the initial court stage, as this is where most delays occur. The first instance court often becomes

a hostage to unfair tactics employed by participants in the process. These tactics include filing various petitions or submitting incomplete documents, which force the court to postpone case consideration.

When addressing the issue of protecting the rights of minority shareholders to access information, it is inevitable to discuss the topic of potential abuses of these rights by certain participants.

Some authors believe that expanding the right of minority shareholders to obtain information may lead to increasing the number of abuses by such participants [Kozhevnikova, 2021].

This type of abuse occurs when someone obtains information solely to distribute it to third parties or makes excessive demands for document copies to hinder a corporation's activities. In clear cases of abuse, the right to access information should be denied [Lomakin, 2014]. But for such a refusal, the motives for the abuse must be obvious.

However, simply assuming that a corporation participant is abusing their rights without legal evidence is insufficient to classify their actions as abuse [Kozhevnikova, 2021].

Requests for documents and information from minority shareholders often indicate an existing corporate conflict, where each side accuses the other of rights abuse. Therefore, it is important to clearly define what constitutes abuse when requesting information. The same conclusion is confirmed by the Supreme Court of the Russian Federation in its Decision of September 3, 2020, on case No. 305-ES20-4519.

It is important to have preventive measures in place to protect the minority shareholder's right to information and prevent significant harm to their interests and the corporation itself [Kozhevnikova, 2021].

The lack of uniform rules and terminology in current legislation

Another issue in protecting members' rights is the inadequate terminology used by lawmakers. This allows unscrupulous participants in corporate relations to significantly complicate, and sometimes make it completely impossible to enforce court decisions.

In the above example, the arbitral court considered the issue of the scope of rights conferred by the court's «submit» and «provide» wording and decided it against a business company's minority shareholder.

The ruling in case No. A83-15487/2021, where the arbitration court actually restricted a minority participant's right to obtain information in contrast to the law, is another noteworthy example demonstrating the importance of developing alternative extrajudicial means of defending the information-gathering rights of minority participants. We should

note that this decision was left unchanged by higher courts, including the Supreme Court of the Russian Federation.

It should be noted that the issue of providing the participant with documents and information on the activities of the corporation is regulated by industry-specific laws. The Civil Code of the Russian Federation establishes the general right to access information as one of the rights of a corporation participant. Industry laws regulate this issue differently. For example, the Federal Law «On Joint Stock Companies» provides for a more detailed regulation of the issue of obtaining information by a shareholder, in contrast to the Federal Law «On Limited Liability Companies». Attention is drawn to the various grounds for refusing to disclose documents for review, provided for by these laws. At the same time, the Federal Law «On the Conduct of ...» does not contain any grounds for refusing to provide documents to a member of the corporation at all.

Different regulation of essentially the same rights of the corporation participants by various sectoral laws creates ambiguity in their understanding by the participants in legal relations, makes civil turnover in this part more confusing, and does not allow creating a unified practice for applying the norms, since courts and law enforcers interpret the laws based on their literal meaning in each specific case.

The establishment of consistent regulations regarding the right of corporate members to access information and documents on a corporation's financial and economic activities is extremely important for effective protection of their rights, without it the effective protection of the rights of corporate participants will be impossible. Another significant issue in regulating the provision of information and documents to corporate participants is the lack of uniform terminology in law enforcement practices. The legislation states that the documents must be «provided» to the corporation participant for review, and upon request, copies of the requested documents must be given to them.

To protect the interests of corporate members, the ability to review documents should include both direct access to the requested documents at the corporation's location and the right to receive certified photocopies of those documents. That is, the ability to review documents does not terminate the right to receive copies of requested documents, which were reviewed.

The opportunity to study the documents should allow participants to take as much time as they need and make extracts from them. Additionally, members should have the right to review the documents personally or with the assistance of a representative. At

the same time, the participant cannot be deprived of the right to use the services of a representative while reviewing the documents of the corporation. Of course, it is necessary to take precautions to prevent the possibility of abuse on the part of the participant, such as limiting the number of representatives a participant can bring, while, hypothetically, bringing too many representatives to the office can paralyze the activities of the corporation. But depriving the participant of the right to invite the representative or giving them the choice to review the documents personally or only with the help of a representative also does not correspond to the rules governing the right to review documents and information about the corporation's activities.

Nevertheless, in practice, there are cases where the courts, when deciding to satisfy the claim of a corporation participant on the obligation to provide them with documents and information about the activities of the corporation, use the term «submit» instead of «provide» in relation to documents and information. In turn, at the stage of execution of such a court decision, bailiffs (executors) interpret the word «submit» in the meaning of show, without allowing to make extracts from the documents. Furthermore, there are cases when a corporation participant receives the court decision mandating the corporation to «submit» documents for review, but cannot execute such a decision for various reasons and applies to the court with a request to receive certified copies of the same documents that they were not able to receive but the courts refuse to satisfy such requirements referring to the fact that the obligation to provide documents for review have already been fulfilled.

Thus, the lack of a unified approach and clear terminology regarding the issue of exercising the right of a corporation participant to access the documents and information about corporation's financial and economic activities creates challenges in actually exercising this right.

There is a perspective that corporations, in particularly joint-stock companies, have a responsibility to observe and protect the rights of shareholders. This can be achieved through the approval of the company's internal documents that resolve disputes related to the exercising and protecting the rights of shareholders [Lomakin, 2014]. However, without clear regulations from the state, expressed in regulatory legal acts and enshrined in the practice of law enforcement, the corporations themselves will not accept such internal documents, since the adoption of these documents restricts the rights of majority shareholders of corporations who typically exercise operational control and management of the corporation.

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To address this issue, it would be beneficial to establish uniform rules in the Civil Code of the Russian Federation regarding the shareholder's right to access documents and information about the financial and economic activities of the corporation. At the same time, it is necessary to define the conceptual apparatus used in these regulations to prevent ambiguous interpretation of the terms and definitions used.

Further consideration should be given to granting the corporation participants the ability to independently protect their right to access documents and information about the activities of the corporation. If the corporation refuses or fails to provide documents and information or provides not everything that has been requested, the corporation participants should have the right to obtain certain documents on the activities of the corporation from third parties who possess them. This right may apply to bank statements and tax reporting documents. In this case, we believe that the conditions of banking and tax secrecy cannot apply to the corporation participants, as they are a priori entitled to be able to access and review such documents.

Conclusion

The lack of proper legal regulation by the state regarding minority shareholders' rights to access information about the corporation leads to significant violations of their rights. Timely and complete access to information can prevent substantial harm to the corporation and help balance the interests of majority and minority shareholders [Viktorova, 2018].

On the contrary, if the process of obtaining information becomes more complex for minority shareholders, it will discourage their participation in corporations and create a negative perception of the entire legal system. Currently, an out-of-court mechanism for protecting the rights of a minority shareholder is

not provided for by the current legislation, as well as there is no possibility for a corporation shareholder to directly request the information of interest from relevant bodies other than the corporation.

Therefore, it is crucial to introduce out-of-court mechanisms to protect the rights of minority shareholders in obtaining the information about the corporation's activities. In our opinion, this is a promising direction of development and should be a focus of state regulation and control efforts. Implementing such out-of-court mechanisms will reduce the burden on the courts and the bailiff service, significantly expedite the receipt of information for the corporation participants and reduce the risk of harm to the participants caused by the unfair actions of the majority shareholders who control the corporation.

Receiving timely and comprehensive information regarding the corporation's activities will ensure protection of the rights of company's minority participants to the maximum extent. When minority shareholders are promptly informed about the corporation's activities, they have a genuine chance to challenge any transactions made by the corporation that they believe violate their rights or infringe upon the rights of the corporation itself. Additionally, shareholders can safeguard their own rights and those of the corporation by pursuing legal action to seek compensation for damages. The timely access to information will provide the minority shareholders with the opportunity to make informed decisions on further participation in the company or the sale of their shares in the authorized capital of the corporation.

We believe that introducing appropriate amendments to the regulations of the Russian Federation will establish an effective state mechanism for safeguarding the rights of the corporation participants to receive documents and information about its activities.

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ИНФОРМАЦИЯ ОБ АВТОРЕ:

Андрей Игоревич Гаврилов, председатель правления, адвокат
Московская коллегия адвокатов «Буторин, Гаврилов и партнеры» (Российская Федерация, 121353, Москва, ул. Вяземская, 12/1, кв. 160). E-mail: Gavrilo_low@icloud.com

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INFORMATION ABOUT THE AUTHOR:

Andrey Igorevich Gavrilo, Chairman of the board, lawyer
Moscow Bar Association "Butorin, Gavrilo and Partners" (12/1, Vyazemskaya St., apt. 160, Moscow, 121353, Russian Federation). E-mail: Gavrilo_low@icloud.com

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ЧТО ЧИТАТЬ

Международное частное право: преемственность и развитие: Сборник статей по материалам Международной научно-практической конференции, посвященной 130-летию юбилею профессора Л.А. Лунца / отв. ред. Н.Г. Доронина. — М.: Институт законодательства и сравнительного правоведения при Правительстве Российской Федерации, 2023. — 304 с.

Издание подготовлено по итогам Международной научно-практической конференции «Международное частное право: преемственность и развитие», посвященной памяти выдающегося ученого, юриста с мировым именем, доктора юридических наук, лауреата Государственной премии СССР, заслуженного деятеля науки РСФСР Лазаря Адольфовича Лунца. Его труды послужили основой научной школы международного частного права Института законодательства и сравнительного правоведения при Правительстве Российской Федерации, которая получила широкую известность в России и за рубежом, продолжает активно развиваться и пополняться новыми работами современных ученых-правоведов.

Сборник охватывает широкий спектр вопросов, таких как: проблемы реформирования национального гражданского права; место международного частного права в системе современного регулирования международных имущественных отношений; источники международного частного права и особенности унификации; подходы к ограничению автономии воли в целях защиты слабой стороны трансграничного обязательства; правовое регулирование международных коммерческих контрактов, иностранных инвестиций, трансграничных авторских и семейных отношений, денежных обязательств; признание и исполнение иностранных судебных решений; защита прав человека в контексте рассмотрения корпоративных климатических исков; квалификация способов внесудебного урегулирования споров; обеспечение стабильности гражданского оборота посредством арбитража и др.

Для аспирантов, преподавателей, научных работников, занимающихся проблемами международного частного права, практикующих юристов, а также для всех, кто интересуется данной проблематикой.



Зырянов С.М. Государственный контроль (надзор): монография — М.: Институт законодательства и сравнительного правоведения при Правительстве Российской Федерации; ООО «ЮРИДИЧЕСКАЯ ФИРМА КОНТРАКТ», 2023. — 232 с.

Монография посвящена актуальным вопросам организации и осуществления органами исполнительной власти государственного контроля (надзора) как стадии регуляторного цикла в условиях модернизации регуляторной политики. Дается общая характеристика государственного контроля (надзора), раскрывается статус контрольных (надзорных) органов и их должностных лиц, содержание контрольно-надзорных правоотношений; уделено внимание проблемам обеспечения законности в контрольно-надзорной деятельности. Книга окажет помощь в законопроектной работе, в организации и осуществлении государственного контроля (надзора) в федеральных органах исполнительной власти и в органах исполнительной власти субъектов Российской Федерации.

Для практических работников, преподавателей, аспирантов и студентов юридических вузов, а также тех, кто интересуется проблемами взаимоотношений органов исполнительной власти с гражданами и организациями.