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### **LEGAL ASPECTS OF DIRECTIVE VOTING FOR RUSSIAN STATE COMPANIES**

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#### *Abstract*

The article is devoted to legal aspects of the use of written instructions (directives) in governing the state companies with a shareholder (member) the Russian Federation or Russian region. The peculiarities of using the directive voting in regional companies with state participation analyzed in this research paper. Moscow city and Moscow region have an interesting experience in giving written instructions. The purpose of the study was to analyze the legal aspects of using directives in governing Russian state companies. For that purpose the authors had to solve the following research questions: define the concept of «directive»; examine federal and regional experience in giving written instructions (directives); undertake a comparative analysis of directives experience of the Russian Federation and leading Russian regions; formulate conclusions on the research topic. Russian regions had different approaches on issue how to regulate directive voting. Some of Russian regions have special laws, others only orders of regional government.

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## 1. Introduction

Nowadays it is hard to imagine an easy and trouble-free process of governing an organization. A manager should control a large number of external and internal processes (Butkovskaya & Sumarokova, 2019). Any of them may lead to a lot of problems. The most difficult to handle are companies with state participation (Yakovlev, 2019) and public joint-stock companies (Makarova, 2017). There are many reasons for that.

The main reason is in a much more complicated procedure for exercising the rights of a shareholder (participant) due to the involvement of a large number of state bodies and officials in the process of governing state organizations. As a result – delay and difficulty in making managerial decisions (Yakovlev, 2018).

One of the distinguishing inherent features in the governing of state joint stock companies and limited liability companies are directives.

## 2. Problem Statement

Russian economy is not similar to other European economies. It historically has a large public sector. Despite the importance of the public sector, it doesn't often become a subject of analysis of Russian scientists. There are studies about economic development of the country (Lenchuk, 2016), separation of powers (Grebnev, 2016), procurement institution (Osipov & Smotrinskaya, 2016; Smotrinskaya & Shuvalov, 2017). Also we can find different Russian researches on various aspects of company functioning: strategy choosing (Beregova, Shchupletsov, & Skorobogatova, 2018), decision-making (Shageev & Chuhonceva, 2019), innovative development (Dorzhieva, 2018), capital investments (Kokhanovskaya & Nazarenko, 2018), etc.

Foreign authors do not have big interest in Russian economy or Russian state companies. However there are studies on the issue of corporate governance in Australia (Mees & Smith, 2019), South Africa (Kilian, 2019) and other countries (Godlewska & Pilewicz, 2018).

This obvious research gap should be closed.

## 3. Research Questions

The major research questions are the following:

- define the concept of «directive»;
- examine federal and regional experience in giving directives;
- undertake a comparative analysis of existing experience of the Russian Federation and leading Russian regions;
- formulate conclusions on the research topic.

## 4. Purpose of the Study

The purpose of the study is to analyze the legal aspects of using directives in governing Russian companies with federal and regional participation.

To achieve goal of closing the mentioned research gap the author has to study federal and regional practice and compare the existing experience.

## 5. Research Methods

To achieve research goal and research questions the author has chosen the methodology based on general scientific methods: analysis, synthesis, induction, deduction, comparison, etc. The author also applied modeling and method of expert assessments.

## 6. Findings

Let us define the basic category.

Directives are written instructions issued to state representatives by an authorized public authority. The directives are written instructions for representatives of the owner (shareholder) about the necessary actions to be performed by the directives. In particular, voting «for» or «against» on issues on the agenda of the board of directors meeting or general meeting of shareholders.

This is manifested in the following cases.

The first is the presentation of the shareholder's position at the general meeting of shareholders, in particular, voting on agenda items. A variation may be the voting of a representative at a meeting of participants in a limited liability company.

The second is voting by members of the board of directors (supervisory board) on the agenda of a meeting of the board of directors or supervisory board.

The need for directives is due to a number of reasons. Among the most significant ones is the desire to reduce the risks of loss of control over the company and the formal exclusion the possibility of voting contrary to the interests of the shareholder formed in the directive. However, in practice, it is possible to find voting by a member of the board of directors differently than indicated in the directive.

Speaking about the pros and cons of directive voting, it should be noted that this is a very controversial issue and in order not to go aside, delving into the arguments expressed in both directions, accumulating the main pros and cons.

The positive aspects of the directives are mainly those that were noted in the reasons for the appearance of directives.

In turn, negative means the impossibility of voting by a member of the board of directors based on his own experience, knowledge and understanding of the situation.

The directive prescribes how to vote on a specific issue on the agenda of a meeting of the board of directors (supervisory board). Also, if there are no written instructions on the issue, the representative of the state votes «against». Such a norm is enshrined in the regulatory act governing powers of the collegial body.

The important point regarding directives is that they relate to persons belonging to the so-called «representatives of interests» or professional attorneys (the Russian Federation or the region), but not apply to people with the status of «independent directors», who have the opportunity to vote in

accordance with an internal feeling (based on the letter of the law) and in accordance with the interests of the state.

Documents devoted to the issue we are studying are available at the federal, regional and municipal levels. The federal act is the Regulation on the governing of federal owned shares of joint-stock companies and the use of the special right to participate the Russian Federation in governing joint-stock companies (the «golden share»).

At the federal level directives are usually issued by the Federal Agency for State Property Management and its territorial bodies, the Ministry of Defense of the Russian Federation and the Office of the President of the Russian Federation. The latter give mandatory instructions to the companies to which they were authorized to govern. In some cases, these may be other government agencies, as well as state corporations.

Speaking generally about such type of commercial organizations as joint-stock companies with the participation of the Russian Federation, there are directives to representatives of the interests of the Russian Federation on the board of directors are issued on the following meeting agenda:

- approval of the agenda of the general meeting of shareholders (both annual and extraordinary);
- increase in the authorized capital of the company;
- formation of the executive body of the company and early termination of its powers;
- recommendations on the size of the dividend on shares and the procedure for its payment;
- making decisions on participation and on termination of participation in other organizations;
- approval of transactions;
- election (re-election) of the chairman of the board of directors;
- acquisition by a subsidiary or dependent company of shares (stakes in the authorized capital) of other companies, incl. at their establishment;
- other issues for the execution of orders and instructions of the President of Russia, instructions of the Chairman or First Deputy Chairman of the Government of the Russian Federation.

Those issues are set by the order of the Government of the Russian Federation of 03.12.2004 no. 738. For some reason, that act does not indicate that directives may be issued only to the members of the board of directors, but not to the member of the supervisory boards. In some state joint-stock companies the collegial body is named so, for example, PJSC Sberbank, VTB Bank (PJSC) (The order of the Government..., 2020).

Directives are used not only in governing of federal companies, but also in regional ones.

Moscow has a rather complicated situation with managing joint-stock companies and with directives in particular. The Moscow city companies are divided into groups (I, II, III). The list of written instructions depends on the group.

For the I group of joint-stock companies all issues require directives.

For organizations of group II the following issues are directive:

- approval of major transactions, the subject of which is property, the value of which ranges from 25 to 50 % of the book value of the organization's assets, determined according to its financial statements as of the last reporting date, as well as transactions that are approved in accordance with the charter of the joint-stock company for large deals;

- approval of related party transactions;
- decision making on participation and on termination of participation in other organizations;
- approval of quarterly reports of the general director on the credit policy of the joint-stock company for the reporting period;
- recommendations to the general meeting of shareholders on the amount of dividends on shares and the procedure for their payment;
- preliminary approval of the annual report of the joint-stock company;
- approval (adjustment) of key performance indicators of financial and economic activities and their planned values, reports on their achievement, permissible deviations of actual values, their specific gravities in order to motivate the general director;
- approval of the strategic business plan, feasibility studies, budgets and operational development plans of the organization, reports;
- approval of internal documents on strategic planning, as well as amendments to these documents;
- approval of the provisions on operational planning of activities, on the credit policy of the joint-stock company, on the motivation of executive bodies, amendments to these documents.

Directive voting is not provided for representatives of the city in joint-stock companies located in group III, however, the regional executive body issues recommendations to them. In addition, for organizations of group II written recommendations of the state agency can be given on all issues, except for the above, on the agenda of the board of directors.

As another example of the use of written instructions by regions, we list the issues referred to as directive in the Moscow region:

- determination of the agenda of the general meeting of shareholders;
- approval of a major transaction;
- participation and termination of participation of a company in other organizations (including subsidiaries);
- use of the reserve fund and other funds of a company;
- recommendations on the size of the dividend and the procedure for its payment;
- approval of the annual report, annual accounting (financial) statements of a company;
- formation of an executive body;
- establishment of branches and opening of representative offices;
- an increase in the authorized capital of a company;
- issue and placement of securities.

The last five questions will be prescriptive if the charter of the organization that fall within the competence of the board of directors (supervisory board) of the company, as that may also fall within the competence of the general meeting of shareholders.

As we see, the developers of the law of the Moscow region closed the list of directive issues, unlike the shareholder of the Russian Federation, which provided the possibility of issuing directives in other cases (The Law of the Moscow Region..., 2011).

It seems interesting that the election of the chairman of the board of directors, neither Moscow, nor the Moscow region, in contrast to the Russian Federation, was deemed necessary to be made directive.

The Russian Federation and both regions are considered to give written instructions on voting on such issues as: recommendations on the size of the dividend on shares and the procedure for its payment, making decisions on participation and on termination of participation in other organizations, approval of certain categories of transactions. Each of the above items is not accidentally assigned to a directive. In particular, the size of the dividend will determine how much a shareholder will receive to its budget.

## 7. Conclusion

To summarize, the following should be noted. The use of directives in governing of companies with state participation can lead to both positive and negative results. It largely will be determined by the practical implementation of the laid down potential in the relevant legal norms.

Russian regions have different approaches on issue how to regulate directive voting. Some regions have special laws, others orders of regional government.

There is no doubt that modern institutions and mechanisms for governing state-owned companies and state property are far from ideal. However, the modernization of existing institutions (one of which is the directive) and mechanisms, as well as the dissemination of best practices of the Russian Federation and Russian regions are quite capable of improving the quality of governing and the effectiveness of companies with state participation.

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