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SESSION IV: THE ROLE OF STAKEHOLDERS IN CORPORATE GOVERNANCE

ROLE OF HIRED EMPLOYEES IN CORPORATE GOVERNANCE

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[1] The present report is aimed at attracting the attention of the state authorities and the business community to the problem of involvement of hired employees in the management of affairs of joint-stock companies and establishment of the role of the Russian trade unions in this activity.

According to the Preamble to OECD Corporate Governance Principles (1999), "competitiveness and final success of a corporation are a result of collective effort, to which hired employees and other persons providing resources make their contribution. In light of these considerations, the present Principles acknowledge the role of such stakeholders and encourage active cooperation with them in creating wealth, jobs and financially prospering corporations."

An important tendency of the present-day state influence and inter-state cooperation of industrially developed nations in managing the affairs of corporations is the combination of imperative and disposable methods, aimed at involving hired workers in the processes of development and adoption of decisions on a corporate level. The choice of such methods depends both on the forms of employees' participation and on specifics of relations of social partners within the frames of an enterprise, industry, region, state, or international association.

Actually, the OECD Principles of Corporate Governance also proceed from the general principle of employment of disposable means for establishing the forms of workers' participation in corporate governance in section III "Role of Stakeholders in Corporate Governance":

"The structure of corporate governance shall recognize the legitimate rights of stakeholders and encourage active cooperation between corporations and stakeholders in creating wealth and jobs and ensuring financially prosperous enterprises."

OECD principles, applied to stakeholders, can be briefly formulated as follows: recognition of the rights to participate in corporate governance, their observance, effective protection in case of their violation, enhancing the efficiency of participation, accessibility of information.

The foreign and domestic science does not use a common approach to the establishment of the forms of employees' participation in corporate governance, therefore we shall employ the approximate typology elaborated within the frames of the research program of the European Federation of Trade Unions and the Institute of International Research in the Hague "Trade Unions and Democratic Participation."[2]

There are different types of direct or representative participation: collective negotiations, co-management or joint management by uniting representatives of employers and employees in a single body, granting information and holding consultations. The latter form may be implemented by means of participation of the employees' representative in a collegial executive body of the corporation, creation of representative bodies of the personnel, etc.

The second group includes the forms of direct participation in decision-making at an enterprise, such as:

[1] The views expressed in this paper are those of the author and do not necessarily represent the opinions of the OECD or its member countries. This paper is subject to further revision.
[2] The typology is presented in the article: P.V.Kuzyakov. Participation of Workers in Reforming Russia (Considering International Practice)//Labour and Social Relations. Moscow, 2000, #3, p.3-40.

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- direct individual and collective consulting, including the so-called quality groups, etc.
- direct delegation of certain authorities and the right of decision-making, for instance, on problems of control of the quality of produce or organization of production, to workers.

The third group envisages the existence of various forms of financial participation, such as: participation in the incomes or profits by distribution of enterprise shares among the workers, or participation of the employees in the auctioning of the enterprise.

Let us consider the contemporary state of the Russian legal regulation of hired employees' participation in corporate governance, to which we refer joint-stock companies, limited and additional liability companies, production and agricultural cooperatives.

A characteristic feature of the modern legislation of the Russian Federation is its incompleteness, inconsistency and lack of coordination of normative acts on employees' participation in corporate governance. This is manifest above all in the change of conceptual guidelines of elaboration of the policy of forming a market economy in Russia. In particular, most of the important normative acts, establishing the legal basis of corporate governance, ignore the role of hired employees. From the point of view of the Russian legislative system, the discord is caused by the regulation of the workers' participation in corporate governance by different branches of the legislation.

Nevertheless, the flaws of the legislative system in some cases can be compensated by inclusion of the relevant clauses in collective agreements and charters of commercial organizations, or by adoption of decisions at the general meeting of a work collective.

The legal regulation of the employees' participation is covered mainly by the labour legislation.

General Bases of Participation of Workers in Corporate Governance

The operational general Russian legislation on corporations does not contain special rules about workers participation in corporate governance, the federal Act about joint-stock companies, law on limited companies does not envision any form of such participation. The exception makes the federal Act of 1998 "About features of a legal status of joint-stock companies of the workers (people's enterprises)", and also the Law " About production co-operatives ". More dital these acts will be reviewed below with reference to the separate forms of participation of the workers in corporate governance.

Absence any mention about participation of the workers in statutory acts which are generatrix the foundation of the legislation on corporations in Russian Federation is explained that in the Soviet Union the problems of participation of the working in control of socialist enterprises were referred to an orb of the Labour Law. Now, despite of manifestative interbranch nature of participation of the workers in operation of business, its regulation prolongs to remain mainly within the framework of the Labour Law.

The legal basis in this sphere is formed by the 1971 Code of RSFSR Laws on Labor, in edition of 1992, with the subsequent amendments, the RF Law "On Collective Contracts and Agreements" of March 11, 1992,[3] with amendments of November 24, 1995, and May 1, 1999, the Federal Law "On Professional Unions, their Rights and Guarantees of Activity" of January 12, 1996,[4] the Federal Law "On the Order of Settlement of Collective Labour Disputes" of November 23, 1995,[5] the Federal Law "On Production Collectives" of May 8, 1996,[6] and a number of other acts.

Article 227, chapter XV of the RSFSR Code of Laws on Labour stipulates the general norm regulating the employees' right to participate in the corporate governance:

[3] Herald of the RF Council of People's Deputies and RF Supreme Soviet. 1992, #17, p.890; SZ RF – 1995, #48, p.4558; SZ RF – 1999, #18, p.2219.
[4] SZ RF – 1996, #3, p.148.
[5] SZ RF – 1995, #48, p.4557.
[6] Herald of the Council of People's Deputies and the Supreme Soviet of the Russian Federation. – 1992, #41, p.2253.

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"Employees have a right to participate in corporate governance, institutions, organizations via general meetings (conferences) of the work collective, councils of the work collective, professional unions and other bodies, authorized by the collective to introduce proposals on improvement of the work of the enterprise, institution, organization, as well as on matters concerning social-cultural and domestic servicing." The administration of the enterprise, institution, organization bears a corresponding obligation to create conditions ensuring employees' participation in corporate governance (article 228 of the RSFSR Labour Code).

The Code establishes some particular forms of this participation, such as collective negotiations, consideration and solving of the issues of self-government of the work collective, and the employees' participation in the enterprise profit. According to the Code of Laws on Labour, the main subject of relations in ensuring the participation of employees in is the labour collective in the form of the general meeting (conference). Under article 235.1 of the Labour Code, mutual relations of the labour collective and the employer, labour protection, social development, participation of employees in the enterprise profit are regulated by the legislation of the Russian Federation, the charter and the collective agreement.

The Code of Laws on Labour guarantees greater powers to a labour collective of an enterprise with an over 50% share of state property. This rule also spreads on joint-stock companies, where the work collective:

- considers and approves, jointly with the founder, the amendments and additions to the enterprise charter;
- works out, together with the enterprise founder, the terms of the contract with the top manager;
- adopts a decision to allocate one or several structural units of an enterprise to set up a new enterprise;
- participates in solving the issue of changing the enterprise form of property in accordance with and within the limits established by the legislation of the Russian Federation and republics within the Russian Federation.

As the clauses concretizing the forms and order of participation of the work collective in corporate governance, stipulated by articles 235.2-235.8, were stricken off the Code by the Law of September 25, 1992,[7] it is necessary to employ other legislative acts valid on the RF territory.

Under the Labour Code, the participation of employees in managing the affairs of a corporation may be carried out by the general meeting of the work collective, the professional or other body authorized by the collective. As for the council of the work collective, created under the USSR Law "On Labour Collectives and Increasing their Role in the Management of Enterprises, Institutions, and Organizations," the Code of Laws on Labour preserves this form of representing the interests of employees in corporations with an over 50 percent share of state property in the charter capital.

The State Duma of the Russian Federal Assembly is considering the Draft Federal Law "On the Labour Collective," which envisages the creation of a system of employees' self-government bodies within the frameworks of an organization similar to enterprise committees in France or production council in Germany.

Unconditionally, the present edition of the Code of Labor Laws does not promote usage of the different forms of participation of the workers in control of corporation. This is precluded by the strong ideological basis of the Soviet time.

Perennial activity on creation of the new Labor code now approaches completion, which one should respond broken economic conditions and developing market relations. That any of the introduced projects has not found all-out support, and against the government project trade unions awakely acted, in December, 2000 in State Duma of Federal Assembly of Russian Federation the working group for development of the mutually acceptable project was built.

For date of writing of the report two thirds of text were matched and was planned to consider all projects in the maiden reading before completion of vernal session of parliament.

[7] Herald of the Congress of People's Deputies and Supreme Soviet of the Russian Federation. – 1992, #41, p.2253-2254.

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The RF Draft Labour Code, submitted by the Russian Government and scheduled for consideration on April 27, 2001, contains a special chapter 9 “Employees’ Participation in the Management of an Organization.” Article 54 stipulates the workers’ right to participate in the management of an organization directly or via their representative bodies, regulated by the federal laws, the statutory documents of the organization, and collective agreements.

Article 55 enumerates the main forms of this participation:

- consultations of the employees’ representative bodies with the employer on adoption of acts on labour;
- receiving information from the employer on matters directly connected with the employees’ interests;
- discussing with the employer the work of the organization, introducing proposals for its improvement;
- participation in the elaboration and adoption of collective agreements.
- The workers’ representatives are entitled to receive the following information:
- reorganization or liquidation of an organization;
- technological changes entailing the alteration of working conditions of the majority of employees;
- training, retraining, and advanced training of personnel;
- other issues envisioned by the present Code, the federal laws, statutory documents of the organization, and the collective agreement.

Representatives of the employees are also empowered to introduce relevant proposals on these matters to the organization managerial bodies and participate in the sessions of these bodies during the consideration of these proposals.

The present edition of articles of the governmental draft reflects the interests of hired employees much better than the initial edition.

The initial edition of the Draft submitted by the Government contained articles concretizing three forms of participation: the participation of representatives of employees in the activity of collegial executive bodies of the organization, the participation of employees in the organization’s profit, and consultations. However, all these norms have a market nature and do not determine the order and conditions of participation, referring to collective agreements, charters and local normative acts of organizations.[8]

Importantly, this Draft qualifies a trade union as the main representative body of employees, in accordance with article 22, which is extremely important for ensuring workers’ participation in corporate governance.

In connection with the changes in the socioeconomic relations, special role in ensuring employees’ participation in corporate government is allocated to trade unions. Their priority objective and function is the representation and protection of workers’ interests in the sphere of labour and labour-related relations. The main purpose of their participation in corporate governance, institutions, and organizations is the maintenance of workers’ rights and interests in adopting managerial decisions.

With this end in view, labour unions authorized by the employees are empowered to have their representatives in the organization’s collegial managerial bodies (item 3, article 16 of the Federal Law of January 12, 1996).

The participation of trade union representatives in the work of other representative bodies of employees of the organization does not strip them of the right to appeal directly to employers on issues concerning the interests of trade union members (item 4, article 16)[9].

It is precisely the trade unions which enjoys the right to free and unimpeded access to information on social-labour issues from the employer (article 17).

Therefore, it is particularly the trade union organization that is supposed to play the principal role in maintaining the interests of hired employees of a corporation on a permanent basis.

[8] At the moment of preparation of the report, there was no information on results of coordination of chapter 9 in general.
[9] Comment to Articles of the Russian Federation Labour Code/ Chief Editor K.N.Gusov. M., Prospekt, 1996.

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To ensure efficient implementation of this function, it is necessary to stipulate in the organization's charter and collective agreement the role of the trade union organization as a body representing the interests of employees.

Besides the general rules of workers' participation in the organization's management established by the labour legislation, it is necessary to mention the existence of special legislation in the Russian Federation, envisaging the involvement of employees in corporate governance on condition that they are at the same time the stakeholders of a joint-stock company created in the process of privatization or transformed into a joint-stock company of employees (people's enterprise).

The former legislation on privatization envisioned several versions of auctioning state and municipal enterprises with participation of their employees. The State Program of Privatization of the State and Municipal Enterprises in the Russian Federation, approved by the Edict of the RF President of December 24, 1993, #2284 with amendments of March 14, 1996, October 6, 1997, July 15, 1998, July 25, August 1, 2000,[10] suggests concrete methods and benefits during the auctioning.

Article 20 of the Federal Law of July 21, 1997, #123-FZ "On Privatization of State Property and an the Bases of Privatization of Municipal Property in the Russian Federation" (with amendments of June 23, 1999, August 5, 2000)[11] stipulates the possibility of privatization of state or municipal property by rent with a right of its purchase by the employees of the enterprise in question at a market price. This possibility consists in the adoption of a decision to this effect at the general meeting of employees of a state or municipal unitary enterprise.

Another special legislative act is the RF Federal Law of July 19, 1998, #115-FZ "On Specifics of the Legal Status of Joint-Stock Companies of Workers (People's Enterprises)."[12] We shall dwell on this law in greater detail in the section on employees' participation in corporate profit.

Information and Consultations

1. The requirement of granting of the information and consulting at bankruptcy

According to article 12, the employer must inform in advance and conduct negotiations with the trade union in cases of liquidation of the organization, its subdivisions, changing the form of property or the organizational-legal form, full or partial suspension of production (work), entailing the reduction of jobs or deterioration of work conditions. This provision is one of the forms of employees' participation in corporate governance via the procedure of consultations. A similar rule is established by article 21 of the Federal Law "On Employment of the Population in the Russian Federation," in edition of April 20, 1996[13]:

"3. Mass-scale dismissal of employees connected with production rationalization, improvement of labour organization, liquidation, re-profiling of the organization or its structural units, full or partial suspension of production on employer's initiative may be carried out only on condition of preliminary (not less than three months in advance) written notification of the relevant trade unions and other representative bodies of the employees.

4. The executive authorities and employers shall hold consultations on employment matters on proposal of professional unions and other representative bodies of the employees.

Agreements may be concluded upon the results of the consultations, envisaging measures aimed at promoting employment.

6. Proposals of trade unions, other representative bodies of employees in connection with mass-scale dismissals, submitted to the relevant authorities and employers, are subject to consideration in the order established by the legislation of the Russian Federation."

[10] Collected Acts of the President and Government of the Russian Federation. 1994, #1, p.2.
[11] SZ RF. – 1997, #30, p.3595.
[12] SZ RF. – 1997, #30, p.3611.
[13] SZ RF, 1996, #17, p.1915.

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Item 2, article 25 of the Law on Employment of the Population stipulates that the employer shall grant information on possible mass-scale dismissals, the number and categories of workers who may be affected by them, and the period during which it is expected to carry them out.

The restriction on presenting the aforementioned information cannot be justified by item 3, article 26 of the Federal Law of January 8, 1998, #6-FZ "On Inconsistency (Bankruptcy),"[14] according to which "it is not admitted to publish or disclose in any other way the information on bankruptcy of a debtor until the moment of publication of the decision of the arbitration tribunal recognizing the debtor bankrupt." The employees of the indebted organization, unlike the other stakeholders, should be informed of the upcoming bankruptcy procedure, as article 31 of the Federal Law on Inconsistency (Bankruptcy) indicates a representative of workers as a participant in the arbitration case of bankruptcy.

In accordance with article 2 of the Law on Bankruptcy, the representative of the debtor's employees is a person authorized by the debtor's employees to represent their interests during the bankruptcy procedures. The authorities of this representative shall be confirmed in the minutes of the general meeting (conference) of the debtor's employees (article 34 of the Law).

Specifically, besides the participation in the arbitration case, he shall represent the employees' interests during the establishment of the contents and size of demands of salary and dismissal pay.

The Law on Bankruptcy envisages the right to participate in all creditors' meetings, albeit without a voting right (article 12), including the first meeting of creditors (article 64), consider the plan of external management, envisaging the measures of restoring the debtor's solvency (article 83), etc. This strictly consultative status at the creditors' meeting is connected with the fact that the payment of back salaries and dismissal wages are not suspended throughout the entire bankruptcy proceedings.

In the event of convocation of a creditors' meeting, the arbitration managers must notify the representative of the debtor's employees of the place and time of the meeting.

The Law on Bankruptcy does not envisage a possibility of appealing to the arbitration court against the decisions of the creditors' meeting, the actions of the arbitration manager, as well as decisions, determinations, rulings of the arbitration tribunal, by the representative of the debtor's employees.

In accordance with item 4, article 15, and article 55 of the Law on Bankruptcy, the differences between the arbitration manager and the representative of the debtor's employees on the contents and amount of demands of salary and dismissal wage to persons working on labour agreements (contracts) shall be considered at the session of the arbitration tribunal not later than two weeks from the day of receipt of the aforementioned appeals and complaints.[15]

2. Cases of granting the information

The Law "On Collective Contracts and Agreements" also contains a clause on granting information.

According to article 17 of this Law, the employer exercising control over the fulfillment of the collective agreement must present all the necessary information at his disposal and report on its implementation to the general meeting (conference) of the work collective.

Article 27 of the Law "On Collective Contracts and Agreements" envisages responsibility for non-presentation of information necessary for collective negotiations and exercising control. Persons representing the employer, guilty of this offense, shall bear disciplinary responsibility or pay a fine in the amount up to fifty minimal salaries, imposed by the court.

[14] SZ RF, 1998, #2, p.222.
[15] See Information Letter of the Presidium of the RF Supreme Arbitration Tribunal of August 6, 1999, #43, "Issues of Application of the Federal Law "On Inconsistency (Bankruptcy)" in Legal Practice"// Herald of the Russian Federation Supreme Arbitration Tribunal, 1999, #10.

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The above clauses, establishing the workers' right to information spread on the information on results of the company's production-economic activity and its financial condition, as the financial state of a corporation is directly connected with material security of employees and their employment.

Granting information on production-financial activity to employees may involve commercial secret, but nevertheless, the Decree of the RSFSR Government of December 5, 1991, #35 "On the List of Data which Cannot Constitute Commercial Secret"[16] stipulates that the employer shall present information on demand of the work collective, regardless of its commercial value, specifically:

- information on financial-economic activity and other data necessary for verifying the correctness of calculation and payment of taxes and other mandatory payments to the RSFSR state budgetary system in the established forms of accountability; documents on solvency… (item 1);

- the size of the enterprise property and its monetary reserves; investments in gainful assets (stocks) of other enterprises, in interest-bearing bonds and loans, in charter funds of joint ventures; credit, trade and other liabilities of the enterprise, stemming from the RSFSR legislation and agreements concluded by it… (item 2).

The condition of presenting information to employees of the corporation may be fixed by the collective agreement, which alongside the compulsory reporting of the employer to the general meeting of the work collective on the basis of article 17 of the Law "On Collective Contracts and Agreements," should stipulate the right of the trade union organization to receive information on social-labour issues, in compliance with article 230 of the RSFSR Labour Code (the rights of the relevant trade union are established by the legislation, the charter, the collective agreements and contracts) and the aforementioned article 17 of the Law "On Professional Unions and Guarantees of their Activity."

Besides that, article 91 of the Federal Law "On Joint-Stock Companies," entitled "Granting Information by the Company to its Shareholders," opens up broad possibilities before the trade union committee to receive information on the company's financial condition, acting through shareholders.

Considering that the work collective of a corporation often includes, besides hired workers, employees who are at the same time the corporation participants (members), the above norm acquires quite an important significance for ensuring effective implementation of workers' right to participate in the corporate governance process.

Collective Negotiations and Conclusion of a Collective Agreement at the Enterprise as a Form of Workers' Participation in Corporate Governance

The legislation on collective contracts and agreements does not directly mention the means of ensuring employees' participation in corporate governance. The 1992 Law does not contain a definition of the notion of "collective negotiations," which complicates, albeit does not prevent altogether the possibility of conducting negotiations on employees' participation in corporate governance. We suppose that this uncertainly ought to be overcome by including in the Law the definition given in the 1981 Convention of the International Labour Organization #154 on supporting collective negotiations[17]:

The term "collective negotiations" signifies all negotiations, conducted between an entrepreneur, a group of entrepreneurs, or one or several organizations of entrepreneurs, on the one side, and one or several organizations of workers on the other side, for the purposes of:

a) establishing work and employment conditions; and/or

b) regulating relations between entrepreneurs and workers; and/or

c) regulating relations between entrepreneurs or their organizations and an organization or organizations of workers.

[16] Collection of Decrees of the Russian Federation Government. 1992, #1-2, p.7.

[17] Convention #154 is not ratified by the Russian Federation, which does not prevent, however, its employment in the Russian legislation.

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Article 13 contains a list of mutual obligations, included in the collective agreement. This list is open to inclusion of new clauses on workers' participation in corporate governance, "taking into account the economic possibilities of the organization."

The obligations presented in this list also enable to influence the corporate governance by means of a collective agreement, for example, in the sphere of regulation of salary (considering the growth of prices and inflation) or in the sphere of employment. As the employment policy of a corporation depends on many economic factors, such as the situation on the market of commodities, jobs and services, the efficiency of corporate governance, including the attraction of investment and placement of the corporation's stocks, the collective agreement may reflect the employer's obligations to grant the necessary information to the employees and to hold consultations on issues concerning the workers' interests in the sphere of employment.

Item 5, article 21 of the Federal Law "On Employment of the Population in the RF" contains a corresponding clause: "Professional unions, other representative bodies of employees may demand that the employer include in the collective agreement concrete measures ensuring employment."

According to article 2 of the 1992 Law, bodies of professional unions and their associations, authorized to representation in accordance with their charters, bodies of public initiative formed at the general meeting (conference) of the organization's employees and authorized by it, shall represent the employees in collective negotiations and during the conclusion of a collective agreement. The right of the primary trade union organization to represent the interests of employees is also fixed by the 1996 Federal Law on Trade Unions (item 1, article 11, article 13). As a matter of fact, the organization shall represent and protect the interests of employees, irrespective of their membership in the trade union, if the trade union organization enjoys the relevant authorizations.

As for the public initiative bodies, the 1992 Law admits the possibility of creating such bodies, which, according to article 12 of the Federal Law "On Public Associations," are qualified as public associations without membership, whose objective is the joint tackling of various social problems the citizens may encounter at their place of residence, work or study, aimed at satisfying the needs of an unlimited circle of persons whose interests are connected with attaining charter goals and implementation of programs of a public initiative body at the place of its creation.[18]

Participation in the Activity of Collegial Executive Bodies of the Corporation[19]

We have already mentioned that the right to participate in the activity of collegial executive bodies of a corporation is granted to trade union organizations in a general form by the Federal Law "On Professional Unions and Guarantees of their Activity," as well as the Draft Labour Code of the Russian Federation. As for the special legislation on corporations, it does not reflect the participation of hired employees in the activity of the executive board or the board of directors.

This legislative position does not prevent the inclusion of the corresponding clauses in collective contracts and agreements.

In this connection, let us point out that the problem of recognizing the right of the trade union committee to have its representatives in collegial management bodies does not arise in the economic sectors, where industrial tariff agreements confirm such rights of the trade unions, for example, the oil and gas industry, construction, mechanical engineering, agricultural machine-building.

Hence, during further development of industrial tariff agreements in other sectors of the national economy, it is expedient to confirm the right of trade unions committees to have representatives in collegial bodies of the company management, in order to prevent any resistance from the latter. The problem of protecting the rights of trade unions, ruling out any opposition of the aforementioned managerial bodies, has been solved rather efficiently by the companies whose charters envisage the allocation of all rights of the board of directors (supervisory board) members to representatives of the trade union committee.

[18] SZ RF. 1995, #21, p.1930.

[19] This article was written on the basis of materials of part 6, chapter 7 of the practical teaching aid: O.M.Krapivin, V.I.Vlasov, Labour Corporate Law. M., NORMA publishers, 2000.

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The implementation of the right to participate in collegial executive bodies is connected with the adoption by the general meeting (conference) of the labour collective of a decision to authorize the primary trade unions organization to have representatives on the board of directors and the corporation's executive board. Such decision should be based on two principles: independence of the trade union in its actions, signifying non-interference of the general meeting into the current activity of the trade union and its representatives in the executive bodies, on the one hand, and transparency of its activity, manifest in periodical presentation of information on its results to the general meeting (conference) of the work collective.

The board of directors (supervisory board) and the executive board will not always accept the proposals of the trade union representative. But in that case he should express his special opinion on the matter and demand that his special opinion be entered in the minutes of the session.

The trade union committee, in its turn, having its representative in the company managerial bodies and disposing of the relevant information, should not leave without attention the decisions, infringing the interests of the workers and the trade union committee itself.

According to article 13 of the Law on Professional Unions and Guarantees of their Activity, after receiving such decision of the managerial body, the trade union committee is empowered to enter negotiations with it to demand the cancellation of this decision or the adoption of another decision that would suit the interests of the workers and the trade union committee.

The trade union committee may react to the adoption of a decision infringing the rights and interests of workers and the trade union committee by the managerial body in a slightly different way. Initially, the trade union committee may address the general meeting of the work collective, informing it of the decision of the management and introducing its proposals on the nature of demands, which the meeting should authorize the trade union committee to submit to the board of directors (supervisory board) or the executive board. Having gained the support of the meeting and received certain authorizations from it, the trade union committee shall enter negotiations, relying on the opinion and authority of the entire work collective, and not merely its own, which considerably strengthens its positions in the negotiations.

It would be expedient to include the clause on participation of representatives of hired employees in collegial executive bodies of the organization's charter, nominating the trade union committee as the competent body deciding the personal composition of representatives, in order to rule out the possibility of any misinterpretation or restriction of rights.

The Draft Labour Code specifies the subject composition of representatives in the collegial executive bodies, excluding the contenders who are participants (members) of this company, partnership, production cooperative.

This important addition is aimed at guaranteeing personal disinterest, necessary for observing the interests of the corporation's employees and preventing possible abuse by the corporation's administration.

Participation of Employees in the Organization's Profit

The observance of this right may acquire various forms and is connected, as a rule, with the distribution of incomes among the employees above their fixed wages.

One of the forms of this distribution consists in the participation in the incomes or profits, both direct and indirect, including the depositing of money on special accounts.

Another form is the distribution of stakes among the employees.

Article 12 of the Federal Law "On Production Cooperatives," entitled "Distribution of Cooperative Profit," contains a clause on the distribution of profit:

1. The profit of a cooperative shall be distributed among its members in accordance with their personal labour and (or) other participation, and the size of their shares, and among members of the

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cooperative who do not take labour participation in the activity of the cooperative – in proportion to their share. On decision of the general meeting of cooperative members, part of the cooperative profit may be distributed among hired employees. The order of distribution of profit is stipulated by the cooperative charter.

2. Part of the cooperative profit, remaining after the payment of taxes and other dues, and after channeling the profit for other purposes established by the general meeting of cooperative members, is subject to distribution among cooperative members.

Part of the cooperative profit, distributed among the members of the cooperative in proportion to their shares, shall not exceed fifty percent of the cooperative profit subject to distribution among the members of the cooperative.

The acting Russian legislation does not directly envision the employees' right to receive part of the net profit of a **joint-stock company**. The lack of this formal right will serve as the grounds for reduction of the list and size of traditional payments. Hence, trade unions should insist on inclusion in the company's charter of a special article concerning employees' rights to part of the company profit.

Direct address by the trade union committee to the proprietor (owners of large blocks of shares, the general meeting of shareholders), rather than the employer is not envisaged by the acting labour legislation. It does not envision negotiations or conclusion of any agreements of the employees and their representative with the proprietor.

Apparently, the reason does not consist merely in the imperfection of the previously adopted labour legislation, but also in the fact that the newly formed legislation is based on international norms, according to which the employees may enter collective negotiations and conclude agreements precisely with the employer.

It is necessary to bear in mind that conducting negotiations and concluding various sorts of agreements directly with the proprietor does not contradict the labour legislation and, hence, is possible. It would be expedient to include a relevant clause in the company charter.[20]

Special regulation is envisioned with respect to joint-stock companies of employees (people's enterprises). It is necessary to point out some characteristics of the legal status of these companies:

The creation of a people's enterprise is possible only by transforming any commercial organization, on condition that not less than 49 percent of the charter capital belongs to the workers of this organization.

1. Workers of a people's enterprise shall own more than 75 percent of its shares.

2. A people's enterprise is entitled to annual increase of its charter capital by the issuance of additional shares to the sum not less than the sum of net profit actually used for accumulation purposes during the reporting fiscal year.

Additional shares of a people's enterprise as well as the shares purchased by the people's enterprise from its shareholders shall be distributed among all workers of the people's enterprise entitled to profit in proportion to their salaries in the reporting fiscal year.

3. One worker – shareholder cannot own the stocks of a people's enterprise, the nominal cost of which exceeds 5% of its charter capital.

4. A worker – shareholder is empowered to sell his shares only in the order envisaged by the present Law.

5. A people's enterprise must purchase from a dismissed worker – shareholder, and the latter must sell to the people's enterprise the stock of the people's enterprise in his property at their purchasing cost.

[20] The norms indicated herein for joint-stock companies are also applicable to limited partnerships.

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Under certain circumstances this shareholder shall be empowered to sell his shares to the employees of a people's enterprise at a negotiated price.

6. The number of employees – non-shareholders during the reporting year shall not exceed 10 percent of the overall cost of workers of a people's enterprise.

7. The general shareholders' meeting of a people's enterprises shall adopt decisions concerning the interests of all employees – shareholders (regardless of the number of shares in their possession) on the basis of the principle "one shareholders – one vote."

The form of workers' joint-stock company is not widely spread yet. Unfortunately, the imperfection of the aforementioned Law, its inconsistency with a number of active normative acts, specifically the Russian Civil Code and the Federal Law "On Joint-Stock Companies," puts under doubt the efficiency of its usage. At the same time, at present it is the only legislative act in the Russian Federation, directly aimed at ensuring employees' participation in corporate governance.

Conclusion

The present survey of the Russian legislation prompts the following conclusions:

The acting Russian legislation envisages various forms of employees' participation in corporate governance, but there are a number of factors preventing their effective utilization. These factors include, in particular:

- insufficient interest of the state in restricting the power of owners of corporate property in favour of interests of durable development of the corporation and employment of the potential of hired employees;

- obsolete legislative technique determining the forms of workers' involvement in the managerial process;

- legislative ambiguity with respect to the subject of discharging employees' rights to participation in corporate governance;

- isolation of the legislation on joint-stock companies and limited partnerships from the labour legislation and lack of coordination between the acts of the labour and civilian legislation in the sphere of employees' participation in the corporate governance process.

In order to overcome the influence of the above factors, we consider it necessary to take the following measures:

The first step of the state authorities should consist in the adoption of the Labour Code in the edition of the conciliation commission, which takes into account the modern trends of employees' participation in corporate governance and establishes the main forms of this participation.

The norms of the Labour Code should envision a considerable level of independence of the participants of collective relations, a possibility to include the conditions of workers' participation in corporate governance in the collective agreement, the organization charter and other local acts. Along with this, it is necessary to coordinate the acts of the labour and civilian legislation by adding to the in laws establishing the legal bases of creation and functioning of corporations the reference to the Labour Code and other federal laws on the issue of employees' participation in corporate government, and add the reference to other federal laws to the Labour Code itself.

Besides that, it is expedient to include in the laws on joint-stock companies, limited partnerships, production cooperatives, the norms concerning the rights of the employees' representative to participate in general meetings of the organization participants (members) with a deliberative vote, as well as in the organization's collegial executive bodies on the rights of a member, considering the application to these relations of the rules of the Labour Code.

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The general meeting (conference) of employees is presently the supreme body of employees' self-government. The professional union operating in the corporation and vested with the necessary authorization by the general meeting (conference) of employees shall be the main body expressing the interests of the workers. Other bodies, called upon to interact with the administration shall be created with obligatory consent of the trade union committee.

Different forms of employees' participation in corporate governance cannot be employed without the assistance of the state, which should encourage the participation of workers in the corporate profit in the form of tax exemptions, at least during the period of formation of the system of such participation in the corporation. It is also necessary to envision the measures of responsibility of the organization's administration for non-presentation or untimely presentation of information to employees, as well as for unjustified refusal or procrastination of consultations.

As the participation of employees in corporate governance is regulated by different branches of the legislation, with the prevalence of the labour legislation, the law on the order of settling collective labour disputes should also spread on disputes connected with this participation.

The adoption of international obligations on conventions of the International Labour Organization #154 on encouragement of collective negotiations (1981), #135 on protection of rights of representatives of workers at the enterprise and their authorities (1971) by the Russian Federation would stimulate active involvement of employees in corporate governance.

Besides that, during the ratification of the European Social Charter, it is necessary to recognize as mandatory the clauses of article 6 (right to collective negotiations), 21 (right to information and consultations), 29 (workers' right to information and consultations during collective dismissals).

We deem it useful to consider the OECD Guidelines for Multinational Enterprises, adopted in the new edition on June 27, 2000, during the formulation of the legislation.

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