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SESSION V: A PRACTICAL VIEW TOWARD STAKEHOLDER RELATIONS -- CASE STUDIES

A PRACTICAL VIEW TOWARD STAKEHOLDER RELATIONS – TRADE UNIONS

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¹ Speaking about formation of the corporate governance in Russia, it is necessary to point out the ground on which the said corporate governance in Russia has been being formed.

Then, in the result of the speeded up privatization the state has lost over 2/3 of its ownership. The whole banking system has been destroyed. New relevant institutions able to serve market reforms have been being formed quickly and unsystematically.

The levied taxes cannot close up all holes in the budgets, as it has been done earlier by the state profits from its ownership.

Rate and nature of the reforms has turned out to be so unprepared, that in early 90's they have established certain investment vacuum.

Those financial-industrial groups and natural monopolies, which are of importance, are in antagonistic relations.

In my opinion, there is a need in the state, as integrated corporate holding, which would interconnect interests of all financial-industrial groups and monopolies and would control them.

Within the framework of the existing legislation it is very difficult to achieve the balance of interests of consumers, shareholders, companies' management and employees, ensuring protection of interests of the Russian economy on the whole. It becomes possible, in our opinion, only then, when the state (state executive authorities) are able to influence efficiently on activities of companies, especially joint stock companies, engaged in the major fields, ensuring economic security of the country. Until the balance of these interests is not ensured in the legislative procedure, one cannot talk about stability in the society, equal social partnership.

Speaking about the rights of companies' employees it is necessary to note, namely: companies' employees are protected before companies' management by labor legislation (RF Labor Code). For time being. No one can say what will be in the new Labor Code.

Clause 5 Article 44 of the Federal Law "On Joint Stock Companies" (claim of a shareholder, group of shareholders, holding a total of at least one percent of the company's issued common shares against officials of the joint stock company for compensation for losses incurred by the company through their fault).

Clause 5 Article 44 of the Federal Law "On Limited Liability Companies" (claim of the company or its participant for compensation for losses incurred by the company through the fault of the board of directors, single-member executive body, member of the collective executive body of the company, manager).

Articles 28, 30 of the Federal Law "On Agricultural Cooperation" (claim for compensation for losses incurred by the agricultural cooperative through the fault of members of its board or supervisory council).

Clause 8 Article 19 of the Federal Law "On Consumer Cooperation" (claim of a shareholder, shareholders for compensation for losses incurred by the company through the fault of the company's chairman or other representatives of management as a result of their decisions).

Also according to certain articles of the RF Civil Code, chapters on compensation for damages caused to an employee through the fault of the employer, etc, rights of corporations' employees may be also additionally protected by provisions of contracts, concluded between employers and employees, as well as by charters of joint stock companies and limited liability companies.

Therefore, possibility of legal influence of certain members of corporations on managers of these corporations is not limited by framework of joint stock relations, but is one of the typical characters of any corporate legal relationship as relationship based on voluntary unification for achievement of the general economic purpose.

Initiators of the roundtable also asks about legal guarantees for creditors in Russia.

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.

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It should be noted here, that the rights of creditors are protected mainly by three federal laws: Civil Code, RF Law “On Insolvency (Bankruptcy)”, “On Executive Procedure”.

The following can be said in response to the question of the roundtable authors: how relations with stockholders are reflected in the management structure of Russian companies:

- Relations with a company’s employee are determined by the manpower policy, which is carried out by the personnel department – one of the leading structures of any company;
- Relations with future consumers, creditors are carried out by marketing department, investment and construction department, internal audit department, etc.

It should be noted here, that there are certain legal ambiguities of legislative trend in the corporate governance field. For example: the Law on Professional Unions contain provisions, regulating participation of representatives of labor collectives in corporate management bodies of companies.

At the same time the RF Federal Law “On Joint Stock Companies” does not say a word about it. Both companies’ owners (shareholders), and lawyers, and employees’ representative bodies find themselves in a tight corner.

The same can be said about the employers’ unions. Nominally they exist in Russia, however, they do not have authorities from the employers to negotiate and to conclude branch tariff agreements (OTS) with employees’ representative bodies.

And this is one of the sides of the corporate governance system in order not to knock together interests of shareholders and employees, but to find a necessary balance of these interests in a civilized way.

In the middle of nineties there have appeared a tendency to attraction of leaders of the professional unions into corporate governance bodies of companies. During several years I have been representing the labor in the Board of Directors of “Gazprom”. However, as soon as hard times have passed, we have been squeezed out from these bodies. That was wrong.

Everyone in Russia needs unified rules of play, unified corporate governance code, which would stipulate strict liability of the employers and management for violation of the code.

Now we know that the FCSM has started to work out that code. The EBRD (European Bank for Reconstruction and Development) has also joined that working out.

Our professional union tried to apply to the FCSM through the FNPR [Federation of Independent Professional Unions] in order to join working out of the code for legal acknowledgement of the role of the professional unions in governance.

However, unfortunately, the FCSM has informed that it could send the draft law for examination and provision of conclusions only when it would be completely finalized and submitted to the RF Government or the RF State Duma.

It is clear, what place has been prepared for the professional unions as the most representative bodies of employees both in the corporate governance system and in the social partnership system for preservation of the social peace in companies and society.

Although the professional unions of oil and gas industry workers unites 90% of all workers of the fields.
Thank you.