

Yakubovskaya Leysan Ravilevna

**LEGAL PROCEDURES IN THE LEGAL REGULATION OF JOINT
STOCK COMPANIES**

Speciality: 12.00.03 - Civil law;
entrepreneurial law; family law; private international law

THE ABSTRACT

Of dissertation for the degree of
PhD in law

Kazan - 2015

Thesis performed at the department of environmental law, labor law and civil process of the Law Faculty of Kazan (Volga Region) Federal University.

Scientific supervisor:

Abdullin Adel Ilsiyarovich

Doctor of Law, Associate Professor, Head of Department of European and international law FSAEI of HPL "Kazan (Volga Region) Federal University"

Official opponents:

Kulakov Vladimir Viktorovich,

Doctor of Law, Professor, Head of the Department of Civil Law FSBEI HL "Russian Academy of Justice"

Povarov Yuri Sergeevich,

PhD, assistant professor of civil and entrepreneurial law Department in FSBEI HPL "Samara State University"

Lead organization:

FSBEI HPL "Ulyanovsk State University"

Thesis defense will be held on 19'th June, 2015 at 13 o'clock at the meeting of the Dissertation Council D 212.081.26 of the Federal State Autonomous Educational Institution of Higher Professional Learning "Kazan (Volga Region) Federal University" at the address: 420008, Kazan, The Kremlin St., 18, aud. 335.

Thesis can be found in the N.I. Lobachevsky Scientific Library of the Kazan (Volga Region) Federal University. The electronic version of the thesis is available on the official website of the Kazan (Volga Region) Federal University <http://www.kpfu.ru>.

The electronic version of the abstract posted on the official website of the Kazan (Volga Region) Federal University <http://www.kpfu.ru>.

Abstract was distributed "___" _____ 2015 g.

Scientific Secretary of
Dissertation Council,
PhD, Associate Professor

G.R. Khabibullina

GENERAL DESCRIPTION OF WORK

Actuality of the research topic.

A necessary condition for development of market-oriented economy in our country is not only the presence, but also a high development level of legal means and methods of economic turnover regulation. An integral element of this development is the evolution of organizational relations, expressed in the legislative recognition of legal procedures that mediate the implementation by participants of civil turnover of their rights and fulfillment of obligations.

Among the participants of the civil turnover the main role should be given to the legal entity as an institution, has appeared in response to the socio-economic needs in the formation which allows to consolidate capitals and to manage them in accordance with the mutual interests of the founders while limiting their responsibility by the size of the contribution. In a market economy, which requires the legislator to have the developed system of legal means to protect the interests of economic entities, the question of legal regulation of commercial organizations becomes highly actual, as here is the most acute problem of setting the balance of economic and social principles, the most bright conflict of interests of the economically dominant and other participants, the organization itself, which has the main purpose of profit gaining, and its creditors, takes place.

According to statistics from the Federal Tax Service of the Russian Federation¹, among more than four million commercial organizations (as of 01.03.2015, the exact figure is 4 021 274 organizations) the most comes to limited liability companies (3 810 559 registered companies), at second place - joint stock companies (139 979 registered companies). Thus, business corporations are the dominant form of commercial organizations conducting business in Russia.

Of special interest here is the analysis of institutional relations, connected to the emergence, liquidation and business activity of joint stock companies. The

¹ The official website of FTS of Russia [electronic resource]. - URL: http://www.nalog.ru/rn16/related_activities/statistics_and_analytics/forms/5404042/ (the date of circulation: 02.03.2015, the data are as of 01/03/2015).

uniqueness of the regulation of joint stock companies in the Russian law is determined by the specifics of joint stock form of business organization that allows to attract venture capital of many individuals, including those who unable to do business on their own for any reason.

In addition, the limitation of liability up to the value of shares allows to invest in very promising and highly risky projects, this greatly speeding up the introduction of scientific and technical progress. Another advantage of joint-stock form is the possibility of fast disposal of shares, which allows to effect a large overflow of capital from one sphere of activity to another in accordance with prevailing market conditions almost instantaneously.

Although statistically small number of joint stock companies in comparison with an impressive array of limited liability companies, it should be noted that in view of these advantages almost all major Russian companies established as joint stock companies.²

Thus, to date, joint stock companies, which are the main form of organization of modern large enterprises and organizations, represent the most advanced legal framework of economic organization based on the merging of property of individuals, corporations of various types and other subjects of civil turnover.

On the other hand, in joint stock companies, where often the separation of ownership and management has place, the most likely to arise conflicts related to corporate behavior, so the development of certain standards of corporate behavior fixed by legal procedures, is the most important for the joint stock companies as a practical guarantees and real Instrument of balancing divergent interests of all subjects of corporate relations. The internal stability of the society and guarantee of the rights and lawful interests of shareholders - an important component of the investment attractiveness of the company.

² 200 largest private companies of Russia - 2014: the Forbes rating. [electronic resource]. - The URL: <http://www.forbes.ru/rating/200-krupneishikh-chastnykh-kompanii-rossii-2014-reiting-forbes/2014?full=1&table=1>(the date of circulation: 11.12.2014).

This observation is confirmed by active reformation of civil legislation of the Russian Federation. The last decade has produced a massive update of the Civil Code of the Russian Federation. A large number of amendments and innovations also affected the law on joint stock companies.

In the summer and autumn of 2013 the provisions of the Federal Law of 29.12.2012 № 282-FZ 'On Amendments to Certain Legislative Acts of the Russian Federation and Invalidating Certain Provisions of Legislative Acts of the Russian Federation' came into effect³ that have made a significant number of innovations in the legal regulation of corporate relations and activities of joint stock companies. The most significant changes are on the order of reorganization of joint stock companies in the form of a merger, division, separation or transformation. In particular, strengthened state control in the sphere of redistribution of assets of companies, a possibility of functioning of the company established during reorganization without further state registration of securities placed excluded.

Significant changes have occurred with respect to the activity of the registration authority in the area of the securities market. On September 1, 2013 the Federal Financial Markets Service ceased to exist. All the powers of the FFMS of Russia, including the registration of issues of securities transferred to the Central Bank of Russia as a mega-regulator for financial markets. The Civil Code of the Russian Federation⁴ (hereinafter - the Civil Code) gained the new section dedicated entirely to uncertificated securities. The changes were made to the procedure for payment of dividends to shareholders, the procedure of conducting the register of shareholders and the procedures for the protection of violated rights

³ The Russian newspaper on December 31, 2012 - № 303.

⁴ The first part of the Civil Code of the Russian Federation dated November 30, 1994 № 51-FZ // Meeting of the legislation of the Russian Federation. - 1994. - №32. - Art. 3301.

Part Two of the Civil Code of the Russian Federation dated January 26, 1996 № 14-FZ // Meeting of the legislation of the Russian Federation. - 1996. - №5. - Art. 410

Part Three of the Civil Code of the Russian Federation dated November 26, 2001 № 146-FZ // Meeting of the legislation of the Russian Federation. - 2001. - №49. - Art. 4552.

Part Four of the Civil Code of the Russian Federation dated December 18, 2006 № 230-FZ // Meeting of the legislation of the Russian Federation. - 2006. - №52. - Art. 5496.

holders of uncertificated securities, as well as to other problematic issues of company law, and are aimed primarily at improving corporate law and strengthening the protection of shareholders' rights.

As part of the next phase of the reform of civil law in May 2014 amendments⁵ in the Civil Code caused a significant transformation of the legal regulation of business entities activities. In particular, in response to a discussion about the balance of interests within the framework of economic entities in order to establish a different regime there was established a division between public and non-public companies. The criteria of publicity is a public offering of shares and securities convertible into shares (by public subscription) or their public trade on the conditions established by securities laws, at the moment or taken place during the existence of the organization. Limited liability companies and joint stock companies which does not meet the given criteria, recognized as non-public.

Article 66.3 of the Civil Code has become a kind of "dividing line" among joint-stock companies: in public companies - more conservative and lasting relationships that ensure the rights of creditors and minority shareholders (the predominance of the imperative method of legal regulation), in non-public companies - a greater degree of intra-organizational freedom (the predominance of the dispositive method of legal regulation).

Thus, for joint stock companies there is a choice provided by the legislator between an exceptional public status and the ability to use the full scope of the dispositive statutes provided that the unanimous decision of the shareholders was reached, that is the ability to choose the predominant method of regulation.

Closed joint stock companies are excluded from the system of legal persons as not justified itself, the status of which is currently almost completely duplicated by the status of limited liability companies, the same regarding the additional liability companies, which have not received practical distribution.

⁵ The Federal Law of 05.05.2014 N 99-FZ "On Amendments to Chapter 4 of the Civil Code of the Russian Federation and Invalidating Certain Provisions of Legislative Acts of the Russian Federation" // the Russian newspaper on May 7, 2014 - № 101.

Approximation of legislation on joint stock companies and on limited liability companies within the regulation of the non-public companies gave rise to the idea "on the establishment of a unified law on economic societies or of incorporation rules on them in the Civil Code (as is the case in today's legislation in a number of developed countries, such as Switzerland and the Netherlands)."⁶

According to legal reforms realized to date it becomes obvious that any changes in the regulation of the activities of legal persons in general and corporations in particular, are inconceivable without the transformation of the organizational-legal element. In most cases, this element is the "carrier" for legal constructions regulating the activities of joint-stock companies, and therefore requires special attention and meticulous legal technique.

Thus, the need to improve the legal regulation of joint stock companies as the major participants of civil turnover, on the one hand, and the need for a developed system of legal procedures to ensure the balance of rights and interests of all subjects of relations in joint stock companies - on the other hand, determined the need to address the chosen topic.

The extent of a theme of the research.

Analysis of scientific researches devoted to the study of organizational principles in the legal regulation of joint stock companies⁷ shows that insufficient attention paid to the study of institutional relations in the legal regulation of joint stock companies. Available researches reflect particular aspects of organizational relations in this area. In particular, there is no classification of legal procedures in the regulation of joint stock companies. Only general questions of existence and

⁶ Bychkov A.V. The need for and feasibility of the concept of civil legislation of the Russian Federation // Arbitration and civil procedure. - 2013. - № 4. - p. 2 - 7 .; E.A. Sukhanov Comparative corporate law. M.: Statute, 2014. - 36 p .; E.A. Sukhanov On the subject of corporate law // Actual problems of private law: a collection of articles for the anniversary of Pavel V. Krashenninikov. - M.: Statute, 2014. - 272 p.

⁷ See, E.g Vavulin D. Changing the order of issuance of securities // Law and Economics. - 2005.- №8; Ganeev R.R. Bases of legal regulation of the securities market. Kazan, 2000; Dolinskaya V.V. Novels // Tsivilist company law. - 2006. - №3; Kalashnikov G. Cumulative voting in joint-stock companies // Securities market. - 2004. - №10; Carlin A.A. The procedure for the conversion of the company: Theory and Practice // Journal of Russian law. - 2003. - №10; Carlin A.A. The reorganization of the company // the Economy and the right. - 2003. - №7; Makovskaya A. Transactions on placement of equity securities // the Economy and the right. - 2004. - № 7; Stepanov I.V. Corporate relations in civil law // Legislation.- 2002.- №6.- P.24 and others.

development of civil institutional relations and civil law procedures were studied doctrinally.

Interest in the study of organizational element of law resulted in creation of the fundamental works devoted to the study of the nature, functions and classification of legal procedures. Among the major basic researches - the works of V.N.Protasov "Legal Procedure"⁸, O.A. Krasavchikov "Civil Organizational and Legal Relations"⁹, dissertation work of G.N. Davidova "Legal Procedures in The Civil Law"¹⁰.

In the last of mentioned scientific works - the first complex monographic study of legal procedures in Russian civil law, legal procedures are determined as the object of institutional relations, which, in turn, proposed to be included into the structure of the subject of civil law.¹¹ The rationale for the necessity of such a conceptual review of the structure of the subject of civil law serve is solid accumulation of unresolved or insufficiently legally regulated organizational relations in the field of civil law, and the need to improve procedural guarantees of the rights and freedoms of the individual as the main direction of the rights enforcement mechanism update.¹²

Among the recent studies, the most significant for the study of institutional relations, as well as the study of individual legal procedures in the legal regulation of joint stock companies, should be called the works of such authors as R.Z. Ibatullina, A.S. Khabibulin, Y.S. Kharitonov (study of management category in the field of private law); V.C. Andreev, V.V. Kulakov, S.I. Nosov, V.N. Sinelnikov, M.Y. Chelishev, A.E. Sherstobitov (civil law generally); A.A. Katymanova, N.V. Kozlov, K.V. Mironov (exploring the category of legal persons in general and corporations in particular); A.V. Gabov,

⁸ Protasov V.N. Legal Procedure.- M.: Jurid. Lighted., 1991. -79 p

⁹ Krasavchikov O.A. Civilian Organizational and Legal Relations of Civil Law // the Anthology of the Urals, 1925 - 1989. - M.: Statute, 2001. -p. 156 - 165.

¹⁰ Davidova G.N. Legal Procedures in Civil Law: Diss. ... Cand. Jurid. Sciences. - Kazan, 2004. - p.8.

¹¹ Davidova G.N. Legal Procedures in Civil Law: General description: Abstract for the degree of PhD in law. - Kazan. - 2004 – p. 27 and further.

¹² For more on this: Reshetov Y.S. The Implementation of the Norms of Soviet Law. System analysis. - Kazan: Publishing house of the University of Kazan, 1989. - p.136.

A.A. Carlin, D.I. Stepanov (considering the reorganization of joint stock companies); E.I. Voronin, Y.M. Gritans, O.I. Grischenko, E.S. Zorin, O.V. Osipenko, E.V. Rudyak, I.V. Stepanov, E.A. Sukhanov, V.Y. Shelenin, E.A. Holmetsky (exploring various aspects of corporate governance); D.A. Vavulin, R.R. Ghana, A.A. Glushetsky, V.V. Sergeev (exploring the issues of circulation of the company securities); S.V. Varfolomeeva, M.A. Mjaken'kaja, E.G. Shutov (examine of the nature of the share capital); M.S. Smoljanov, A.G. Tarasov, S.G. Bashirov (considering legal procedures in relation to the realization of human rights in the system of private law); V.V. Dolinskaya, Y.S. Povarov, V.S. Shapkina, I.S. Shitkina, which reflected many aspects of joint stock companies.

So far there was no such monographic study of legal procedures in the legal regulation of joint stock companies, which would have addressed issues of systematization of these procedures, revealed their features and analyzed the practice of the legal procedures for joint stock companies.

The purpose and objectives of dissertation research.

The aim of the research is to develop the model of legal regulation of multidimensional activity of joint stock companies through legal procedures.

Achieving this goal is related to the formulation and solution **of tasks** of the following analytical and methodical character:

1. To define the legal procedures that mediate the activity of joint stock companies, in the civil turnover, to formulate the concept and identify the specifics of the legal procedures in the legal regulation of joint stock companies, to justify their classification.

2. To summarize similar features and identify the characteristics of the company's legal capacity management procedures in forms of the establishment, reorganization, cessation of its activity.

3. To analyze the concept and principles of corporate governance and control in joint-stock companies, determine the range of organizational-legal relations

fixed by law, and to evaluate their effectiveness from the positions of balance between regulatory methods.

4. To describe the procedures for the management of company's property: legal procedures aimed at the formation and change of the charter (registered) and equity (actual) capital of the company.

5. To develop proposals for amendments to the Russian legislation governing the organizational-legal relations with the joint stock companies, to improve the efficiency of legal regulation on the basis of the study above.

Object of research are civil organizational relations in the area of creation, operation and termination of joint stock companies.

The subject of research are the regulations set forth civil procedures of creation, operation and termination of joint stock companies, the legal practice of these procedures implementation, as well as the views of legal researchers analyzing the organizational, procedural principles in law and studying the legal regulation of various aspects of the joint-stock companies' activity.

The methodological and theoretical basis of the study.

The theoretical basis of the study are conceptual provisions of the law theory, civil science, entrepreneurial law, developed by the scientists of pre-revolutionary, Soviet and modern periods in the development of Russian law.

We used the works of such scientist as: B.P. Arkhipov, M.I. Braginsky, D.A. Vavulin, A.V. Gabov, R.R. Ghana, Y.M. Gritans, G.N. Davydov, V.V. Dolinskaya, R.Z. Ibatullina, O.S. Ioffe, A.V. Kozlov, V.A. Zakharov, E.S. Zorin, A.A. Carlin, O.A. Krasavchikov, N.V. Kozlov, S.D. Mogilevsky, O.V. Osipenko, V. Protasov, E.A. Sukhanov, D.V. Stepanov, I.V. Stepanov, A.S. Khabibulin, A.B. Tselovalnikov, M.Y. Chelishev, G.F. Shershenevich, I.S. Shitkina, E.G. Shutov and others.

Pursuant to achieve the goals and tasks set forth above this dissertation research is based on the general scientific dialectical method, as well as special methods: of system analysis, comparative law, formal logic. The empirical basis of

the research were as follows: materials judicial practice, the efficacy of the varying rules of law in practice.

The scientific novelty of the research lies in the fact that the author developed a model of the legal regulation of joint stock companies activity through a system of legal procedures.

Up to this point legal literature mainly affected general issues of substantive law governing the activities of joint-stock companies, as well as certain types of legal procedures in the legal regulation of joint stock companies that do not provide an integrated view of the organizational-legal relations, concurring the processes of functioning and cessation of the joint stock company, implemented through the system of legal procedures.

This research developed a model and definition of the legal procedures set forth in the legal regulation of joint stock companies, defined their specificity; founded the authors' classification of legal procedures in legal regulation of joint stock companies, depending on the control object (the relevant aspect of company's activities), subjects of organizational-legal relations and the legal result of the target process; organized legal analysis of the company's capacity management procedures, corporate governance and control procedures, and company's assets management. Based on the analysis the author formulated a number of proposals for updates in the company law and the wording of the legal definitions.

Theoretical and practical significance of the work lies in the fact that the results of the study, in particular, classification of legal procedures in the legal regulation of joint stock companies proposed by the author, may be used for further development of the legal procedures related to other forms of legal entities, remaining outside of this study.

In the light of the proposal contained in the concept of civil law (hereinafter - the Concept)¹³ on introduction of regulations for business companies into a single

¹³ The Concept of Civil Legislation of The Russian Federation (approved by the Presidential Council for Codification and Enhancement of Civil Legislation, 7th October, 2009) // Bulletin of the Supreme Arbitration Court of the Russian Federation.- 2009.- № 11.

codified act, the proposed classification can be used as a base structure governing the organizational and legal relations in joint stock companies.

The conclusions and proposals formulated in this thesis can be used in law enforcement, considered by the legislator in the process of improving of regulations on joint stock companies and in the development of local regulations governing the procedures of corporate governance and control.

The results of the research can be used in law education within the general course "Entrepreneurial Law" and special courses devoted to the study of legal status of commercial legal entities, the legal regulation of joint stock companies.

Approbation and implementation of research results. Thesis discussed and approved at the Department of environmental law, labor law and civil procedure of the Law faculty of the Kazan (Volga Region) Federal University.

The key points of the research were presented in the statements of the author of a number of scientific conferences, as well as announced at the panel discussions at the National Forum on Corporate Law (Moscow, 12-13 November 2014).

The results of the research were also used to improve the processes of legal support for the activities of "KAMAZ" Foreign trade company" Inc., in particular, to organize activities in the field of corporate governance and control. A number of proposals for improving the existing compliance procedures, complex examination of counterparties and competitive procurement system was introduced and implemented in the subsidiaries of "KAMAZ" Inc.

Key provisions of the dissertation are reflected in scientific articles, four of which have been published in leading peer-reviewed journals and publications recommended by State Commission for Academic Degrees and Titles of the Russian Ministry for the publication of results of dissertations for the degree of PhD in sciences.

Thesis for the defense.

The following provisions contain the base of the research:

1. Legal procedure in the regulation of joint stock companies - special case of civil procedure. The specifics of legal procedures in the legal regulation of joint stock companies are determined by the peculiarities of the legal form of the joint stock company, the nature of external and internal relations in joint stock companies and involves the following features:

1). The system of legal procedures in the legal regulation of joint stock companies formed under the influence of the inherent control category, which refers to the activities of the subjects of joint stock company's relations, aimed at the acquisition, modification, implementation and termination of the legal capacity of the company.

2). The system of legal procedures of company law is dominated by the intermediate regulation procedures characterized by the influence of norms of public regulation to private-treaty relations. Legal procedures for mediating the activity of public joint stock companies represent the upper limit of company law "processualization".

3). Subject structure of legal procedures in the legal regulation of joint stock companies is unique by the number of participating public law entities in comparison to procedures involving other forms of business organizations stipulated by Russian law.

Given the identified specificity and civil legal nature the legal procedure in legal regulation of joint stock companies may be defined as a system of sequential actions and relationships managing the specific aspect of the joint stock company's activity, aimed at establishment, modification or termination of its legal capacity.

2. Legal procedures in the legal regulation of joint stock companies can be classified by the object of governance on the following types:

- procedures for the governing the company's legal capacity (object-relations, aimed at the creation, modification or termination of the legal personality of the joint-stock company);

- corporate governance and control procedures (governance object - corporate (internal) relations);

- procedures for the management of company's assets (object - relations on the property of the Company and expressed through share transactions (transactions with charter (registered) capital of the Company) or through contracts and non-contractual transactions with share (actual) capital of the company).

3. Legal procedures in the legal regulation of joint stock companies have their entire structure and can be divided into the following phases: a preparatory (committing actions that ensure the achievement of the final result of legal procedures); target (in this stage, the achievement of the final target take place or failure to reach it); final (at this stage the required finalizing steps are to be committed, mostly of information nature).

4. Legal procedures in the legal regulation of joint stock companies can be classified by the governance sphere to external (governance sphere - external relations of joint stock company), internal (governance sphere - internal relations of joint stock company) and mixed (affecting both external and internal relations).

5. According to the criterion of the desired result all legal procedures in the legal regulation of joint stock companies can be classified into the basic and auxiliary procedures. Within the basic procedure achieved its ultimate goal; auxiliary procedures can have a complete structure with three dedicated stages, separate subject composition, but they do not lead to the ultimate goal of governance of the selected aspect of the activity, and are thus serve as parts of the basic procedures.

6. The procedures in the legal regulation of joint stock companies are in a permanent relationship, the nature of which is caused by a backbone category of governing, it crosscuts all organizational and legal relationship with the joint stock company. The central part of the legal procedures are considered corporate governance procedures.

7. In order to systematize and harmonize regulation of the legal procedures for approval of transactions of the company it is proposed to legislate the term "extraordinary transactions" within the meaning of the "transactions of the

joint stock company, not related to a change in its share capital, which require the approval of the governing bodies of the company according to provisions of law and/or regulations of constituent documents of the company." The concept includes major deals; transactions in respect of which there is an interest; transactions for which the constituent documents applicate approval procedure of major transactions; transactions which according to the constituent documents of the company should be approved in the order other than prescribed in Chapter X and Chapter XI of the Law on Joint Stock Companies.

9. In order to increase the efficiency of the legal regulation it is proposed to equate to the major deals the deals which according to the company's charter should be approved in the order prescribed for major deals (to extend the legal status of a major deals), including the grounds of challenge and the shareholder's right to demand redemption of its shares in the manner prescribed by Art. 75 of the Law on Joint Stock Companies, subject to the restrictions imposed by claim 6 Art. 79 of the Law on Joint Stock Companies.

10. Establishment of legal procedures in the field of internal (corporate) relationships in joint stock companies should be based strictly on a discretionary basis and principles of the appropriateness and adequacy. It makes sense to develop at the legislative level and offer to joint-stock companies a model concept of organizational relations, the so-called "Code of local procedures" ("Procedural Agreement"), subject to approval by local acts of the company, that provides the right for the number of benefits of procedural nature for this company, i.e, for registration of legal actions of the company there will be reduced bureaucratic barriers (simplification, liberalization of procedures, reduction of the degree of state control). Thus, the center of the state control of joint stock companies would be shifted from external influence from regulatory bodies for the protection of the rights and freedoms of participants in joint stock company's relations through the structuring of internal administrative processes with increasing discretionary external interactions of the company.

The structure of the dissertation is defined by the range of its tasks, aims and objectives.

The work consists of an introduction, four chapters, bringing together nine paragraphs, conclusion, list of literature.

MAIN CONTENT

Introduction. Substantiates the relevance of the research topic, defines the purpose, objectives, object, subject, methodological, theoretical, normative and empirical basis of the study, revealed scientific novelty, the theoretical and practical significance of the work, with the main provisions for the defense, provide information about the scientific and practical testing results.

First chapter - "The concept, classification of legal procedures in the legal regulation of joint stock companies and their place in the system of civil procedures" devoted to the study of the concept of legal procedures in the legal regulation of joint stock companies, the definition of the place of legal procedures of joint stock companies in the civil legal procedures and identify their characteristics. The author's classification of legal procedures in the field of regulation of joint stock companies, containing the conceptual framework of the research, substantiated theoretical and practical significance of the developed classification.

In the first paragraph of the first chapter the author conducted the analysis of the fundamental works devoted to the study of the nature, function and classification of the legal procedures in the field of private law, as well as works devoted to study of relations in joint stock companies.

To determine the nature of organizational-legal relations the author proceeds in his study of the place of the basic material regulatory relations in the civil law system.

In the matter of sectorial affiliation of law on joint stock companies on the basis of the analysis of subject composition and nature of relations in joint stock

companies, their comparison with corporate and civil relations dissertator justified the position on the recognition of law on joint stock companies as civil law institute, consisting mostly of rules of a private nature, however, notes the existence of rules, which are characterized by public law regulation.

The author notes that this feature affects the subject composition, the character and the whole system of institutional relations in the legal regulation of joint stock companies, designed by a system of legal procedures. So, from the standpoint of the previously given classification of legal procedures in the civil law the author points to the unique subject composition of said block of legal procedures and the predominance in the legal regulation of joint stock companies of procedures intermediate adjustment, when private-law relationships are influenced by public regulation. Legal procedures for mediating the activities of public companies, represent the upper limit of "procesualization" of the law on joint stock companies.

This feature is determined by the specifics of joint-stock form of business organization, in which the separation of ownership from management requires the establishment of a balanced system of legal procedures to ensure protection of the rights of all participants of the said relations and provides the opportunity to achieve a reasonable compromise of their legitimate interests.

Deepening the study of the nature of legal procedures in the legal regulation of joint stock companies, the author refers to the category of management (governance) in relation to civil law as a phenomenon, which is genetically related to the process, accompanying the activities of legal entities, and indicates the high relevance of the question of effectiveness of governance and setting a clear system of procedures in joint stock companies, in particular the public ones, where the functions of ownership and management are the most distant.

Dissertator endorses the views of A.Sh. Habibullina to legal procedure as a core element of the dynamics of the legal regime of the legal entity governance and to realization of company's legal capacity as a purpose of such governance. Under the governance of a joint stock company the dissertator understands the activity of

the subjects of legal relations aimed at the acquisition, modification, implementation and termination of the legal capacity of the company.

Given existing views on the nature and characteristics of the legal procedures in general and legal procedures in the field of civil law particularly, taking into account the revealed specificity of legal procedures in the legal regulation of joint stock companies the author proposed the definition of legal procedure in legal regulation of joint stock companies as a system of sequential actions and relationship of governance of specific aspect of the joint stock company's activity, aimed at the emergence, modification, realization or termination of its legal capacity.

In the second paragraph of the first chapter there is justified the classification of legal procedures in the legal regulation of joint stock companies by the criterion of the governance object to procedures for the governing the company's legal capacity (object- relations, aimed at the creation, modification or termination of the legal personality of the joint-stock company); corporate governance and control procedures (object- corporate (internal) relations); procedures for the management of company's assets (object - relations on the property of the Company and expressed through share transactions (transactions with charter (registered) capital of the Company) or through contracts and non-contractual transactions with share (actual) capital of the company).

There is a correlation of branches of proposed classification with features of a legal person, which can be easily adapted to all organizational and legal forms of business corporations in Russian civil law and serve in view of its universality as the basis of the structure of the section proposed for inclusion into the Civil Code, dedicated to the regulation of institutional relations, mediating activities of commercial corporations.

Legal procedures in the legal regulation of joint stock companies can be classified by the governance area to external, internal, and mixed; by the criterion of the desired legal result - for the base and auxiliary procedures.

The procedures in the legal regulation of joint stock companies as the elements of the system are in a relationship, the nature of which is caused by a backbone concept of governance (management), it crosscuts all organizational and legal relationships with the joint stock company. The central part of the legal procedures are procedures of corporate governance, which mediate the formation of the company's will.

In view of the classification of legal procedures in the legal regulation of joint stock companies on the level of the desired legal result corporate governance procedures can act as auxiliary ones in relation to all other types of procedures in the legal regulation of joint stock companies (in the case where control of legal or property of the company requires approval by its management bodies), as well as basic one if the desired end legal result of the procedure is a decision on matters not coinciding with the target results of other legal procedures in the regulation of joint stock companies.

Similar nature of the relationship observed between the external and the internal procedures in terms of the previously proposed classification, given the predominance of mixed procedures in the legal regulation of joint stock companies.

From the point of view of the internal structure of the procedures in the legal regulation of joint stock companies the following stages can be marked: preparatory (committing actions that ensure the achievement of the final result of legal procedures); target (in this stage, the achievement of the final target take place or failure to reach it); final (at this stage the required finalizing steps are to be committed, mostly of information nature).

In the second chapter - "Procedures for the governing the company's legal capacity" considered in detail the organizational-legal chains, mediating establishment, reorganization and termination of joint stock companies.

Describing procedures for the governing the company's legal capacity, the author reveals as their common characteristic that as a registration (target) step for

all procedures of this type it will be entering the data on the status of the company into the Unified State Register of Legal Entities (state registration).

With respect to the procedures of reorganization and termination of the joint stock company it is noted that, in contrast to the procedure of establishment of a company the basic registration (target) stage is preceded by intermediate - entering the information on the initiation of reorganization (liquidation), its stages and completion (end of the registration phase) into the Unified State Register of Legal Entities. These intermediate steps are accompanied by the mandatory publication of information on being of joint stock company in the process of reorganization or liquidation. It appears that this specific procedure of reorganization and termination of joint stock companies is determined by the necessity to protect the rights of creditors in a situation of company's activity destabilization and reduces the risk of causing damage to their property.

The first paragraph of the second chapter is devoted to the study of how to create a joint stock company, where the pre-registration (preparation) stage is taking decision to establish the company, the conclusion of the agreement on establishment of the company, preparation of constituent documents; at the registration (target) stage arises a record of the newly created joint-stock company in the Unified State Register of Legal Entities; post-registration (final) stage is represented by the providing of documents confirming the state registration to the registration authority by the applicant.

Here revealed the features inherent in the procedure for creating a credit institution, the procedure for creating a joint stock company in the permitting procedure and the procedure for creating a joint-stock company through reorganization.

According to the author of this research, in the establishment procedures for the joint stock companies legislator sustained optimal balance of the dispositive and imperative regulation methods. Shareholders have an opportunity to settle a major part of the issues regarding the establishment of the company, in the

company's charter, the agreement on the establishment or any other corporate contracts.

The second paragraph of the second chapter is devoted to the analysis of procedures for the reorganization of the company.

Reorganization can be voluntary or forced (by the court and authorized antimonopoly authority).

These kinds of procedures have significant differences in the pre-registration stage. The basis for a voluntary reorganization is the adoption of reorganization by the general meeting of shareholders. In cases prescribed by law for the forced reorganization, the reason for it is the decision of the court or an authorized state antimonopoly body on forced division of commercial organization or the allocation of its composition of one or more commercial organizations.

It determined when the reorganization is considered to be held (registration, target stage), for each type of reorganization.

The third step of reorganization procedure (after registration step) is substantially the same as described above post-registration stage of joint stock company establishment procedure.

In this section we review the significant changes introduced to the Civil Code by the Federal Law of 05.15.2014 №99-FZ. In particular, it is pointed that the list of forms of legal entities in which a joint stock company can be transformed in, was changed, as well as the possibility of simultaneous mixed and combined forms of reorganization was introduced as a novation, the transfer act is defined as the universal document certifying succession between reorganized and formed during the reorganization of legal entities. Stressed the need for sequential development of these changes in the legislation on joint stock companies, the law on registration of legal entities and on the circulation of securities in order to comfort and effective application of new rules introduced in the Civil Code provisions.

The author notes that the reorganization of the company is of particular interest as the legal process because of its complex and multi-subject composition,

the presence of "intermediate" cells and incomplete coverage by means of legal regulation in view of the recent profound changes of the civil legislation, are not yet fully broadcast in special legal regulation acts (law on joint stock companies, securities market regulation etc.).

Reorganization procedure deviates from the general rule of fixing occurrence, cessation or termination of the legal status of a joint stock company by the relevant record in the Unified State Register of Legal Entities. In particular, the reorganization will not be considered complete, succession - accomplished, and the purpose of the legal procedure - reached before the entry into the Unified State Register of Legal Entities on the termination of the last of the affiliated entities or the state registration of the last of the newly created legal entities.

The third paragraph of the second chapter is devoted to the study of the basic procedures of termination of the joint-stock company.

As the procedure of reorganization, liquidation may take place on a voluntary and compulsory basis.

Procedurally these orders of company's liquidation will vary on the pre-registration stage: in the first case, the basis for the elimination of the decision will be shareholders' decision, in the second - the court's decision. For the procedure of liquidation there is a mandatory component of pre-registration stage – providing of information about the beginning of the liquidation procedure to the registering authority. This is followed by: a field tax audit, appointment of the liquidation commission, the publication of information about the liquidation of the company, performing activities in accordance with the plan of liquidation, the collection of creditors' claims, the interim liquidation balance sheet (for credit organizations - its coordination with the Central Bank of the Russian Federation), the payment of sums of money to creditors of liquidating company, drawing up the liquidation balance sheet approved by the Shareholders' Meeting, the distribution of the remaining assets after satisfaction of creditors' demands between the shareholders.

At the registration stage, information about the liquidated legal entity is to be excluded from the Unified State Register of Legal Entities.

On the post-registration phase registration authority not later than one working day from the date of state registration of the Company in connection with its liquidation issues (sends) the applicant the document confirming an entry of the record in the corresponding state register.

The bankruptcy procedure of the company is characterized by the participation of the arbitral tribunal and, accordingly, the application of the rules of the Arbitration Procedure Code of the Russian Federation¹⁴.

The author emphasizes that the intermediate stages of the registration procedures for the termination of the company accompanied by the mandatory publication of information on the being of the company in liquidation (bankruptcy). It appears that this specificity of termination of joint stock companies is determined by the need to protect the rights of creditors in the of the company's status destabilization and the following risk of default of obligations from the company side since the procedure of liquidation does not imply succession.

In the third chapter - "The procedures of corporate governance and control in joint-stock companies" investigates the procedures regulating internal (corporate) relationships, presented by the procedures of corporate governance and control, as one of the governing functions.

In the first paragraph of the third chapter it explained the concept and principles of corporate governance, taking into account the official introduction of the term "corporation" to the Civil Code and the basic provisions of the Corporate Governance Code in 2014. On the basis of research author emphasizes the need to take into account principles of corporate governance (in particular, the principles of centralization and decentralization) when ordering and regulatory m fixing and procedures of corporate governance and control.

In the second paragraph of the third chapter it is stage by stage considered decision-making procedures by governing bodies of the company (general meeting

¹⁴ Code of Arbitration Procedure of the Russian Federation from 24.07.2002 N 95-FZ // Russian newspaper on July 27, 2002 - № 137.

of shareholders and board of directors). Emphasize on the dependence of the efficiency of corporate governance in the joint stock company from clarity of the distribution of competences between each of the structural elements of the corporate governance model.

The preparatory (pre-registration) phase of this type of legal procedure is a sequence of actions of the organizational nature on noticing all the participant about holding the relevant meeting of company's governing bodies, proper conduct of the meeting (in person or in absentia) and counting of the votes. Task stage contains in signing the minutes of the meeting of the relevant governing body of the company. For the decisions of general meetings of shareholders according to the new rules of the Civil Code, introduced by governmental Federal Law №99-FZ, it is prescribed the necessity to legalize all the protocols by the company's official registrar or a notary public. The final stage of the procedure is to inform all the authorized persons, about the decisions taken by the relevant governing body of the joint stock company.

The author noted that the procedures of corporate governance largely more formalized as compared to procedures for corporate control, due to the desire of the legislator to protect the rights of shareholders.

In the fourth chapter of dissertation - "The procedures for the management of company's assets" - considered the legal procedures through which the company manages its assets.

To determine the range of procedures of this type covered by the present dissertation research in **the first paragraph of the fourth chapter** analyzed the current views on the nature of the company's property. For the purposes of the study the concept of property is presented in the form of the duality of charter (nominal) and equity (actual) capital.

Having determined that the share capital, while the notional value, can not be regarded as part of the assets of the company, the author, however, justifies the need to review the procedures of formation and change of the authorized capital as a tool through which the company attracts the investments or reduces its capital,

that affects the size and composition of its assets. Procedures for payment by the founders of their shares, increasing and decreasing of the authorized capital of the company are regulated in detail by law because of their importance to the activity of many participants of civil turnover – entity itself, its investors and creditors.

The procedure for the formation of the charter capital at the stage preparatory (pre-registration) stage is presented by a sub-step of decision-making on the establishment of joint-stock company, signing the agreement on the establishment of the company and issuing of shares. Target (registration) stage for the procedure of formation of the charter capital will be the moment of state registration of shares and report on the results of their issue by the Bank of Russia. The final (post-registration) stage of the procedure of formation of the authorized capital, therefore, will be the actions of the founders on payment of placed company's shares in the amount established by the agreement on the establishment of the company and its articles of association.

Further, the author analyzed the grounds and procedures for increasing and decreasing the share capital.

Based on the analysis of the legal provisions governing the procedure for changing the share capital, the author concludes that both procedures are regulated to a greater degree of imperative norms of joint stock companies law, especially with respect to the procedure to reduce the share capital. Mandatory preparatory step for the mentioned procedures is approval of changes in the authorized capital by General Meeting of Shareholders, and in the case of reduction - notification of the company's creditors. Moment of registration (completion of the target stage of the procedure) of the changes in share capital by analogy with the procedure of formation of the authorized capital will be considered as the moment of state registration of the issue and report on the issue of shares, and in case of increase of the nominal value of shares without issue procedure - state registration of the relevant changes in the company's charter.

In the second paragraph of the fourth chapter reviewed all other procedures of the property management of the company, which are legally

regulated order of contract concluding and other transactions with the company's assets, affecting the size and composition of its property, by other, extra-contractual means.

In this section of the dissertation the focus is on the study of procedures to conclude transactions by the company's requiring the approval of a special order from the company's governing bodies as the main method of company's assets management.

In order to systematize and harmonize regulation of the legal procedures for approval of transactions of the company it is proposed to legislate the term "extraordinary transactions" within the meaning of the "transactions of the joint stock company, not related to a change in its share capital, which require the approval of the governing bodies of the company according to provisions of law and/or regulations of constituent documents of the company." The concept includes major deals; transactions in respect of which there is an interest; transactions for which the constituent documents applicate approval procedure of major transactions; transactions which according to the constituent documents of the company should be approved in the order other than prescribed in Chapter X and Chapter XI of the Law on Joint Stock Companies.

In order to increase the efficiency of the legal regulation it is proposed to equate to the major deals the deals which according to the company's charter should be approved in the order prescribed for major deals (to extend the legal status of a major deals), including the grounds of challenge and the shareholder's right to demand redemption of its shares in the manner prescribed by Art. 75 of the Law on Joint Stock Companies, subject to the restrictions imposed by claim 6 Art. 79 of the Law on Joint Stock Companies.

At the end of the research there is a summary of theoretical conclusions on the regulation of legal procedures in the field of law on joint stock companies and of proposals to improve the legislation.

On the topic of the research the author **published** the following works:

In the editions recommended by the Higher Attestation Commission of the Russian Federation:

1. Yakubovskaya L.R. The value of the qualification stage in the legal procedure of approval of transactions by company's governing bodies // Journal of economics, law and sociology. - 2014. - №2. - p. 158-161. - 0.46 eq n .l.

2. Yakubovskaya L.R. The extraordinary transactions of the company in terms of legal procedure // Kazan science. - 2014. - №4. - p. 219 - 221 - 0.35 eq n .l.

3. Hisamutdinova L.R. Legal procedures in company law: concept, classification // Gaps in Russian legislation - №4 / 2010. - Moscow, 2010. - p. 130-132. - 0, 3, 5 para eq .l.

4. Hisamutdinova L.R. Legal procedures of corporate governance in joint ventures in form of closed joint stock companies as a company with a small number of participants // Business Law. - 2010. - number 4. - p. 57-59. - 0.35 eq n .l.

In other publications:

5. Hisamutdinova L.R. Legal procedures in company law: concept, classification // Collection of postgraduate research papers. - 2007 – Vypusk 8. - p.316-321. - 0.29 pech.l.