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The review provides a detailed analysis of main trends in Russia's economy in 2014. The paper contains 6 big sections that highlight single aspects of Russia's economic development: the socio-political context; the monetary and credit spheres; financial sphere; the real sector; social sphere; institutional challenges. The paper employs a huge mass of statistical data that forms the basis of original computation and numerous charts.

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6.3. Innovations of corporate legislation and regulation: changes in the Civil Code and the new Code of Corporate Governance in Russia in 2014

6.3.1. Civil legislation reform; legal entities

The reform of civil legislation started in the summer of 2008, with the signing of the Presidential Decree of the Russian Federation of 18 July 2008 No. 1108 "On the improvement of the Civil Code of the Russian Federation". The objectives of the changes in the Civil Code (*hereinafter referred to as the "CC"*) were declared as:

a) the further development of the basic principles of the civil legislation of the Russian Federation, to match the new level of development of market relations;

b) to reflect the experience of the use of the CC and its interpretation by the courts;

c) rapprochement of the CC provisions with the rules regulating relations in the relevant laws of the European Union;

d) the use in Russian civil legislation of the newest positive experiences of the modernisation of the civil codes of a number of European countries;

e) to maintain the uniformity of regulation of civil-law matters in the member states of the CIS;

f) to ensure the stability of civil legislation.

Significant changes in the Civil Code of the Russian Federation, including with regard to the Chapter "Legal Entities", were considered within the framework of the Civil Legislation Development Concept, and these included several draft laws. This Concept was approved in October 2009.[1] In 2010–2011 the first versions of the draft laws were publicly presented.[2] The scale of the changes and additions to the Civil Code was even compared with that of 1995, when the First Part of the Civil Code, which then came into force, changed the Fundamentals of the Civil Legislation of the Union of Soviet Socialist Republics and of the Republics.[3] In May 2014 Federal Law No. 99-FZ of 05 May 2014 was adopted, providing for the changes in the "Legal Entities" Chapter of the Civil Code.

According to the opinions of some authors, the revision of the rules relating to the legal entities was, on the whole, motivated by[4] the need to simplify and unify legal regulation, to eliminate the multiplicity of active laws and their mutual contradictions, and to increase the role of the Civil Code in the regulation of the status of legal entities.

It is important to note, that in relation to a whole range of legal entities, such as the State Atomic Energy Corporation (Rosatom), the State Corporation for the Promotion of Development, Manufacture and Export of High-Technology Products (Rostechnologies), the Deposit Insurance Agency, the state corporation - The Support Fund for the Reform of the Housing and Utilities Sector, the state corporation - the Bank for Development and Foreign Economic Affairs (Vnesheconombank), the State Corporation for the Building of Olympic Objects and the Development of the City of Sochi as a Mountain Resort, the state company - Russian Highways, and also in relation to other legal entities created by the Russian Federation on the basis of special

[1] For more details, refer to: Apevalova E. A. Corporate legislation 2006–2010: some results and innovations.- // The Russian economy in 2010: the trends and prospects. - Moscow, the Gaidar Economic Policy Institute, 2011, pages 459–474

[2] For more details, refer to: The civil legislation reform./ Analytic information - www.consultant.ru

[3] For instance, Turbanov A. V. The civil legislation reform: new approaches and mechanisms. //Banking Law, 2012 No., pages 3–7.

[4] Soifer T. V. Topical directions of the development of the civil legislation on non-profit organisations. // Russian Justice 2014, No.3, page 8.

federal laws, the provisions of the Civil Code of the Russian Federation on legal entities are applied only to the extent that there is no other provision under a special federal law with regard to the corresponding legal entity.[5]

General Provisions

The changes in the corporate legislation[6] first of all, affected the term *"legal entity"*. Beside the fact, that "an organisation that has separate assets, and is liable for its obligations with such assets, may on its own behalf acquire and exercise civil rights and have civil obligations, to act as a plaintiff and defendant in court is recognised to be a legal entity", it is now stipulated that the founders, holding proprietary rights for the assets of such a legal entity, should be state and municipal unitary enterprises or institutions. The participants of a legal entity that has corporate rights, should be corporate organisations. So, aside from the division of the rights of the participants in a legal entity into different types, the strengthening of the rights (for instance, of the corporate rights) has been provided for, and without these, a legal entity cannot exist as such.

Earlier, in 2009,[7] the protection of corporate rights had been introduced in the Arbitration Code. Previously, corporate rights, as an institution in law, did not exist in the legislation, and the shareholders, for example, were considered to be endowed with the rights of obligation. i.e. with the rights to claim. Corporate rights are understood as a right to claim, on behalf of a corporation, for the compensation of damages inflicted on such a corporation; or, acting on behalf of a corporation, to challenge the transactions carried out by that corporation and to demand the enforcement of the consequences of such invalidated transactions, as well as the enforcement of the consequences of the invalidity of void transactions, in addition to some others. It is significant that the law and the constituent documents of a corporation may contain other rights as well.

Additionally, an *extension of the legal capacity of a legal entity has been secured*, already established in the field of legislation on self-regulation and practice, from now on a legal entity may engage in certain types of activity, not only on the basis of a licence, but also on the basis of its membership in a self-regulated organisation, or through a certificate issued by a self-regulated organisation on admission to certain types of works.

A broad list of types of non-profit organisations was provided, which included, for instance, partnership of property owners, Cossack associations, autonomous non-profit organisations, public companies, etc.[8] These will be considered in detail below.

Furthermore, *the preparation of the constituent documents of legal entities has been simplified.* All legal entities, other than commercial businesses, may now act only on the basis of their articles of association, approved by their respective founders (participants). The commercial business entities may now act on the basis of their memorandums of association. The possibility of using standard articles of association, approved by a corresponding state authority, has been provided for. The founders may now choose to adopt internal rules governing their corporate documents.

The obligation of members of the collegial bodies of a legal entity to act in the interests of such a legal entity, reasonably and in good faith, has been fixed (in a similar way to how a person, may be authorised to act on behalf of a legal entity). On the practical side, the principle of good faith means that the above-mentioned participants in civil law relations shall respect the rights and interests of counter parties, not abuse or misuse their rights, not perform any actions, aimed at the evasion of law, and not artificially create conditions for the non-performance of obligations or the

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[5] P.6 of Article 3 of the Federal Law of 05 May 2014 No. 99-FZ "On the Introduction of Changes in Chapter 4 of the First Part of the Civil Code of the Russian Federation and on the Recognition as Invalid Certain Provisions of the Legislative Acts of the Russian Federation".

[6] All changes in the Civil Code, considered below, are based on the "Changes in the Provisions of the Civil Code of the Russian Federation with regard to Legal Entities (Federal Law of 05 May 2014 No. 99-FZ)".

[7] Federal Law of 19 July 2009 No. 205-FZ "On the Introduction of Changes to Certain Legislative Acts of the Russian Federation".

[8] For more details, refer to Article 50 of the CC of the Russian Federation, as amended and supplemented, entered into force since 01 September 2014.

unfounded acquisition of rights. In practice, the civil legislation is not able to spell out and prohibit all possible violations of the interests of other parties, and this is why it is important for the courts to have the possibility, based on the principle of good faith, to declare one or another person as dishonest, and the actions of such persons - as an abuse of rights.

From our point of view, the introduction of such a principle brings the Russian legal system closer to the Anglo-Saxon one (the possibility of making a decision, not only on the basis of specific rules, but also on general principles). This is undoubtedly a step forward; however, in practice, mistakes and abuses may occur during the assessment of business risk and integrity.

Further, the legal responsibility of a person, authorised to act on his/her own behalf, as well as of the members of the collegial bodies of a legal entity has been fixed[9] (but excluding any who voted against a decision which resulted in damages, or who, acting in good faith, did not participate in such voting). Upon the request of a legal entity, the above-mentioned persons are obliged to compensate its founders (participants), for the damages, caused to the legal entity through their fault. In the case of the mutual infliction of damages, joint liability is provided for. Agreements on the limitation or elimination of such liability are null. In reality, this has introduced a mechanism for the protection of owners' interests against abuse and misuse on the part of management, which is already widespread in Russian practice.

On the whole, the innovations in this block should be considered as positive ones, aimed at developing legal regulation and a better level of protection for owners.

Reorganisation of legal entities

The law has fixed the possibility of complex ***reorganisation***, i.e. the reorganisation of legal entities with the simultaneous combination of different forms of reorganisation, including that involving the participation of more than two legal entities, even if they are subject to different legal forms of organisation. It appears that such wide possibilities of reorganisation will hinder the definition of legal succession and will contribute to abuses on the part of the enterprises subject to reorganisation.

The key document in the reorganisation of legal entities is now only the Deed of Transfer (previously the separation balance sheet was also applicable), which, in addition to the original requirements, will now have to contain "the procedure for the definition of legal succession in connection with the change of type, composition and value of the assets, with the creation, change and termination of the rights and obligations of a legal entity, which may take place *after* the date of the corresponding Deed of Transfer" (Part 1 of Article 59 of the Civil Code of the Russian Federation).

If a Deed of Transfer does not allow for a successor to be defined, or implies that during the reorganisation the assets and obligations of the legal entities were not divided in good faith, and that this resulted in significant violations of the creditors' rights, such a reorganised legal entity and the legal entities, created as a result of the reorganisation, shall be jointly liable for such obligations.

The regulation of the guarantees of creditors' rights during reorganisation have undergone significant changes. Previously, a creditor of a legal entity was entitled to demand the early performance of the corresponding liability by the debtor if such a creditor's rights to claim had appeared before the publication of the reorganisation of the legal entity. Additionally, in the case of such early performance not being possible, to demand the termination of the liability and compensation for any damages, related thereto (with the exclusion of certain cases, established by law). Now all creditors are governed by the conditions, which previously applied to joint-stock companies, related to the demand for the early performance of liabilities; and moreover, through court procedures, to a 30 day term of submission of such demands, etc. An exception has been

[9] The details of the compensation for losses by persons, included into the bodies of a legal entity, refer to the Ruling of the Plenum of the Supreme Arbitration Court of 30 July 2013 No. 62 "On Certain Matters, Related to the Compensation for Losses by Persons, Included into the Bodies of a Legal Entity".

made for any creditors, who were provided with security for the fulfilment of obligations. In reality, a narrowing of creditors' rights during reorganisation is taking place.

Furthermore, it is now not only legal entities created through the reorganisation procedure that are responsible to their creditors for the non-performance of the corresponding obligations, but also "*persons, having the authority to define the actions of the reorganised legal entities, members of their collegial bodies, or a person, authorised to act on the behalf of a reorganised entity*", provided that they, by their actions, contributed to the non-compensation of losses, or the early non-performance of obligations, or the non-provision of sufficient security.

The law has directly established that the recognition by a court of the invalidity of a decision on reorganisation does not entail the liquidation of the legal entity formed as a result of that reorganisation, and nor does it constitute grounds for transactions, made by such a legal entity, to be considered invalid. It appears that such a situation will ensure immutability in the distribution of the assets of state companies and corporations that have undergone multiple reorganisations.

A special regulation applies where a reorganisation is recognised as void. It may be executed upon the request of a corporate member, who voted against a decision on the reorganisation or who did not participate in the voting on such a matter, provided that the decision on the reorganisation was not taken by the members of the reorganised corporation, or was established with the use of deliberately false information about the reorganisation.

The consequences through the court taking such a decision are:

- the reinstatement of the legal entities, which existed prior to the reorganisation,
- the transactions of the legal entities, created as a result of the reorganisation, with persons, who, in good faith, relied upon the legal succession, remain in force for the restored legal entities, which are the joint debtors and joint creditors in relation to such transactions;
- the participants of a previously existing legal entity are recognised as the owners of the participation shares in that legal entity to the extent of the shares that they owned prior to the reorganisation.

There are also some additional consequences not listed here.

A prohibition has also been introduced on the reorganisation of business partnerships and companies into non-profit organisations or into unitary commercial organisations.

From our point of view it appears that, in general, the rules which have been introduced on reorganisation provide particularly for the interests of large state companies and corporations, while they also narrow the rights of creditors during reorganisations.

Liquidation of a legal entity

With regard to the norms on liquidation, it is firstly worth noting the introduction of the definition of an "*inactive legal entity*", which means a legal entity, which, during the previous 12 months has not presented the accounting documents stipulated by the Tax and Levy Legislation and has not made transactions using at least one bank account. Such an entity is deemed to have actually terminated its activity and is subject to exclusion from the Unified State Register of Legal Entities, but this does not prevent persons from the governing bodies of such an entity being held liable, determining its actions, or representing its interests, in accordance with the liability discussed above. The introduction of such a procedure is positive, and will contribute to the "clearance" from the market of abandoned companies and fly-by-night companies.

In addition, a new basis for the liquidation of a legal entity by the courts has been introduced - the recognition of the state registration as being invalid *in the case of absence of membership in a self-regulated organisation.*

Prior to the approval of the liquidation balance sheet, the creditors of an entity being liquidated are granted *the right to apply to the courts with a claim to satisfy their demands against the entity under liquidation*, in the case that the liquidation commission has refused to satisfy their demands or has failed to consider them.

If it lacks sufficient funds, the liquidation of a legal entity is carried out jointly and severally at the expense of its founders (participants).

In the case of non-performance, or improper performance, by the founders of a legal entity of their obligations on the liquidation, the interested person, or an authorised state body, is entitled to request, through a court procedure, the liquidation of the legal entity and the appointment of an administrative receiver for that purpose.

The procedure for the liquidation of a legal entity remains essentially unchanged, but with the clarification of some points:

A) in the case of a dispute between the founders as to whom an item remaining after the satisfaction of the creditors' demands, shall be transferred, the item shall be sold at auction by the liquidation commission;

B) the assets of a non-profit organisation that remain after the satisfaction of the creditors' demands shall be used, in accordance with the articles of association, for achieving the purposes for which such assets were created.

With regard to the satisfaction of the demands of the creditors of an entity under liquidation, the most important point here is the introduction *of the right of an interested person or authorised body to apply to the courts with a claim for an appointment procedure for the distribution of discovered assets.* This right may be exercised in the case of the discovery of assets of a liquidated legal entity, excluded from the State Register, and includes the situation of it being declared bankrupt. Such an application may be submitted within 5 years from the date of entry of information on the liquidation of that legal entity into the State Register.

Additionally, it is expressly stated, that creditors' claims for the compensation of losses in the form of loss of profit and for the recovery of penalties (forfeits, penalty fees) are to be satisfied after the 1, 2, 3 and 4th stage claims of the creditors.

Corporate legal entities (general provisions)

The law introduces *a division of legal entities into corporate ones* – those in which the founders (participants) have the right of participation (membership), and form the supreme body of such legal entities; and the *unitary ones* - the founders of which do not become participants and do not acquire the rights of membership in such entities.

Corporate legal entities include economic partnerships and societies, peasant (farming) enterprises, economic partnerships; production and consumer cooperatives, public organisations, associations (unions); partnership of property owners, Cossack associations entered into the corresponding register, and indigenous small ethnic communities.

The law introduces a *general provision on the rights and obligations of the members of a corporation*, and it repeats, to a large extent, the current norms on the rights and obligations of legal entities. New aspects are firstly the obligation to participate in taking corporate decisions, without which a corporation cannot continue its activity, provided that their participation is necessary for taking such decision, and secondly, the obligation not to perform any actions to the detriment of the interests of the corporation. These represent a significant strengthening of the rights: to act on behalf of a corporation to claim compensation for damages inflicted on it; to act on behalf of a corporation to challenge, the transactions carried out by that corporation and to demand the enforcement of the consequences of such invalidated transactions, as well as the enforcement of the consequences of the invalidity of void transactions.

The Civil Code has been supplemented with the possibility to apply the consequences of the affiliation (relatedness) of legal entities.

The members of the collegial executive body of a corporation have been granted the rights to receive information about the corporation's activity, to familiarise themselves with its accounting and other documentation, to demand the compensation of damages inflicted on that corporation, to challenge the transactions carried out by the corporation and to demand the enforcement of the consequences of any such invalidated transactions, as well as the enforcement of the consequences of the invalidity of the void transactions.

The innovation in the regulation of the activities of non-public economic societies is the introduction of the possibility for the redistribution of the powers of the society's members, disproportionately to their shares in the charter capital. This possibility may be realised through the inclusion thereof in the society's articles of association or in the corporate agreement, provided that such information was entered into the Unified State Register of Legal Entities.

The matter of the contributions of the members of economic partnerships and societies has been regulated differently. While, previously, the issue concerned "securities", it is now related to the "shares in the charter (contributed) capital of other economic partnerships and societies, state and municipal bonds". Besides those specified earlier, there were named additional exclusive intellectual rights, and rights under licence agreements, subject to monetary valuation, unless otherwise provided by law".

The law, or the constituent documents of an economic partnership or society may establish the types of assets that cannot be contributed to pay for the shares in the charter (contributed) capital.

There is also further development concerning the general provisions *on the charter capital of an economic partnership*. When paying the charter capital of an economic society, the monetary resources must be contributed in an amount not less than that of the minimum amount of the charter capital. The monetary valuation of a non-monetary contribution to the charter capital must be carried out by an independent appraiser, and the participants in an economic society are prohibited from determining the monetary valuation of a non-monetary contribution as being higher than that defined by the appraiser.

The *joint subsidiary liability of a company's participants and of the independent appraiser is now also established* if, within 5 years from the date of registration of the company or from the date of entering the corresponding changes into the articles of association, there is an insufficiency of the company's assets during the payment of its shares with non-monetary resources, in the amount by which the corresponding valuation of the assets, as entered into the charter capital, was overstated. Such liability does not apply to companies, incorporated through the process of the privatisation of unitary enterprises.

A separation of companies, which had been under discussion for a long time*, into public and non-public ones has been* introduced. A public company is a joint-stock company, the shares of which, and the securities of which, convertible into its shares, are publicly placed (via public subscription) or are publicly traded under the conditions established by the corresponding laws on securities. The rules, relating to public companies also apply to any joint-stock company, the articles of association and commercial name of which contain reference to the fact, that such a company is a public one.

Any business entity that does not meet the above criteria is considered to be a non-public company. With regard to non-public companies, the possibilities of making changes in certain general corporate norms, by registering them in the articles of association, are provided for. Such norms, for instance, include: the procedure for convening, preparing and carrying out general meetings of the participants of the business entity and the procedure for making decisions through these; on the procedure for exercising a pre-emptive right to acquire a share or part of a share in the charter capital of a limited liability company or a pre-emptive right to acquire shares or securities that are convertible into shares, placed by that company, etc.[10]

Alongside this, additional liability companies and closed joint-stock companies shall cease to exist, as had been suggested, even before 2008, by the Corporate Legislation Development Concept.

As was previously stated, the law introduces the definition of a *"public joint-stock company"*, and establishes certain features of its activity

A public joint-stock company is be obliged to submit to the Unified State Register of Legal Entities a reference to the fact, that the company is a public one. Only after doing so, will a joint-

[10] For more details, refer to the Article 66.3 of the Civil Code of the Russian Federation, as revised in the Federal Law of May 05, 2014 No.99-FZ.

stock company be entitled publicly to place shares and securities convertible into shares. This requirement does not apply to joint-stock companies incorporated prior to 1 September 2014, provided they meet the criteria for public joint-stock companies.

The collegial governing body of a public joint-stock company must be comprised of not less than 5 people. The procedure for the creation and the competence of such a collegial body are defined according to the law on joint-stock companies and by the articles of association of that public joint-stock company.

The obligations, related to the maintenance of the registry and the performance of the counting commission of the shareholders of a public company, are to be undertaken by an independent organisation that has the appropriate licence provided for by law. In a public joint-stock company, the number of shares owned by any shareholder, their aggregate nominal value, as well as the maximum number of votes granted to any one shareholder, cannot be restricted. The articles of association of a public joint-stock company cannot provide for the necessity of receiving an individual's consent for the alienation of the shares of that company. No one may be granted a pre-emptive right to acquire the shares of a public joint-stock company, except for those cases, provided for by paragraph 3 of Article 100, related to the increase of the charter capital of a joint-stock company.

The articles of association of a public joint-stock company may not attribute to the exclusive competence of the General Meetings of shareholders the solution of issues not related to such competence in accordance with the Civil Law and the law on joint-stock companies.

A public joint-stock company is obliged to disclose publicly the information prescribed by law. Additional requirements for the creation and activity, as well as for the termination of public joint-stock companies are established by the law on joint-stock companies and the laws on securities.

A public joint-stock company is prohibited from placing preference shares, the nominal value of which is lower than the nominal value of the ordinary shares.

On the whole, the innovations in this block may be evaluated as necessary ones, which had been anticipated for a long time.

Corporate agreement

Article 67.2, named the "Corporate Agreement", has been introduced in the Code, and this Article is common to all business entities, including joint-stock companies. According to this Article, the participants of a business entity, or some of them, shall be entitled to execute between themselves an agreement on the exercise of their corporate (member) rights (the corporate agreement), in accordance with which they shall be obliged to exercise such rights in a specified manner, or to refrain from (refuse) the exercise thereof. This includes voting in a certain way at general meetings of the company's shareholders, performing other actions related to the management of the company in a coordinated manner, acquiring or alienating shares in its charter capital at a certain price and/or upon the occurrence of certain circumstances, or refraining from the alienation of shares prior to the occurrence of certain circumstances (p. 1 Article 67.2).

A corporate agreement cannot oblige its parties to vote in accordance with the instructions of the company's bodies, to determine the structure of the company's bodies and their competence. Any conditions of a corporate agreement, contradicting those indicated above, are null.

The participants that have executed a corporate agreement are obliged to notify the company about this fact, but in doing so, they are not required to disclose the content of the corporate agreement. The information on the corporate agreement of a public joint-stock company shall be disclosed to the extent, and both in accordance with the procedure and conditions provided for by the law on joint-stock companies. Unless otherwise provided for by law, the information on the content of a corporate agreement, executed by the participants of a non-public company, shall not be subject to disclosure, and is considered to be confidential.

Violation of a corporate agreement may constitute grounds for the recognition of a decision made by a body of a business entity with regard to a claim, brought by a party under such an

agreement, to be invalid, provided that, as on the date of taking the corresponding decision by the body of the company, all participants of the company were parties under the corporate agreement.

A transaction, made by a party under the corporate agreement that violates it may be found invalid by a court on the basis of a claim, brought by a party under that agreement, only if the other party under the transaction knew, or should have known, about the limitations provided for by the corporate agreement.

The rules related to the corporate agreement also apply to the agreements, executed by the creditors of a company and other third parties with the participants of the business entity, in accordance with which the latter is obliged to exercise their corporate rights in a certain manner of to refrain from the exercise thereof. The purpose of this is to secure the interests, protected by law, of such third parties.

These rules related to subsidiary business organisations, introduced in the Civil Code, essentially duplicate the norms of the Federal Law "On Joint-Stock Companies".

The innovations in this block are aimed at the development of corporate relations and provide participants in the economic turnover with the possibility of regulating their own mutual relations, and this corresponds well with the nature of the entrepreneurial activity.

Non-profit corporate organisations

According to the evaluations of the developers of the first draft of the Civil Code of the Russian Federation, which was approved in 1994, at that time no one realised that, as a consequence of the open list of non-profit organisations provided for in the Code, the legislation in this branch would be created so actively and un-systematically. The current condition of this branch of legislation is such that even specialists differ in their opinions with regard to the number of currently existing forms of non-profit organisation (different specialists itemise from 20 to 40 such forms). Such a multiplicity of forms is evidently excessive, and as a rule, is not justifiable.[11] This is why the Civil Code provides a closed list of the legal organisational forms of non-profit organisations that also includes the corporate ones.

The non-profit corporate organisations are considered to be those legal entities that do not pursue profit-making as the main purpose of their activity, do not distribute received profit among their participants, and the founders of which receive the right of participation (membership) in such entities and form their supreme body.

The non-profit corporate organisations include: consumer cooperatives, public organisations, associations (unions), partnerships of property owners and Cossack associations, as well as indigenous small ethnic communities of the Russian Federation.

The remaining norms, related to non-profit corporate organisations, duplicate the corresponding norms of the Federal Law "On Non-Profit Organisations".

With regard to the **consumer cooperatives**, changes have been made, related to the transformation thereof. Previously, the transformation of a consumer cooperative into a business entity or partnership was possible, and now they can transform into a public organisation, association (union) or an autonomous non-profit organisation or fund.

The law additionally fixed the new obligation of the members of a consumer cooperative - to cover any formed losses by making additional contributions. The size of such contributions is determined within three months of the date of the approval of the annual balance sheet. In the case of non-fulfilment of this obligation the cooperative may be liquidated through a court order at the request of the creditors. The members of a cooperative are held jointly and subsidiary liable for its obligations within the frame of the corresponding non-contributed part of the additional contribution of each member of the cooperative.

The legal norms, related to **production cooperatives**, to a significant extent, duplicate the norms of the corresponding Federal Law.

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[11] Denisov S. A. Non-profit organisations in the new version draft of the Civil Code of the Russian Federation // The Civil Law Bulletin. 2012. No. 4, pp 66–74.

The regulation of the **activity of public organisations has been expanded.** Now, they are created "for the provision and protection of the mutual interests and achievement of other purposes not contradictory to the law". Public organisations may amalgamate in associations (unions). A public organisation, upon the decision of its founders, may be transformed into an association (union), an autonomous non-profit organisation or a fund.

The number of founders of a non-profit organisation may not be fewer than three people. A participant (member) of a public organisation shall exercise the corporate rights noted above, according to the procedure, established by the articles of association of that organisation. Such a participant is also entitled to be on a par with other participants of the organisation in the gratuitous use of the services provided by the organisation. Such a participant is also obliged to pay membership and asset contributions and to bear other obligations incumbent upon the participants of such a corporation. A participant of a public organisation has the right to withdraw from the organisation at any time. Membership of a public organisation cannot be alienated. The exercise of the participant's rights cannot be assigned to another person.

The exclusive competence of the supreme body of a public organisation has been expanded. In addition to a range of powers provided for the supreme body of a corporation (p.2 of Article 65.3 of the Civil Code of the Russian Federation) it now also includes the ability to take decisions on the size and procedure for payment of the membership and other asset contributions.

It is now mandatory for a public organisation to have a sole executive body (a chairman, president, etc.) while permanent collegial executive bodies (board, administration, presidium, etc.) may be created. Previously, one and/or the other body could be created. In addition to that, it has been established that, upon a decision taken at a general meeting of the members of a public company, the powers of its executive body may be prematurely terminated in cases of "flagrant violations by this body of its duties, an inability to demonstrate the proper conduct of affairs, or upon other serious grounds".

The legislator has introduced a definition of an **association** (a union), similar to that fixed in the Federal Law "On Non-Profit Organisations"; however, it is emphasised that the purposes of an association (union) should be non-profit in nature and not contrary to the law. The following examples of an association (union) are given:

- an association of persons, whose purposes are the coordination of their entrepreneurial activity and the representation and protection of their common property interests;
- professional associations of citizens, whose purposes are not the protection of the labour rights or the interests of their members;
- professional associations of citizens, not connected with their participation in labour relations (associations of lawyers, notaries public, appraisers, individual artists etc.);
- self-regulated organisations and their amalgamations.

An association is the owner of its assets, and is held liable for its obligations with all its assets, unless otherwise provided for by law with regard to associations (unions) of certain types. An association (union) is not held liable for the obligations of its members, unless otherwise provided for by law. The members of an association (union) are not held liable for its obligations, unless a subsidiary liability of the members is provided for by law or by the articles of association of such an association (union).

An association (union), upon the decision of its members, may be transformed into a public organisation, an autonomous non-profit organisation or a fund.

The features of the legal status of associations (unions) of certain types can be established by laws.

So, as we can see, the regulations leave open a wide range of possibilities for the functioning of the associations (unions) according to other rules.

There must be no fewer than two founders of an association (union). The laws on certain types of associations may establish other requirements for the minimum number of founders.

Issues related to taking decisions on the procedure for the determination of the size and method of payment of membership contributions, on additional asset contributions on the part of the members of an association (union) and on the extent of the subsidiary liability for the obligations of the association (union), if any, fall within the exclusive competence of the supreme body of the association (union), along with those matters provided for by p. 2 of Article 65.3, considered above.

The peculiarities of the creation and termination of the powers in an association (union) of the executive bodies, and the rights and responsibilities of its members are similar to those also considered above that are provided for a public organisation.

A further innovation is the introduction into the Civil Code of the definition of a **partnership of property owners**, which means a voluntary association of real estate owners, created by those owners for the joint possession, use and disposal, within the frames established by law, of property, which by law is in their joint possession or in joint use, in addition to other purposes provided for by law.

The articles of association of the partnership must contain all the key provisions, related to the activity of such a partnership. The partnership is not liable for the obligations of its members and the members of a partnership are not liable for its obligations. Upon the corresponding decision of its members, a partnership of property owners may be transformed into a consumer cooperative.

The partnership is the owner of its assets. Common property in an apartment building, as well as the shared facilities in horticultural, gardening and non-profit dacha partnerships, belong to the members of the partnership of property owners according to the right of common shared ownership, unless otherwise provided for by law. The composition of such property and the procedure for the determination of the shares in the common ownership right to such property is established by law.

A share in the common ownership right to the common property in an apartment building, a share in the common ownership right to the shared facilities in horticultural, gardening or in a non-profit dacha partnership of an owner of a land plot (who is a member of such a non-profit partnership) follow the fate of the ownership right to the above-specified premises or land plot.

The features of governance of a partnership of property owners are similar to those for a public organisation which were considered above.

The Code gives the definition of a **Cossack society**, as one which is introduced into the State Register of Cossack Societies in the Russian Federation of citizens' associations, created for the purposes of the preservation of the traditional way of life, households and culture of the Russian Cossacks, as well as for any other purposes provided for by the Federal Law of 5 December 2005 No.154-FZ “On the State Service of the Russian Cossacks”, and which voluntarily, according to the procedure established by law, assumes the obligations of performing a state or other service.

A Cossack society, upon the decision of its members, may be transformed into an association (union) or an autonomous non-profit organisation. The provisions of the Civil Code with regard to non-profit organisations apply to Cossack societies, which have been entered in the State Register, unless otherwise established by the above-mentioned law on Cossacks.

The definition of an **indigenous small ethnic community of the Russian Federation** has also been included in the Code, to mean a voluntary association of the citizens belonging to any of the indigenous small ethnic communities of Russia, and who are united by blood, kinship and/or on a territorial or neighbourly basis for the purposes of protecting their native habitat, or preserving and developing their traditional ways of life, households, crafts and culture.

The members of such a community have the right to receive a part thereof or a compensation for the price of such part in the case of exiting the community or of its liquidation.

Such a community, upon the decision of its members, may be transformed into an association (union) or an autonomous non-profit organisation.

The provisions of the Code apply with regard to such communities, unless otherwise provided for by law.

In evaluating the innovations of this section, it is worth mentioning the limited list of organisations, their systematisation, and the raising of the status of the norms on non-profit organisations, which is, undoubtedly, a positive move.

Non-profit unitary organisations

More extensive regulation has been created in the Civil Code for **funds.** It has been stipulated that the reorganisation of funds is not permitted, with the exclusion of non-state pension funds.

The assets, transferred to a fund by its founders, are the property of the fund. The exclusive competence of the supreme collegial body of a fund has been established, although it can be expanded both by law and by the articles of association of the fund.

The supreme collegial body of a fund has to elect an exclusive executive body for the fund but may also appoint a collegial executive body.

The persons, authorised to act on behalf a fund are obliged, upon the request of members of the fund's supreme body, acting in the interests of the fund, to compensate for any losses caused to the fund by such persons. There also should exist a board of trustees of the fund that maintains supervision over the fund's activity, over making of decisions by other bodies of the fund and their enforcement, as well as over the usage of the fund's resources and the compliance of the fund with the current legislation. The board of trustees of a fund acts on a public basis.

It is interesting that the possibility of changes in the articles of association of a fund by a court decision is provided for (along with the more usual possibility of the introduction of such changes by the supreme body), on the basis of the corresponding application of the fund's bodies, if the preservation, unchanged, of the fund's articles of association entails consequences that could not be foreseen during the establishment of the fund, and the supreme collegial body of the fund or the founder of the fund have not changed its articles of association. This offers a mechanism for overcoming conflicts.

A fund may be liquidated only on the basis of a court decision, upon the application of the persons concerned, if the assets of the fund are insufficient to perform its activity and the possibility of receiving the necessary assets is unreal; if the purposes of the fund cannot be achieved, and the necessary changes in the purposes of the fund cannot be made; if the fund in its activity evades the purposes provided for in the articles of association; and in other cases, provided for by law.

In the case of the liquidation of a fund, its assets, which remain after the satisfaction of the claims of its creditors, are directed for the purposes, indicated in the fund's articles of association, with the exclusion of those cases where the law provides for the return of such assets to the founders of the fund.

Institutions have also been the subject of a definition that is uniform for all forms. That is: "an institution is considered a unitary non-profit organisation, created by the owner for the performance of governance, social and cultural and other functions of a non-profit nature". In addition to this, some innovations with regard to the FZ "On Non-Profit Organisations" have been introduced:

- In creating an institution, co-foundership by several persons is not permitted.
- An institution is held liable for its obligations for its disposable monetary resources, and in those cases established by law, also for other assets. In the case of insufficiency of monetary resources or assets, the owner of the corresponding assets is to be held subsidiary liable.

The founder must appoint a head of the institution, who is an organ of the institution. Heads of a state or municipal institution may be elected by its collegial body and approved by its founder.

With regard to **state or municipal institutions**, their division into state-owned, budgetary or autonomous institutions is preserved. State or municipal institutions are not held liable for the obligations of the owner of their assets. A state-owned institution is held liable for its obligations in respect of its disposable monetary resources. In the case of an insufficiency of those monetary resources the owner is held subsidiary liable for the obligations of the state-owned institution.

The property liability of a **budgetary institution** is differently regulated from now on. It is now held liable for its obligations for all its assets according to its right of operational management, including those acquired on the basis of income received from income-yielding activity, with the exclusion of very valuable assets and a number of other exceptions.[12] In the case of insufficiency of a budgetary institution's assets the owner of the assets of the institution will be held subsidiary liable for the obligations of the institution that may be levied in relation to the consequent infliction of harm to citizens.

With regard to a **private institution**, it must in whole or in part be financed by the owner of its assets, and is held liable for its obligations with respect to disposable monetary resources. In the case of insufficiency of those resources the owner of the assets shall be held subsidiary liable. A private institution may be transformed by the founder into an autonomous non-profit organisation.

Autonomous non-profit organisations are now subject to more detailed regulation, in respect of the requirements to their articles of association, which must now contain the purposes of the activity of the organisations, the composition, procedure for the formation of and the competence of the bodies of that autonomous non-profit organisation, etc. An important point is the fact that, an autonomous non-profit organisation that engages in entrepreneurial activity necessary for the achievement of its purposes, shall be obliged to establish business entities or to participate in such entities.

A person may, at his/her own discretion, withdraw from the founders. Upon the unanimous decision of the founders of an autonomous non-profit organisation, new persons may be included in its founders. An autonomous non-profit organisation, upon the decision of its founders, may be transformed into a fund.

The governance of the activity of an autonomous non-profit organisation is carried out by its founders, according to the procedure established by its articles of association as approved by the founders. Upon the decision of the founders a permanent collegial body (bodies) may be created, the competence of which must be established according to the articles of association. The founders must appoint a sole executive body, which may also be represented by one of the founder-citizens.

Religious organisations are subject to some new regulations. Now, such an organisation may be considered a voluntary association of the citizens of the Russian Federation or other persons, permanently and on legal grounds residing on the territory of the Russian Federation, which was created by them for the purposes of the joint confession and propagation of faith, according to the procedure, established by law.

The Civil Code now separates: a local religious organisation - a legal entity, from a centralised religious organisation - an association of these local organisations, as well as a governing or coordinating body, created by such association.

It has been stipulated that a religious organisation cannot be transformed into a legal entity of another legal organisational form. The rights of the founders, the articles of association and property issues are now regulated, to a large extent, uniformly with Articles 10 and 21 of the Federal Law "On the Freedom of Conscience and on Religious Associations".

Summarising the results of the analysis of the changes in the Civil Code, it is worth mentioning the systematic development of the legislation (for the first time since 1995) with regard to the matter under consideration. The suggested measures are aimed at the further development of the rules on corporate governance by means of changing the norms on the reorganisation and liquidation of enterprises, the introduction of norms on corporate agreements, the rights and obligations of shareholders, and the classification of legal entities.

Theoretically, the conditions have been laid for *raising the levels of responsibility of the head of a legal entity, and of the founders and members of the Board of Directors* in the case of inflicting losses on a legal entity through their fault, or their joint liability. Furthermore, we can observe the

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[12] For more details, refer to p. 5 of Article 123.22 of the Civil Code as revised on 05 May 2014, as amended and supplemented, and entered into force since 1 September 2014.

development of corporate governance itself by the introduction of the institution of corporate agreements and the possibility to redistribute the legal powers of the participants of a company disproportionately to their shares. However, in this regard there is a risk of misuse and the violation of the rights of shareholders, particularly of the minority ones.

An important feature of the legal regulation of legal entities, which we would like to note, is *the flexibility of the regulation:*

- the use of open lists, which can be supplemented by each company itself;
- the participants of a corporation may, themselves, supplement the rights and obligations;
- the company may now determine the types of assets that cannot be contributed to pay for shares in the charter contributed capital;
- non-public companies can make changes in the articles of association with regard to the procedure for convening, preparing and carrying out the general meetings of the company and their decisions-making, etc.

The majority of the innovations which have been introduced seem to be the norms, which are necessary, systematic and developing the legal relations. The exceptions are those on reorganisation, which narrow the rights of creditors, and are aimed at the preservation of transactions, even those made after illegal reorganisation. By doing so, they slow down and impede the establishment of a balance of interests among the participants in corporate relations.

6.3.2. The New Code of Corporate Governance

The global financial and economic crisis in the late 2000s gave a new impetus to the revision and development of the norms of corporate governance. The OECD in its reports on corporate governance and the financial crisis[13] for the years 2009–2010 emphasises the extensive impact of defects in corporate governance on the development of the crisis. In 2011, the Financial Crisis Inquiry Commission (FCIC), created by the US Government, published its Report on the Inquiry into the Financial Crisis,[14] in which the main causes of the crisis were named as the significant failures of corporate governance and of risk management in many systemically important financial institutions.

As is known, the Principles of Corporate Governance of the OECD (hereinafter referred to as the "PCG of the OECD"), which were initially approved in 1999 as a result of a series of large corporate scandals which swept the countries of the world at the turn of the millennium (for example, Enron and WorldCom in the USA, HIH and One.Tel in Australia), were reviewed as early as 2004. In 2014, the crisis of the end of the 2000s formed the grounds for beginning a new process of reviewing the PCG of the OECD.

It is quite natural, therefore, that the global financial and economic crisis has also become one of the reasons to review the Russian Code of Corporate Conduct of 2002[15] (hereinafter referred to as the "CCC"). The speculative investors prevailing on the Russian market during the catch-up growth period have lost their interest in Russian companies, while the long-term investors require a clear understanding of the strategic targets and prospects of any company, as well needing to be sure that their rights will not be violated. This is impossible without constant improvements to the regulatory norms and practices of corporate governance.

At the beginning of the 2000s the Russian legislation on joint-stock companies was underdeveloped and had an abundance of loopholes, which the CCC of 2002 was intended to close.

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[13] Corporate governance and the financial crisis. URL: http://www.oecd.org/daf/ca/corporategovernanceandthefinancialcrisis.htm.

[14] FCIC. The Financial Crisis Inquiry Report: Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States / Official Government Edition, 2011. – P. xviii. URL: http://fcic.law.stanford.edu/report.

[15] The Order of the FCSM of the Russian Federation of 04 April 2002 No. 421/p "On the Recommendations for the Use of the Corporate Governance Code" // Bulletin of FCSM of Russia, No. 4, 30 April 2002 (the Order) actually became void after the publishing of the Letter of the Bank of Russia of 10 April 2014 No. 06-52/2463, which recommended the Corporate Governance Code.

As a result, the structure of the CCC turned out to be rather bulky and overloaded. The principles of Corporate Conduct, stated in the first chapter of the CCC, were the basis for the recommendations contained in the subsequent nine chapters, but these were far too detailed for a framework document.

Since the adoption of the CCC, a significant number of problems and issues related to corporate conduct have been solved at the level of legislation and by regulatory legal acts. There is now no further need for the many "regulating" recommendations of the CCC: there is no more need for separate chapters on the general meetings of shareholders (Chapter 2), on the executive bodies of a company (Chapter 4), on dividends (Chapter 9) or on the settlement of corporate conflicts (Chapter 10).

The new Code of Corporate Governance of 2014[16] (hereinafter referred to as the "CCG") has adopted its structure from the PCG of the OECD of 2004. The CCG consists of two parts, the first part contains the principles of corporate governance (Part A), and the second part (Part B) contains recommendations related to the realisation of those principles.

The second part of the CCG is more practical in character in comparison to the annotations of the second part of the PCG of the OECD, consisting of comments on the principles of corporate governance, which are intended to help in an understanding of the basis of these principles.

It is worth noting that the development of the CCG took place simultaneously with the realisation by the OECD of its plan of action for corporate governance and resolving the financial crisis, at one stage of which the experts of the OECD came to the conclusion that the defects in corporate governance, which had played a significant role in the development of the financial crisis, were caused, not by defects in the international and national standards of corporate governance, including the PCG of the OECD, but by the non-performance of such standards. As a result, in 2010 the OECD published a set of recommendations, complementing those principles, for overcoming the defects of corporate governance and supporting a more effective realisation of the PCG of the OECD.[17] Only in 2014 did it announce the start of the process of reviewing the PCG of the OECD themselves.

Since the OECD participated in the development of the Russian CCG during the above period, we can assume, that this fact, among others, has influenced the recommendatory (rather than annotative) character of the CCG, and that the new PCG of the OECD will also be of more practical character.

What is the difference between the principles of corporate governance of 2014 and the principles of corporate governance of 2002, and what do they have in common with the principles of corporate governance of the OECD?

Firstly, the new name of the Code - the Code of Corporate *Governance* - reflects the change in approach and role of the Code. Now it is not just a document, defining the proper conduct of Russian joint-stock companies in relation to their shareholders and investors, but also "a powerful tool for increasing the efficiency of governing a company and ensuring its long-term and sustainable development".

The CCG adopted from the PCG of the OECD the definition of corporate governance, which was previously absent in the CCC.

The term "corporate governance" covers the system of mutual relations between the executive bodies of a joint-stock company, its Board of Directors, the shareholders and other stakeholders. Corporate governance is a tool for the definition of the targets of a company and a means for achieving such targets, as well as for ensuring the effective control over the company's activity on the part of the shareholders and other stakeholders.

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[16] The Letter of the Bank of Russia of 10 April 2014 No. 06-52/2463 "On the Corporate Governance Code" // Bulletin of the Bank of Russia, No. 40, 18 April 2014.

[17] Corporate Governance and the Financial Crisis: Conclusions and Emerging Good Practices to Enhance Implementation of the Principles. OECD, 2010.

Secondly, the CCG adopts the principles of the CCC, based on the PCG of the OECD, which are related to the rights of shareholders and the equality of shareholders in the exercise of their rights, and it further develops these principles in the recommendations (section I).

Thirdly, the principles, related to the Board of Directors of a company, have changed to the largest extent (section II).

The CCG has clarified the obligations of the Board of Directors, particularly, by including several principles of corporate governance from the OECD. The Board of Directors is obliged:

– to determine the principles and approaches to the system of risk management and of internal control in the company (2.1.3);
– to play a key role in ensuring the transparency of the company, the timeliness and completeness of the disclosure of information by the company, and the easy access of shareholders to the company's documents (2.1.6);
– to exercise control over the corporate governance practices in the company and to play a key role in significant corporate events, taking place in the company (2.1.7).

The CCG has turned the recommendation of the CCC, related to the requirements of a member of the Board of Directors, into a form principle. It is recommended that a member of the Board of Directors should have an impeccable business and personal reputation, and have the knowledge, skills and experience, necessary for performing his/her duties (2.3.1).

The CCG has improved the principles, related to independent directors (2.4.1–2.4.4), going further than the PCG of the OECD, and, in particular, has defined an independent director as a person who has sufficient professional competence, experience and independence to form his/her own position and who is able to make independent, objective and good faith judgments.

The CCC recommended, that the independent directors should comprise at least one quarter of the composition of the Board of Directors (and that under any circumstances, there should be no fewer than three independent directors). Along with the definition of an independent director, the requirement for the number of independent directors was a recommendation, made by the CCC. The CCG raised this recommendation to the level of a principle and increased the required proportion of independent directors up to at least one third.

The CCC recommended the creation of committees for the preliminary consideration of the most important issues related to the activity of a company, and that these should consist of the members of the Board of Directors. The principles of the CCG also establish new requirements for the composition of such committees (2.8).

The audit and remuneration committees must consist of independent directors. A remuneration committee must be headed by an independent director, who is not the chairman of the Board of Directors. The majority of the members of a committee for nominations must be independent directors.

The subsequent recommendations, transformed into principles, became the provisions: on the Chairman of the Board of Directors (2.5) (such a principle is absent in the PCG of the OECD), on the rights and obligations of the members of the Board of Directors (2.6) and on the obligation of the Board of Directors to ensure the assessment of the quality of the work of the Board of Directors, its committees and the members of the Board of Directors (2.9).

Fourthly, the Russian principles differ from the principles of the corporate governance of the OECD by the presence of principles related to the Corporate Secretary of a company. Now, the above-specified principles constitute a separate small section (III) of the CCG, which has been partly formed using the recommendations of the CCC (Chapter 5 of the recommendations of the CCC), but which clarifies the tasks of the Corporate Secretary of a company (efficient current interaction with the shareholders, coordination of the company's actions with regard to the protection of the shareholders' rights and interests and support of the efficient work of the Board of Directors) and establishes the requirements of his/her position (for instance, sufficient independence from the company's executive bodies).

Fifthly, through a separate section (IV) on systems of remuneration, the CCG develops a separate principle from those of the CCC and PCG of the OECD, which establishes the dependence of the remuneration of the members of the Board of Directors, executive bodies and other key executive employees of a company on their actual contribution to the results of the company's activity and on the long-term interests of the company and its shareholders.

Sixthly, the CCG has updated the principles relating to the system of internal control, and has established new principles for risk management (section V). The CCC included risk management in the procedures for internal control, and the principles of risk management themselves were absent in it.

The development of the specified principles was due to the significant role of the defects of corporate governance in the field of risk management in the development of the global financial and economic crisis at the end of the last decade. Despite this significant role of the risk management system, there is little said about it in the PCG of the OECD.

Seventhly, the principles of disclosure of information about a company and of the information policy of a company as stated in the CCC and the CCG (section VI) do not specify, which substantial information about its activity a company must disclose. However, the recommendatory parts of the CCC and the CCG do contain a list of information subject to disclosure - from the structure of the capital of the company to information related to the social and environmental responsibility of the company.

The Principles of Corporate Governance of the OECD expressly state, that the disclosed substantial information should include, among other, data on the rights of the major shareholders and voting rights, transactions with affiliated persons and any predictable risk factors.

According to the recommendations of the CCG, the web-site of a company on the internet should be the main source of disclosing information.

The principles of the CCC and the CCG related to confidential and insider information, are absent from the PCG of the OECD, but in the annotations to the Principles of Corporate Governance of the OECD there is mention of the provision of such information.

Eighthly, as we have already seen, the CCG has transformed several recommendations of the CCC into principles of corporate governance. The most significant transformation is related to the provisions on substantial corporate actions (from the recommendatory Chapter 6 of the CCC into Section VII of the principles of the CCG).

For instance, the Codes consider as substantial corporate actions: the reorganisation and merger of a company, the performance by it of substantial transactions and increases or reductions of the charter capital. The innovation of the CCG is in classifying the listing and de-listing of the shares of a company as among the above-mentioned actions. However, the provisions on substantial corporate actions are absent in the PCG of the OECD.

There are some principles of the corporate governance of the OECD, which have not been included in the Russian version of the CCG, but which are worth adopting and fixing.

First of all, there is the most important 'Principle I', related to the creation of an efficient system as a basis of corporate governance, insomuch as this is related to the *applicability* of the legal and regulatory requirements affecting the practice of corporate governance, and, in this regard, vesting the supervision, regulatory and law-enforcement bodies with the corresponding powers and resources to perform their obligations in a professional and objective way.

As we have already said, the failures of corporate governance have been caused, not so much by flaws in the principles of corporate governance, as by the non-performance of such principles. Therefore, to ensure compliance with corporate, legal and regulatory requirements the above-specified bodies should be vested with the appropriate powers.

Furthermore, with the purpose of increasing the efficiency of the activities of companies, the systems of corporate governance should recognise the rights of the parties concerned (for example, of the companies' employees and creditors) and should encourage active cooperation between the companies and these parties (Principle IV of the PCG of the OECD).

So, the main advantage of the CCG of 2014 is in its structure, which has become more compact and convenient. Unnecessary provisions, duplicating the legislation, have been removed from the CCG. The CCG is now more in line with the international standards of corporate governance, and this facilitates the efficient use of its provisions by companies. However, such use remains voluntary, while the compliance with the provisions of the corporate governance codes of a number of developed countries has, for a long time, been founded on the “comply or explain” principle.[18]

[18] For instance, the Corporate Governance Codes of the United Kingdom and Germany, the Corporate Governance Code of France (for public companies).