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Legal realisation of information technology activities of the government-owned corporations: automation of management and control

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Abstract. The article touches upon the problem of digitalization of management and control over government-owned corporation activities. The authors develop the architecture of a unified electronic information system for property management and control of property turnover. The paper reveals a range of issues related to the use of information technologies in management and control over government-owned corporation activities. The researchers analyze the causes of arising problems in legal regulation, general issues being common for all elements of the legal regulation system, as well as private ones relating directly to management and control of the government-owned (public) corporation. The authors use general and special methodological approaches in their research to solve the tasks stated in the paper. This research paper represents the analysis of normative legal acts containing the legal basis for creating an effective system of management and control over government-owned corporation activities. The results of the authors' study indicate general trends of building a system of a legal response by means of established prohibitions, limits and restrictions. The research points out positive and negative aspects of this approach. The authors identify types of activities of public corporation being non-subject to the control of the founder and monitoring agencies due to definite lacks in the current legislation and suggest legal means to fill in such gaps. Analyzing this doctrine in relation to the use of different approaches to the management and control of government-owned corporation the authors determine positive and negative characteristics of the proposed methods. The researchers suggest using a set of legal instruments in legislative regulation of management and control over government-owned corporation activities. Along with the prohibitions, limits and restrictions the article proposes to digitalize the processes of management of a government-owned corporation and control its activities by means of creating and maintaining a unified electronic information system of property management and control over the turnover of property. The authors characterize features of such a system distinguishing it from existing analogs and specify the structure of the subjects having access to such systems. The paper determinates databases necessary for inclusion in its structure.

1. Introduction

Active development of information technology and the formation of new sectors of the digital economy have determined the need to create an effective system of legal regulation reflecting the specifics of the electronic format of civil turnover.

The constant introduction of digital innovations, digitalization of modern processes and use of information technologies in all spheres of life predetermine the rapid obsolescence of existing legal



methods and means. At the international level there is a lack of clear approaches to the law necessary to resolve emerging conflicts. [1]

Consequently, we suppose, that the changing architecture of the modern economy creates the necessity to change not only the structure of law but also the concept of new mechanisms of legal regulation [2].

For numerous fields and institutions of the economy a legal framework is currently being created to solve problems concerning the area of regulation and control over legal subjects activity. However, there are some institutions which do not use the information technology necessary for the effective management and monitoring of modern organisations up to now.

Thus, Russian law is aware of the non-specific organisational and legal form of a legal entity created as a result of the transfer of state property as a contribution to the authorised capital of a non-profit organization – public corporation.

Debates concerning the activities of the subject of law have not subsided since the moment of incorporation of this legal form in the Russian legislation and the creation of the first public corporation in scientific field. The results of the study indicate the need for an effective system of management of the Corporation and the monitoring of its operations. There are various opinions among researchers about the control of public corporation's property transferred to it by the government, which can be described as a particularly valuable and strategically important property. Similar to the last point, the problem of control over the use and disposal of such property by a government-owned corporation is particularly highlighted.

Legislators made numerous attempts to solve the problem of property management and control over the turnover of public corporation's property. Thus, in order to solve this problem, the federal law "on public corporation on atomic energy "Rosatom" underwent amendments more than sixteen times. In respect of the public corporation "Rostech" legislators have adopted seven federal laws changing its legal status. Numerous changes have been made in the regulations regarding other corporations. It is, however, evident that without fundamental research in this area, it seems impossible to create an adequate system of legal control of legal relations. The facts considered predetermined the need for this scientific analysis.

The legislators attempts to solve the problem of control over the property management system and civil turnover of public corporation's property, as a rule, are reduced to the establishment of limits and restrictions on the implementation of public corporation's property rights. However, solving the problem by establishing a large number of bans is not entirely efficient, as these bans limit the targeted activities of a government-owned corporation preventing the achievement of its designated objectives.

Specific problems established by the legislator's limits and restrictions, are unconditionally, solved. It is, however, necessary to look at this problem from another angle identifying solutions through the creation of a single electronic information system of property management and control over the turnover of property of public corporation.

2. Results

The analysis of the scientific literature shows that most authors believe that the management of a public corporation is out of state control, [3] which is unacceptable since the creation of a municipal corporation is primarily predetermined by the need to solve domestic and international problems of our country. So, by art. 7.1 of the Federal Law "On Non-Profit Organizations" of the Rostech, Rosatom, Vnesheconombank and other state corporations are not subject to the rules on state control related to their activities as non-profit organizations: control bodies without the consent of a state corporation are not entitled to request statistics on the economic and other activities of the state corporation; carry out inspections, including the expenditure of funds and so on.

Of course, one cannot say that the activities of a state corporation is non-subject of control. Unique control mechanisms have been created to meet the goals that the government decides through the creation of public corporations. Unfortunately, we have to state that they are not sufficient to solve the indicated problems.

Moreover, we should note that the mechanisms created can, as a rule, be qualified as public control (the obligation to provide public reporting has emerged, the Audit Chamber of the Russian Federation can verify activities [4] “On the Accounts Chamber of the Russian Federation”), although the interpretation of the law is ambiguous regarding the possibility of such verification and the subject of the audit, which led to additional discussions in the literature and practice, etc.). However, at present, the problem of control is extremely acute, both for the state corporation management system and for the civil turnover of its property, which, of course, necessitates the development of additional control and monitoring tools.

In the research literature, certain civil legal means of control over transactions by state corporations are proposed, but, as a rule, such proposals are reduced to the establishment of prohibitions on the Commission of certain types of operations; [5] or prohibitions on transactions with certain property of a state Corporation; [3] the establishment of control over transactions by the state; [6] a change in the civil legal standing of a state Corporation. [7]

Some authors see the problem of corporate governance in the activities of governing bodies. [8]

Of course, these points of view are worthy of attention and, to a certain extent, can help solve the problems of managing the property of a state corporation and controlling its turnover, including control over the circulation of funds. However, we consider that absolute significance in determining the possibility of exercising continuous control over the making transactions state corporations is the establishment of duty for it to disclose information about transactions.

Considering the transactions of a state corporation, one can single out some deals in respect of which there are currently no adequate controls, including on the part of the founder.

Giving public corporations the right to contribute funds received, including from the federal budget, to the authorized capital of subsidiaries and affiliates, the legislator did not take into account the fact that individuals can act as co-founders of such companies, which may result in redistribution budget funds in favor of such founders (for example, clause 3, clause 4, article 17 of the Federal Law of December 1, 2007 No. 317-Φ3 (as amended on December 31, 2017) “on public corporation on atomic energy “Rosatom”). [9]

Permission given to government-owned corporations to consent to large transactions, including those related to the alienation of property of unitary enterprises under their jurisdiction either cannot be considered indisputable (paragraphs 16, 17, paragraph 1, article 8.1. Of the Federal Law of December 1, 2007 N 317-Φ3 (ed. of December 31, 2017) “on public corporation on atomic energy “Rosatom”), as well as the right to act as a guarantor (taking into account the possible consequences of imposing a material burden on the guarantor) (clause 1 of Article 7 of the Federal Law of November 23, 2007 N 270- Federal Law (as amended on 04.23.2018) “On public corporation on the Promotion of the Development, Production and the export of high-tech industrial products “Rostech”).

We also consider the opportunity given to a government-owned corporation to issue loans on concessional terms. The absence of a ban on the transfer to the sublet of property received by public corporation from the state as a constituent contribution and leased on concessional terms is also a matter of censure. The possibility of gratuitous financing of commercial legal entities also creates opportunities for specific abuses of the right, a similar remark can be made regarding the possibility of investment in Russian and foreign organizations (paragraph 5, clause 5, article 7 of the Federal Law of November 23, 2007 N 270-FZ (Ed. 04/23/2018) “On public corporation on the Promotion of the Development, Production and Export of High-Tech Industrial Products Rostech”).

Thus, it should be noted that there is a possibility of making various transactions with property transferred by a state corporation to the state, including the possibility of introducing into public circulation funds allocated from the federal budget. Along with the establishment of legislative prohibitions and restrictions, as well as the use of legal means proposed by various authors and cited above, the unified electronic information system for property management and control over the turnover of property of a state corporation can solve the problems of power.

Analogues of such an information system currently exist in various sectors of the Russian economy — for example, the Unified State Register of Real Estate (Federal Law of July 13, 2015 N 218-FZ (as

amended on 03.08.2018) “On State Registration of Real Estate”), the Unified State Information System in the field of health (Resolution of the Government of the Russian Federation of 05 May 2018 N 555 On the Unified State Information System in the Field of Healthcare”), Unified State Register of Rights to Aircraft (Federal Law of March 14, 2009 N 31-FZ (as amended on 13.07.2015)“ On State Registration of Aircraft Rights and Transactions with Them”) and etc.

There are numerous examples of the use of electronic information systems for international trade (for example, the Decision of the Board of the Eurasian Economic Commission of September 30, 2014 N 180). Moreover, as it is rightly noted in the scientific literature, despite some problems related to the legal nature of electronic transactions, as well as the definition of the moment of their conclusion, there are legitimate bases for creating electronic registers and electronic transactions in the Russian Federation. [10, 11]

However, unlike existing in legislation analogues of unified information systems to provide information to a specific or a wide range of subjects, the centralised electronic information system for property management and control over the turnover of state corporation property should not have a public sign. This feature is associating with the specifics of the activities of state corporations, some of which are carriers of state secrets. This system should be of a closed nature and can be available only to certain subjects strictly defined in law. The unified electronic information management system and control over the turnover of property of a state corporation are intended for information support of the activities of the control bodies and the founder.[12]

The unified electronic information system for property management and control over the turnover of property of a state corporation should be a federal state information system, which includes: information databases on any transactions with property, including money, made by state corporations; subject and object of sales; information about the subjects entering into deals with state corporations; information on the rights to property arising from the parties of the legal relationship at the conclusion of such a transaction.

3. Conclusion, recommendations

1. Crucial in determining the possibility of effective management and continuous control over the turnover of property of the state Corporation is to establish for it the obligation to disclose information about the transactions.

2. Disclosure of information should be carried out using the creation of a unified electronic information system of property management and control over the turnover of property of the State Corporation. The purpose of the system – information support of the control bodies and the founder of the state Corporation to determine the level of management efficiency.

3. The unified electronic information system of property management and control over the turnover of property of a state Corporation should not have a sign of publicity. Access to this system is possible only to the entities defined in the law to obtain information, the scope and content of which is necessary for the performance of their functions.

4. The unified electronic information system of property management and control over the turnover of property of the state Corporation should contain information databases on transactions with the property of state corporations; on the subject and object of transactions; on the subjects of transactions; on property rights arising from the parties to the legal jural relations.

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