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**TÍTULO:** Sobre la naturaleza legal de los documentos internos de una corporación.

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**RESUMEN:** El artículo está dedicado al estudio, análisis y solución de problemas para determinar la naturaleza legal y la importancia de los documentos internos de una corporación. Se analiza el marco legal actual nacional y extranjero y la práctica de aplicación de la ley en el campo de las relaciones corporativas para la adopción y ejecución de documentos internos. Se investigan los problemas teóricos y prácticos asociados al concepto y las características de los documentos internos, haciéndose un análisis legal comparativo de dichos documentos con categorías legales comparables. La novedad científica radica en la identificación de las principales tendencias y direcciones del apoyo legal y el desarrollo de propuestas constructivas para mejorar el mecanismo legal de adopción y ejecución de acciones internas.

**PALABRAS CLAVES:** corporación, organismos corporativos, documentos internos, temas de relaciones corporativas, estatuto de una corporación, acuerdo corporativo, ley de recomendación.

**TITLE:** On the legal nature of internal documents of a corporation

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**ABSTRACT:** The article is dedicated to the study, analysis and solution of problems to determine the legal nature and importance of the internal documents of a corporation. The current national and foreign legal framework and the practice of law enforcement in the field of corporate relations for the adoption and execution of internal documents are analyzed. The theoretical and practical problems associated with the concept and characteristics of internal documents are investigated, making a comparative legal analysis of said documents with comparable legal categories. The scientific novelty lies in the identification of main trends and directions of legal support and the development of constructive proposals to improve the legal mechanism of adoption and execution of internal actions.

**KEY WORDS:** corporation, corporation bodies, internal documents, subjects of corporate relations, charter of a corporation, corporate agreement, recommendation act.

**INTRODUCTION.**

The inclusion of corporate relations in the subject of civil law regulation led to the intensification of both the formation of the legal framework necessary and sufficient for the full participation of corporations in various types of corporate relations, as well as the scientific interest in the problems of improving and developing corporate law.

One of the most discussed issues is the formation and development of a regulatory framework governing corporate relations, including both regulatory acts issued by public authorities (the so-called “centralized norms”) and intra-organization (intra-company) norms.

Emphasizing the relevance and significance of the identified problems, V.A. Belov writes that the problem of corporate law "intersects with the problem of the so-called local regulations: questions about the status and legal force of documents issued by organizations to regulate relations with their own participation, are also relevant for organizations that are corporations. This (corporate) aspect of more general issues ... deserves independent study, but it does not allow reducing corporate law to a set of intraorganizational (intra-company) norms” [Belov V.A. et al. (2019), p. 42].

The creation of a corporation and the organization of its activities are a rather complicated process that requires, first of all, full legal support. Current legislation is not able to solve all the problems of legal support for the normal, rational functioning of a corporate organization. Ways to solve the corresponding problems were found by legislatively vesting the subjects of internal corporate relations with the right to adopt internal documents, through which it is possible to resolve a variety of issues of an internal corporate nature. Such documents are local in nature, apply only to this corporation and are binding on all its bodies and participants.

The process of creating a corporation, the adoption of various decisions by the founders, bodies of the corporation and their constituent entities, the conclusion and execution of corporate contracts require legal permission in order to ensure its proper organization and functioning. The internal documents are called upon to solve this problem. Therefore, it is fair to say that, despite the active development of corporate legislation, there is clearly a tendency towards a transition from legislative regulation of corporations to self-regulation.

## **DEVELOPMENT.**

### **Research of methodology.**

The methodological basis of this article is the historical legal and comparative legal methods in combination with a comprehensive and systematic analysis of the problems under study with the use of linguistic data.

### **The results of the study.**

#### ***General provisions on the concept and legal nature of internal documents of a corporation.***

One of the essential features of the formation of the system of corporate law sources is the inclusion in this system of internal documents that are adopted by the competent bodies of the corporation in accordance with the laws and the charter of the corporation. According to paragraph 5 of Art. 52 of the Civil Code of the Russian Federation, the founders (participants) of a legal entity have the right to approve internal regulations and other internal documents of a legal entity that are not constituent documents. Internal documents are able to provide particular legal regulation of corporations within the framework of legislative authorization.

We make a reservation at once that, in our opinion, in the norms of Art. 52 of the Civil Code of the Russian Federation, a not entirely successful terminological solution of the phenomenon under study was legalized - an “internal document”.

From an etymological point of view, the term “document”, as a rule, denotes the written form, but not the substantive essence of a legal phenomenon. For comparison, let us recall the regulator of internal labor relations used in labor law, called the “local regulatory act”, in which it is quite justifiable and logical that the main emphasis is placed on the act as a type of legal fact, and not on its formal written expression - a document. In addition, it should be borne in mind that the term “internal” as applied to corporate relations remains not sufficiently clear and obvious, since the

corporation may include bodies, participants, employees, the auditor, the managing organization and other entities. Do internal documents of the corporation act on them?

It should also be emphasized that in legal literature the name “internal documents of corporations” does not find support, as evidenced by the fact that they are called by the authors in different ways, and this also cannot, but cause objections: “local acts”, “local regulatory acts”, “Corporate acts”, “sub-regulatory acts” [Sirota EG (2004), p. 30], and so on.

We share the opinion of scientists proposing to use the term “corporate act”, which, in our opinion, most accurately expresses the essence of the corporation’s internal documents: firstly, it indicates that by its nature such a document represents a legal fact, which is a deliberate action; secondly, with its help the scope of its application is outlined - corporate, which makes it possible to distinguish internal documents of a corporation from comparable concepts used in other branches of law (for example, in labor law - Internal Labor Rules).

The legislator, which provided for both the obligation and the possibility of internal rulemaking of the corporation, thereby authorizes the adoption of relevant documents and makes them binding.

An analysis of the relevant legal framework allows us to state that corporate internal documents (regulations) are acts regulating corporate relations that meet such criteria as:

- 1) They are adopted by the competent corporate governance bodies in accordance with applicable law.
- 2) Contain general rules of conduct designed for repeated use.
- 3) Are required for all participants in corporate relations.

It should be emphasized that such a binding does not arise by virtue of public coercion, but proceeding from the very essence of the corporate form of organization, which assumes that the participants of the corporation, joining it, voluntarily assume the so-called “burden” of subordinating the “will” of the corporation, expressed in particular, in fulfilling the requirements established by its internal documents.

However, in the legal literature, a single point of view on the concept and legal nature of internal documents of the corporation did not work out. There are positions according to which internal documents are: a special type of sources of corporate law [Nosov S.I. (2001), p. 122]; a phenomenon similar to the well-known labor law concept of “local act” [Shitkina I.S. (2013), p. 19]; unilateral and multilateral transactions; the regulator along with civil law sources and so on.

We believe that the most accurate nature and legal nature of internal documents of the corporation is expressed by S.D. Mogilevsky, who, noting that the formation of the will of the legal entity always needs some finalization, which is the legal act, characterizes it as “the formation of the will of the legal entity based on the law and other legal acts, developed and executed according to the established procedure in the form of a special act of the body of a legal entity and aimed at establishing local legal norms or the emergence, amendment or termination of scheme civil law relations in order to achieve the objectives for which the legal person created [Mogilevsky S. D. (2001), p. 120].

Internal documents of corporations on the features of the legal regime can be classified into the following types:

- 1) Internal documents, the need for adoption of which is expressly provided for by law (for example, acts governing the formation and organization of activities of governing and control bodies).
- 2) Internal documents, which are adopted at the discretion of corporations, depending on the scope of activity, composition of participants, distribution of shares, features of the economic structure, territorial location of its structural divisions, etc.

### **Description of legal features of internal documents of the corporation.**

An analysis of the current corporate legislation allows us to determine the most characteristic features for internal documents of the corporation, allowing us to deepen our understanding of the

concept and essence of these legal phenomena. These features, in our opinion, include the following:

- Internal documents of the corporation are acts based on legislation, in its broadest sense, and cannot contradict it.
- They are accepted by the bodies of the corporation within the framework of both imperative and dispositive regulation.
- By establishing internal rules and procedures in the corporation, they contribute to the implementation of corporate legislation.
- They are accepted by the competent governing bodies of the corporation in compliance with the relevant procedures.
- They are subject to accounting by judicial and other law enforcement agencies when considering disputes relating to the internal activities of a corporation.
- In contrast to the organizational and administrative documents adopted by the corporation bodies of an individual nature (orders, orders of the head, decisions of collegial management bodies, etc.), the corporation's internal documents contain general instructions that are designed for repeated use and apply to all entities involved in corporate relations.

Our position is confirmed by numerous statements by the authors regarding the concept and characteristics of internal acts of the corporation. So, according to S.V. Fedoseeva, “the decision of the governing body is both an act of exercising the legal personality of a legal entity (i.e., volitional action) and a form of expression of this act, while a local act is a written objectified system of rules of conduct that is put into effect by decision of the relevant governing body. However, the decision itself does not contain any rules of conduct” [Fedoseyev S.V. (2010), p.63].

Corporation internal documents should also be distinguished from regulatory legal acts. As rightly points out N.N. Pakhomova, “local corporate acts cannot be attributed to regulatory legal acts in the context of Art. 3 of the Civil Code of the Russian Federation, since they do not have the properties

of the latter, they have not reached the degree of their generalization. But local corporate acts have a different normality. This normativeness reflects the socially compulsory aspect of interaction between entities in a specific corporate association and is ensured by corporate sanctions” [Pakhomova N.N. (2005), p. 168].

This position is quite close to our point of view, according to which the legal nature of an internal act of a corporation is close to the legal nature of a contract, since it, like the contract, is a regulator of the activities of the corporation and its participants.

### **Discussion.**

In the Russian civil law science, there is no single approach to both the concept and essence of the corporation’s internal documents and the formation of their system. So, in limited liability companies, internal documents include documents regulating the organization of the company’s activities (Articles 32, 33 of the Federal Law «On Limited Liability Companies»). In joint-stock companies, internal documents are delimited into regulatory bodies of management and others (Articles 19 and 65 of the Federal Law «On Joint-Stock Companies»).

In the system of regulatory documents of corporate relations, a special place is given to the charter of the corporation, the legal nature of which also causes controversy. The charter is a constituent document, so it is not possible to attribute it to the number of internal documents of the corporation in their own understanding, as suggested by some authors. This is explained as follows. In the hierarchy of corporate acts, the charter prevails, which is expressed in the fact that the internal documents of the corporation cannot contradict the charter, and in case of a contradiction, the rules of the charter are applied. In addition, the legislation establishes a special legal regime for the adoption of the charter and amendments to it, since the introduction of an amendment to the constituent documents, unlike internal documents, requires state registration or notification of them by the state registration authorities. Finally, the legislation on individual legal forms of corporations



establishes their certain substantial differences; for example, in accordance with paragraph 18, paragraph 1. Article. 65 of the Federal Law "On Joint-Stock Companies" the competence of the board of directors can only be expanded by the charter of the company, and the procedure for convening and holding the board of directors is determined by the charter or internal document.

In the practice of Russian business, the conclusion of corporate agreements has become widespread. According to Art. 67.2 of the Civil Code of the Russian Federation in accordance with a corporate agreement, the parties undertake to exercise corporate rights in a certain way or to refrain (refuse) from exercising them, including to vote in a certain way at a general meeting of company members, to coordinate other actions to manage the company, to acquire or dispose of shares in it charter (shares) at a certain price or upon the occurrence of certain circumstances or to refrain from alienation of shares (shares) until the occurrence of certain circumstances.

Due to the short time of existence in Russian law, the institution of a corporate contract has not been sufficiently studied, and therefore, there are many problems in the civil law doctrine. So, it is extremely important for a correct understanding of the legal nature of a corporate contract and to identify the scope of its application, the question arises: is a corporate contract a source of corporate law. We believe that, despite the increasing role of the corporate contract as an important legal means of regulating corporate relations, it is impossible to recognize it as a source of law due to the lack of a sign of general obligation provided by the force of state coercion. Being a productive legal means of regulating relations, a corporate contract creates rights and obligations only for persons who have concluded it.

In the Russian legal doctrine, following the example of a foreign one, the concept of "soft law" (soft law) began to be actively used, which refers to acts of a recommendatory nature. For corporate law, not only legislative and internal acts are important, but also the positions of regulators (professional communities, exchanges, and other non-state structures). Sometimes reference acts in the form of methodological recommendations, methodological manuals, and methods are adopted by authorized

state bodies; however, unlike normative legal acts, they are not binding. An example of a recommended source of corporate law is the Corporate Governance Code, which cannot be recognized as a by-laws due to the absence of a normative sign. It can only be fully or partially integrated into the system of its internal documents at the discretion of the corporate organization itself.

## **CONCLUSIONS.**

The analysis carried out in the article led to the conclusion, that despite the active development of corporate legislation, a tendency towards a transition from legislative regulation of corporations to self-regulation is clearly visible. Internal corporate documents (regulations) have a high regulatory potential, however, the methodological basis of local law-making remains insufficiently developed. It has been established that internal documents of corporations are acts regulating corporate relations, which are adopted by the competent governing bodies of the corporation in accordance with applicable law, contain general rules of conduct designed for repeated behavior and are binding on all participants in corporate relations.

The essence and legal nature of the corporation's internal documents can be expressed as will-formation or expression of will of a legal entity based on law and other legal acts, developed and executed in accordance with the established procedure in the form of a special act of the legal entity's body and aimed at establishing local legal norms or civil-law consequences in the interests of achieving the goals for which the corporation was created.

Such an approach makes it possible to identify characteristics that are characteristic of internal documents of a corporation, as well as to differentiate them with organizational and administrative documents adopted by the corporation that have an individual character (orders, orders of the head, decisions of collegial management bodies, etc.) and regulatory legal acts.

Internal means of regulating corporate relations include, in particular, the charter of a corporation, a corporate agreement, and recommendatory acts, the legal nature of which requires further study and analysis. Further theoretical understanding is required by the problems of classification of corporate acts, legal and technical methods for their preparation and adoption, and ensuring their regulatory effectiveness.

### **Conflict of interest.**

The authors confirm the absence of a conflict of interest.

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