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# Introduction

Companies operate through its management bodies such as a general meeting of shareholders, board of directors, sole and collegial executive body. For the purpose of exercising their powers, management bodies adopt decisions on matters within its competence. For various reasons, these decisions are not always in compliance with the law and can violate the rights and legitimate interests of shareholders. To redress and protect them, the institute of invalidating the decisions of companies’ management bodies exists.

The purpose of this thesis is to study the problems of invalidation of management bodies’ decisions in relation to limited liability and joint-stock companies. .

To achieve this goal, it is necessary to perform the following tasks: conduct research on challenging decisions of the general meeting of shareholders, decisions of the board of directors, and actions and decisions of the sole executive body.

The thesis consists of an introduction, three chapters, a conclusion and a list of used literature.

# Chapter 1 Challenging Decisions of the General Meeting of Shareholders

## Parties to the Case of Challenging the Decision of the General Meeting

A shareholder has the right to challenge the decision of the general meeting, adopted in violation of the provisions of the Law on Joint-Stock Companies, other regulatory legal acts, or the company's articles of association, if such a decision violated his rights and legitimate interests, provided that he did not participate in the meeting or voted against the decision. The respondent in this case is the company.[[1]](#footnote-1)

Under Paragraph 3 of Article 181.4 of the Civil Code of the Russian Federation a shareholder in a company has the right to challenge the decision of the general meeting in court. A shareholder who took part in the meeting and voted for the decision or abstained from voting is entitled to challenge the decision if the expression of his will was contravened.

Court practice often faces questions concerning which persons are entitled to challenge the decisions of the general meeting of shareholders.

For instance, if a joint-stock company is the sole shareholder of another company, the shareholders of the parent company are not entitled to challenge the decisions of the general meeting of the subsidiary.[[2]](#footnote-2) This conclusion of the court is consistent with the provisions of the Civil Code and the Law on Limited Companies, according to which subsidiaries have the status of independent legal entities. The dependence of a subsidiary on the parent company does not yet endow the shareholders of the latter with the right to challenge the decisions of the general meeting of the subsidiary, since they do not violate the rights and legitimate interests of the claimants (shareholders of the parent company).[[3]](#footnote-3)

A shareholder who abstained from voting or who did not vote against the decision taken as a result is not entitled to challenge it. There is an exception to this rule: a shareholder who did not vote or voted for the decision may challenge the decision in case if the expression of his will was contravened. It should be noted that the specific circumstances in which the shareholder abstained from voting (i.e. was absent at the meeting, left the meeting, did not hand in the voting paper, etc.) in this case are indifferent.[[4]](#footnote-4)

The position of the courts that the nominee holder does not have the right to challenge the decisions of the general meeting of shareholders is fully in line with the provisions of the law. The court, giving a negative answer to the question of whether a nominal holder may file a claim on his own behalf to challenge the decisions of the general meeting, assumed that the agreement between the nominee holder and the shareholder is not a sufficient legal basis for the former to exercise rights associated with the security instrument. Thus, the court concluded that the nominee holder is entitled to file such a claim only according to the general rules of the Arbitration Procedure Code on the basis of a power of attorney issued by the shareholder.[[5]](#footnote-5)

It is worth noting that it is the shareholder who is the subject of the right to challenge the decisions of the general meeting, the company itself does not have standing in such a case.[[6]](#footnote-6)

The courts disagree on whether the trustee has the right to challenge the decisions of the general meeting on his own behalf . One court noted that under Article 1012 of the Civil Code, the trustee may take any *de jure* and *de facto* actions with respect to the property in the interests of the beneficiary in accordance with their agreement. Consequently, unless otherwise provided by law or the agreement, then the trustee has the right to challenge the decisions of the general meeting.[[7]](#footnote-7) There is also a different approach, though. Courts, dismissing the trustee’s claim to rescind the decision of the general meeting, indicated that the entering into a trust agreement does not entail the transfer to the trustee in full the rights and obligations of a shareholder, including the right to control. From this it was concluded that the claimant (trustee) could file a claim for rescission of the decision of the general meeting only on behalf of the shareholder and on the basis of the power of attorney issued to him.[[8]](#footnote-8)

The claimant filed a lawsuit against the company demanding nullification of the extraordinary general meeting of shareholders and rescission of the decisions adopted, declaring the claimant’s termination of powers as the company's CEO and electing another person to this position illegal. The courts of the first and appeal instances concluded that since the claimant is not a shareholder of the company, he is not entitled to challenge the decisions of the general meeting. Furthermore, the courts underlined that the decision in question was adopted in the presence of a quorum. The court, however, indicated that the dispute regarding decisions on the early termination of the claimant’s power as a CEO stemmed from labor relations. Consequently, with regards to that part of the suit the claimant is entitled to challenge the decision of the general meeting.[[9]](#footnote-9)

Another court refused to uphold the claim in a similar case and explained that the CEO, who is not a shareholder of the company, is not an interested party regarding the claim to rescind the decision of the general meeting.[[10]](#footnote-10) This conclusion is confirmed by the practice of the Supreme Arbitration Court.

## Proper Claim Requirements When Challenging the Decisions of the General Meeting of Shareholders

There are questions in the court practice regarding the proper wording of a claim in cases of challenging the decisions of the general meeting of shareholders.

The foreign company filed a claim to the arbitration court to rescind the decisions of the general meeting regarding the election of the audit committee of the company, and requested the court to hold valid the decision of the general meeting on the election of the audit committee with a different composition. The first submission was upheld by the court. The second one was dismissed on the grounds that if the court changed the voting results, it would *de facto* replace the supreme management body of the company. Which would be illegal, because the election of the audit committee under the law is attributed to the exclusive competence of the general meeting of shareholders.[[11]](#footnote-11)

There is also another approach. Thus, in a similar case, the claimant requested the court to rescind the decision on non-payment of dividends, and at the same time to hold the decision on payment of dividends adopted. The court upheld the claim. As a reason, the court suggested that the major shareholder had abused the right to vote at a general meeting, which, in turn, resulted in a violation of the claimants' rights to restore corporate control.[[12]](#footnote-12)

Requesting annulment of the meeting itself is not a valid remedy.[[13]](#footnote-13)

In one of the cases, the shareholder filed a claim against the company, requesting the annulment of the general meeting and the rescission of decisions adopted. The court of first instance upheld the claim, the appeal was dismissed. The court of cassation indicated that under the provisions of the Law on Joint-Stock Companies, the decision adopted at the meeting is subject to rescission, but the meeting itself cannot be annulled. Judicial acts, however, were not overturned, since the court found those to be lawful and reasonable.[[14]](#footnote-14)

The courts also recognized the request to annul the minutes of the general meeting as not a valid remedy, noting that neither Article 12 of the  Civil Code or other legal acts does provide for such.[[15]](#footnote-15)

## Circumstances Subject to Proof When Challenging the Decisions of the General Meeting of Shareholders

Under Paragraph 5 of Article 49 of the Arbitration Procedure Code of the Russian Federation, the court does not accept the claimant’s discontinuance, the reduction in the relief sought, the admission of the claim by the respondent, does not approve the settlement agreement of the parties, if it is contrary to the law or violates the rights of third parties. In these cases, the court considers the case on its merits. In cases of challenging the decisions of the general meeting of shareholders, such circumstances will occur if there is a corporate conflict in the company.

In the event that a corporate conflict takes place within the company, the court may not accept the the discontinuance of the claim, filed by the company’s CEO or representative.[[16]](#footnote-16) The court indicated that for it to consent on the notice of discontinuance of the claim, the court must make sure that such a notice expresses the will of the company itself. In a presence of a corporate conflict, it is not possible to adequately establish this fact. In a similar case, another court pointed out on the absence of such a right with the company’s CEO.[[17]](#footnote-17)

Of course, when challenging a decision on the liquidation of a company, the proceedings are not subject to termination on such grounds. The courts note that refusal to consider the case on its merits in such circumstances violates the claimant’s right to judicial protection.

## Period of Limitation for Challenging the Decisions of the General Meeting of Shareholders

For the shareholder’s claim for challenging of a decision of the general meeting, a reduced period of limitation is established. According to Paragraph 7 of Article 49 of the Law on Joint Stock Companies, it is three months. Some questions may arise concerning the moment when this period begins, as well as concerning the circumstances under which it can be extended.

Courts presume that shareholders learn that the adopted decision violates their rights, no later than the next annual general meeting. Accordingly, the limitation period begins from this date unless it is proved that the shareholder learned about the violation of his rights earlier.[[18]](#footnote-18) According to Paragraph 5 of Article 181.4 of the Civil Code, the six-month term for challenging the decision of the general meetings begins to run from the moment when the person whose rights were violated learned or should have learned about it, and cannot exceed two years from the day when the information on the decision in question was made publicly available to shareholders.[[19]](#footnote-19) When the claimant misses the period of limitation and the respondent brings a motion to have the claim dismissed on the grounds that the action was commenced beyond the limitation period, the court dismiss the claim, noting that a reasonable and good-faith participant in stream of commerce, acting with a due degree of care and diligence, as prescribed by Article 10 of the Civil Code, has the opportunity to learn about the decision on the date of the next annual general meeting or earlier. On the contrary, given the claimant’s indifferent attitude to the status of the shareholder and the fate of the company, the failure to take measures to obtain information about its business activities, the courts reasonably conclude that the limitation period was missed.[[20]](#footnote-20)

It is worth noting that in case of a request to the court to rescind a null and void decision, the respondent’s objection that the claim is based on a null and void decision must be considered by the court on the merits essentially regardless of the expiration of the limitation period to rescind this decision.[[21]](#footnote-21)

The period of limitations on the claims to rescind the decisions of the general meeting, which approve the liquidation balance sheet, begins to run no later than seven days from the date of the discovery by shareholders of the fact of approval of the liquidation balance sheet. This period is due to the obligation of the company to provide information to shareholders within seven days from the date of the request for familiarization with the documents.[[22]](#footnote-22)

## The Circumstances Under Which the Decision of the General Meeting Might Be Rescinded

A decision of the general meeting of shareholders, adopted in violation of the Law on Joint-Stock Companies, other regulatory legal instruments, or the company's articles of association, might be challenged by a shareholder whose rights and legitimate interests were violated by such a decision. The court positions, on what circumstances indicate a violation of the rights and legitimate interests of the shareholder are the subject of this paragraph.

If the general meeting decides to amend the articles of association related to the establishment of the company's obligation to issue shares and equity securities convertible into shares only by private subscription, this decision shall be rescinded on the grounds of violation of the rights and legitimate interests of shareholders.[[23]](#footnote-23)

A decision of a repeated extraordinary general meeting of shareholders shall be rescinded when there have been material violations of the procedure for convening the previous meeting.[[24]](#footnote-24) The shareholder filed a claim against the company and requested the court to rescind the decision of the repeated annual general meeting of shareholders convened due to the lack of the necessary quorum. The court found that the minutes of the meeting of the board of directors, at which the decision to hold the initial annual general meeting of shareholders was adopted, was falsified. Based on this, the court concluded that the initial general meeting was convened by an unauthorized body. In addition, after the closure of the initial general meeting, the protocol was not drawn up and was not signed by the authorized persons. Since the violations of the procedure for holding the initial meeting were material, the court upheld the claim to rescind the decision of the repeated general meeting.[[25]](#footnote-25)

If the authorized capital of the company is increased by an additional issue of shares by private subscription, the corresponding decision of the general meeting may be rescinded if the shareholders who in total hold more than 50% of the shares did not participate.[[26]](#footnote-26) The court noted that the fact of a proper notification of shareholders about the meeting being held does not deprive them of the right to challenge the decision, since it significantly affects the rights of shareholders who did not participate in the voting. Moreover, as the court pointed out, the fact that the cumulative equity participations of the claimants in the company's authorized capital is 60% of the voting shares suggests that their voting could have influenced the decision. Moreover, the position of the claimants, expressed during the court hearing, is also important, because on its basis the court concluded that the challenged decision would not have been taken if the vote on the agenda issues was held with the participation of the shareholders who filed a claim, challenging the decision.[[27]](#footnote-27)

Notification of a meeting of the board of directors does not comply with the law if it was by posting information on the company's notice board or sending telegrams. As a result, the decision of the general meeting on the adoption of the board of directors regulations, by which this method of notification is established, shall be rescinded.[[28]](#footnote-28) The court noted that the law does not establish requirements regarding the timing and method of notification of convening a meeting of the board of directors, however, it follows from the spirit of the law that it must provide a real opportunity to receive notice of the convening of the meeting and participate in it. The court, taking into account the absence of imperative rules on the procedure for notification, considered this method of notification abuse of rights, stating that it unreasonably restricts the exercise of shareholders' rights to manage the company through participation in its board of directors, which violates their legal rights and interests.

Material violations of the provisions of the Law on Joint-Stock Companies include the non-admission of a representative of a shareholder to participating in a general meeting, while the representative’s powers are confirmed by a power of attorney issued in compliance with the established requirements. The decision of such a meeting shall be rescinded.[[29]](#footnote-29) The claimants filed a claim and requested the court to rescind the decision of the general meeting based on the fact that their representative was denied registration at the general meeting on the grounds that the power of attorney did not indicate the name of the company. Due to the denial of admission to the registration of a representative of the shareholders, they could not exercise their rights to participate in the meeting and vote on the agenda items. The court considered that the admission was denied to the representative unlawfully, since if there were doubts as to which company the power of attorney was issued, it was sufficient to establish whether the principal was a shareholder and had the right to participate in the meeting. The court emphasized that the provisions of the Law on Joint-Stock Companies do not explicitly state what violations of the law are material. At the same time, proceeding from the essence of corporate relations, such violations should include violations affecting the shareholders' rights to manage the company, if they are gross and indispensable. This violation was considered material by the court, and the fact that the court established the fact of the decision adopted by the meeting with a material violation of the procedure for holding it prevents the court from upholding it regardless of the claimant’s voting and presence or absence of losses. In this regard, it is necessary to add that V. Dolinskaya considers the requirements for the power of attorney established by Article 57 of the Law on Joint Stock Companies, and Clause 4.1. of Regulations on additional requirements for the procedure for preparing, convening and holding a general meeting of shareholders (approved by order of the Federal Financial Markets Service of Russia of February 2, 2012 No. 12-6/pz -n) insufficient. According to V. Dolinskaya, these requirements need to be expanded by the local regulations.[[30]](#footnote-30)

## Additional Problems Associated Challenging Decisions of the General Meeting of Shareholders

Is it possible to challenge the decisions not adopted by the general meeting of shareholders? Until recently, it was believed that no, since it contradicts the above norms of the Civil Code of the Russian Federation and special laws, such a decision of the meeting is from the doctrine standpoint is not a corporate act, and it can hardly affect the rights and interests of a potential claimant (a shareholder or a company). However, in this case, the court accepted the following construction of claims: to invalidate the decisions of the annual general meeting of LLC shareholders regarding the voting on a number of issues on the agenda and declaring the said decisions adopted. However, in the opinion of the Supreme Court of the Russian Federation, "the courts refused to uphold the requirements, rightly stating that the challenged decisions of the annual general meeting (voting against the questions posed) of the Company's shareholders were made within its competence." The very method of protecting the right of did not raise any doubts of the courts of all instances.[[31]](#footnote-31)

Does the EGM have the right to decide on the distribution of profits of past years strictly for the development of the company? If so, are the dates of such a meeting legal? The court responded positively to the first question and negatively to the second.

Facts of the case and the position of the court of appeal, supported by the Supreme Court. A claim was filed, *inter alia*, requiring invalidation of decisions taken in November 2014 by the EGM on the direction of profits received in 2011–2014, to the company's development as violating the shareholders' right to dividends. This format and the essence of the decision of the supreme management body of the company did not raise any concerns of the court. In addition, it was confirmed that the decision on dividends or the rejection of it is, in fact, the privilege of a majority shareholder.[[32]](#footnote-32)

Extract from the Resolution of the Seventh Arbitration Court of Appeal of September 23, 2015: "Joint-stock companies are corporate commercial organizations, *a priori* built on the principle of decision-making by a majority vote, determined by the ownership of shares. The possibility of making decisions against the will of a minority predetermines the possibility of participation in the civil circulation of an entity based on combining the capital of several persons. Voting by a majority shareholder cannot be recognized as abuse of rights in the light of Article 10 of the Civil Code of the Russian Federation, because this contradicts the essence of corporate relations. In order to protect the rights of minority shareholders, the Law on Joint-Stock Companies lays down special corporate protection mechanisms applicable in cases specified by law (for example, the right to demand redemption of shares). The right to demand payment of dividends contrary to the decision made by a majority in a meeting of shareholders is not provided for by the law."[[33]](#footnote-33)

This position was supported by the Supreme Court of the Russian Federation.[[34]](#footnote-34)

Has the use of reduction factors been justified when evaluating blocks of stocks in the event of repurchasing shares (articles 75, 76 of the Federal Law on Joint-Stock Companies) and payment to the shareholder in the LLC of the real value of the share? Court’s answer: no.

Facts of the case: the shareholder of the LLC, which is a holding company, filed an application for withdrawal, he was paid the value of the share with which he did not agree, and filed a claim to recover the difference corresponding to his calculations. The courts of two instances agreed with him, but the district court reversed their judgements and took the side of the company. In turn, the Judicial Panel for Economic Disputes of the Supreme Court of the Russian Federation supported the judges of first and appeal instances.[[35]](#footnote-35)

Does the company have the right to declare dividends on ordinary shares when announcing a partial payment of dividends on preferred shares? Court’s answer: no.

As a reminder, according to Section 2 of Article 43 of the Law on JSC the company is not entitled to decide (declare) to pay dividends (including dividends for the first quarter, six months, nine months of the reporting year) on ordinary shares and preferred shares, the amount of dividends for which is not defined, if the decision to pay the dividends in full is not made (including accrued dividends on cumulative preferred shares) for all types of preferred shares, the amount of dividends (including dividends for the first quarter, six months, nine months of the reporting year) for which is defined by the company's charter.[[36]](#footnote-36)

Does the company have the right to challenge the provisions of its charter with shareholders as respondents? Court’s answer: no.

Facts of the case: company saw contradictions in the charter approved by the shareholders (decision making on the charter: in one provision of the charter – unanimously, in the other – by a majority of two thirds). A claim was filed to invalidate the charter. The court refused to uphold the claims.[[37]](#footnote-37)

# Chapter 2 Challenging Decisions of the Board of Directors

## 2.1. The Right of the Shareholder to Challenge the Decision of the Board of Directors in a Judicial Procedure

A shareholder has the right to challenge a decision made by the board of directors in court if this decision was made in violation of the requirements of the Law on Joint-Stock Companies, other regulatory instruments, the company's charter, and also violates the rights and (or) the legal interests of the company or shareholder.[[38]](#footnote-38) The respondent in this lawsuit is the company.[[39]](#footnote-39) The court, taking into account all the circumstances of the case, has the right to uphold the decision being challenged, if it did not entail losses or other adverse consequences for the company or shareholder,[[40]](#footnote-40) and also if the committed violations are not significant.[[41]](#footnote-41) 

A shareholder has the right to appeal against decisions of the board of directors (supervisory board), if he had this status at the time of the adoption of the challenged decision and retained it at the time of bringing of a suit.[[42]](#footnote-42)  The claimant’s lack of shareholder status at any of these moments deprives him of the opportunity to prove violation of his rights and legitimate interests; also, it is one of the independent grounds for refusing a claim.[[43]](#footnote-43) There is, however, an exception to this rule, that is, when shareholder acquires shares through acceptance of an inheritance. In this case, although a shareholder did not have such status at the time of adopting the challenged decision and making a challenged transaction, he still has the right to challenge them both if he retains the status of shareholder at the time of bringing of a suit.[[44]](#footnote-44)

Suppose, the decision of a general meeting of shareholders on the appointment of a board of directors is rescinded. Does that provide grounds for challenging the decisions of that board of directors? It is an open question, because the court practice in this respect is non-uniform. There are two positions of the courts.

1. The decisions of board of directors are null and void;

2. The decisions of board of directors are in force.

The first position is that the rescission of the decision of the general meeting of shareholders on the election of the board of directors provides grounds for invalidating the decisions of this body. The courts assume that the fact that the rescission of decisions on the election of the Board of Directors leads to such a composition being powerless.[[45]](#footnote-45) Thus, all decisions made by it are null and void, invalid and violate the rights and legitimate interests of shareholders. Material violations of the law, which lead to the decision of the general meeting of shareholders being void, might be, for instance, the absence of a quorum,[[46]](#footnote-46) election of a smaller number of members of the board of directors[[47]](#footnote-47) or greater,[[48]](#footnote-48) than those specified in the Articles of Association, failure to meet the time limit for convening the meeting and non-compliance with the procedure of convening the meeting or notifying the shareholders,[[49]](#footnote-49) convening the meeting by an unauthorized body.[[50]](#footnote-50) In one of the cases, the adoption by the court of interim measures in the form of a ban to the annual general meeting of shareholders to decide on the election of the board of directors (despite the fact that current legislation does not provide for the extension of powers of the board of directors), resulted in the termination of powers of this board of directors from the date of the annual general meeting of shareholders.[[51]](#footnote-51)

According to the second position, rescission of the decision of the general meeting of shareholders on the election of the board of directors does not provide grounds for invalidating the decisions of this management body. The courts assume that the fact that the rescission of the decision on the election of the board of directors does not constitute valid grounds for challenging the decisions of the board made up to this point, if they do not violate the law.[[52]](#footnote-52) The court noted that the current legislation does not contain provisions stipulating that the rescission of the decision of the general meeting of shareholders on the election of the board of directors is in itself the basis for invalidating the decisions taken by this board of directors before entering into force of the judicial act which renders the composition of this board of directors illegitimate.[[53]](#footnote-53) The claimant must provide information about specific violations of its legal rights and interests by the decision of the board of directors.[[54]](#footnote-54) "By itself, the rescission of the decision of the general meeting of shareholders by which the board of directors was elected does not lead to the illegality of all the subsequent actions of the management body of the company"[[55]](#footnote-55) – the author contends that the court needed to clarify the absence of a “pre-existing” illegitimacy of the board of directors decisions, and also list the criteria for declaring such decisions valid: they shall not violate the rights of shareholders (according to the current legislation) and shall be adopted before the general meeting’s decision on the election of the board of directors.[[56]](#footnote-56) Either way, the court’s reference to the “established arbitration practice” looks rather unconvincing[[57]](#footnote-57) to substantiate their conclusions — after all, this is only one of two opposing positions that are present.

The violations committed by the board of directors in preparation for the convening the general meeting of shareholders shall be eliminated before holding such a meeting. Challenging these decisions after holding such a meeting is meaningless and cannot be considered a way to protect and redress of the violation of rights of shareholders.[[58]](#footnote-58) At the same time, the shareholder has the opportunity to protect the infringed rights by filing a claim for invalidation of the decision of the general meeting of shareholders; within the framework of this method of judicial protection, violated rights and the legally protected interests of shareholders can be restored.[[59]](#footnote-59)

The scope of a shareholder’s right to challenge decisions of the board of directors has its limits: for instance, the shareholder’s multiple (more than three times) demand to convene an extraordinary general meeting on the same issue (after the claimant’s proposal was rejected three times by the majority of shareholders during the voting) in order to cause harm to the company (the cost of organizing, preparing and conducting meetings falls on the company) is considered abuse of rights.[[60]](#footnote-60) Therefore, the board of directors’ decision to refuse to convene the general meeting of shareholders shall be valid.

## 2.2. The Right of a Member of a Board of Directors to Request in a Judicial Procedure the Rescission of a Decision of the Board of Directors

A member of a Board of Directors has the right to challenge the decision made by the Board of Directors in a judicial procedure if it does not meet the requirements of the law, other normative legal acts and violates the rights and lawful interests of a board member.[[61]](#footnote-61) A member of the board of directors has the right to challenge the decision of the board if he did not participate in the voting and or voted against the decision made by the board.[[62]](#footnote-62) The respondent in this case shall be the company.[[63]](#footnote-63) 

The courts usually rule for the respondent if vote of the claimant could not affect the decision-making.[[64]](#footnote-64) 

Among the common reasons for rescinding a decision of the board of directors as a result of its member’s claim is when he was not notified of the meeting. Such a non-notification provides grounds for rescission of the decision of the Board as a decision with material violation.[[65]](#footnote-65) Сonsequently, not only the member of the board of directors is entitled to challenge the decision in question, but also the shareholder “... who has the right to expect that such decisions will be made in compliance with the law and the requirements of the articles of association. The referral of controversial issues to the board of directors is a procedure for indirect participation of the shareholder in the management of the company's affairs, therefore convening the meeting of the board of directors improperly violates the right of the shareholder to manage the company.”[[66]](#footnote-66) 

The notification must be proper: as the court pointed out, the respondent’s argument of a verbal notification of the claimant does not prove that the company complied with its obligation to notify the claimants as elected members of the board of directors.[[67]](#footnote-67) Also, the notification should contain information about the agenda.[[68]](#footnote-68) When the board member, who also performs functions of a CEO of a company is not duly notified that the meeting’s agenda includes the question on the termination of his powers (that is, the notification contains no agenda at all), it provides grounds for rescinding the decision adopted on that meeting.[[69]](#footnote-69) The court rejected the company's reference to the board of directors having an unconditional right to elect and remove the CEO of the company, since it is possible if the relevant decision-making procedure is complied with.  If the person who performed the functions of the CEO of would participate in the meeting of the board of directors he could have influenced the adoption of the decision by providing explanations and objections from his side. For the same reason, the court did not take into account the fact of unanimous voting at the meeting. *Per se* this fact does not lead to the conclusion that board members would have voted the same way with the participation of the claimant in the meeting.

At the same time, the absence of the procedure established in the company for convening and holding meetings of the board of directors does not relieve the company of its obligation to notify all members of the board of directors of upcoming meetings in a timely and appropriate manner.[[70]](#footnote-70) 

## 2.3. Limitation Periods for Challenging the Decisions of the Board of Directors

The limitation periods vary depending on who is the claimant in the case of challenging the decision of the board of directors.

If it is a shareholder, the claim for rescinding the decision of the board must be filed within three months from the day when the shareholder learned or should have learned about the decision and the circumstances that are the grounds for rescinding it.[[71]](#footnote-71) If the deadline is missed, the time cannot be extended, except for cases where a shareholder does not initiate the proceedings under the influence of violence or threats.[[72]](#footnote-72) The courts assume that that in determining the start of the limitation period for shareholder’s claim of rescinding the decision of the board of directors on approval of a major transaction, it should be noted that the shareholder "who takes a proactive stance in relation to the company, timely, reasonably and prudently exercises rights to participate in its activities", should have found out about the violation of his rights by the decision in question no later than the date of the next annual general meeting of shareholders, at which the balance sheet was presented,  that demonstrated a significant change in the composition of assets compared with the previous year.[[73]](#footnote-73) At the same time, missing the limitation period for rescinding the decision of the board of directors does not prevent a shareholder from having that major transaction nullified in accordance with Paragraph 2 of Article 174 of the Civil Code of the Russian Federation. The position on the calculation of the term remains in force, however, it should be kept in mind that since January 1, 2017, the major transaction must be approved by the board of directors or the general meeting of shareholders depending on the value of the property that is the subject of the transaction (Paragraph 1 of Article 79 of the Law on Joint-Stock Companies)

When the claimant in the case of challenging a decision of the board of directors is its member, the law provides for a lesser period of limitation, which is only 1 month (calculated from the date when the member of the board of directors learned or should have learned about the decision). Such a significant reduction in the period is due to the fact that the claimant is a professional manager.[[74]](#footnote-74)

## 2.4. Consequences of Rescission of Decisions of the Board of Directors

These are outlined in Paragraph 7 of Article 68 of the Law on Joint-Stock Companies. First of all, rescinding the decision of the board of directors to convene a general meeting of shareholders does not entail the nullification of the decision of the general meeting of shareholders held on the basis of the rescinded decision to convene it.[[75]](#footnote-75) Secondly, rescission of decisions of the board of directors on approval of transactions, the consent to which is attributed by law or the company's articles of association to the competence of the board of directors, does not entail nullification of those transactions if such decisions are rescinded separately from the transactions.[[76]](#footnote-76)

The law also identifies a category of decisions of the board of directors that are null and void irrespective of their challenging in court. The court, considering the dispute, the parties to which refer to such a decision, must, on its own initiative, declare it unenforceable and resolve the dispute subject to the norms of law. Examples of such decisions include decisions adopted in violation of the competence of the board of directors, decisions adopted in the absence of a quorum, when its presence is compulsory, or without the necessary majority of votes of board members.[[77]](#footnote-77) For example, a decision of the board of directors adopted without the necessary majority of votes is unenforceable and does not entail legal consequences, while the claimant is not under the obligation to prove the fact of violation of his rights as a shareholder and causing him losses.[[78]](#footnote-78) Grounds for the decision to be held unenforceable regardless of the challenge are the explicit (obvious) violations of the law that do not require validation, can be established without judicial procedure and collecting additional evidence.[[79]](#footnote-79)

## 2.5. Additional Problems Associated with Challenging Decisions of the Board of Directors

Does the introduction of special qualification requirements for members of the board of directors and reduction of the material composition of this management body give shareholders the right to buy back shares in accordance with Articles 75 and 76 of the Federal Law on Joint-Stock Companies, and as such can the refusal of the current board of directors to consider the minority shareholder’s requirements to buy back shares be declared meritless? The court of first instance, recognizing the inclusion in the constituent document and the local regulatory act of such changes as the issuer's bad faith behavior, confidently answered "Yes" to this complex question:

“These changes affected the material composition of the board of directors of the company and the criteria for qualifying requirements for candidates to the board of directors. Thus, according to the indicated changes, the number of members of the board of directors was changed from 11 to 7 members of the board of directors. A person may be elected a member of the company's board of directors, if it meets the requirements of the current legislation of the Russian Federation, the company's charter, the regulation on the board of directors and other internal documents of the company, approved by the decision of the general meeting of shareholders or the board of directors; has an impeccable business and personal reputation, as well as possesses the knowledge, skills and experience in managing a successful business - the qualities necessary for making decisions that fall within the competence of the board of directors and are required for the effective performance of its functions.

The state commercial court agrees with the position of the defendant in terms of amending the company's charter in paragraph 7.12 of the charter, since these changes are brought in line with the provisions of the Corporate Governance Code, approved by the Bank of Russia letter dated April 4, 2014 No. 06-52/2463 "On the Corporate Governance Code", and with the position of the Bank of Russia set out in the letter dated March 30, 2015 No. 06-52 / 2825.

However, the wording of Clause 7.12 of the company's charter differs in content and meaning from Clause 2.3.1 of the Corporate Governance Code, which sets out that a person with an impeccable business and personal reputation and possessing knowledge, skills and the experience necessary for making decisions related to the competence of the board of directors and required for the effective performance of its functions.

Thus, the state commercial court concludes that the amendments made to paragraph 7.12 of the charter regarding the qualification requirements for candidates for members of the board of directors of the company do not comply with the current legislation and the arguments of the defendant that the above changes were made the company's charter and regulations on the company's board of directors with current legislation shall be rejected.

As for the changes in the provision of paragraph 7 of the company's charter, the state commercial court considers these changes to be in line with the current legislation only to the extent that the law provides for a number of board members of at least 7, but rejects the respondent’s argument that the claimant’s rights are not limited by these changes and do not affect his corporate rights, since these changes directly affect the interests of the claimant in terms of corporate control over the company.

On the contrary, acting in good faith, taking into account the relevant recommendations of the Bank of Russia (letter of April 4, 2014 No. 06-52/2463) regarding the application of the Corporate Governance Code , the respondent should have applied the wording of the Bank of Russia without changing its content and semantic load, without broad interpretation.”[[80]](#footnote-80)

This position of the court is also confirmed by the established judicial practice of the Moscow District (for example, Resolution of the Federal Arbitration Court of the Moscow District of May 28, 2012 in case No. A40-104508/11-137-238)." [[81]](#footnote-81)

Shareholder who sent his candidates for election to the AGM in accordance with Art. 53 of the Federal Law on Joint-Stock Companies, believes that his nominee to the Audit Commission has been rejected by the board of directors illegally. Will the court support (if there are relevant substantive grounds) not only shareholder’s requirement to invalidate the refusal of the board, but also the requirement to oblige the board to correct the mistake? Arbitration courts often agree with such a construction of the claim, which is confirmed by the case at hand.[[82]](#footnote-82)

Is it possible to consider the decision of the board of directors on appointing *ad interim* CEO as a kind of decision on the formation of the sole executive body? The court decided, that not.

the court has come to the conclusion that the decision adopted by the board of directors at the meeting on December 30, 2015 and challenged by the claimant does not concern the formation of the executive body of the Company and the early termination of its powers, therefore, does not go beyond the limits of authority of the Board of Directors and does not fall within the exclusive competence of the general meeting of a company.[[83]](#footnote-83)

Can the Board of Directors by its decision establish additional rights and obligations of the CEO? The court: no, even if these rights are associated with the privileges of making specific decisions.

Also, is the discrepancy between the wording of the agenda item of the meeting of the board of directors and the decision taken on it critical ? Court’s answer: yes.

Extract from the Resolution of the Arbitration Court of the Far Eastern District of June 16, 2017: In fact, by the challenged decision, the board of directors endowed the said bodies of the joint-stock company with an unconditional right to participate in meetings of the board of directors, which is not within its competence. [[84]](#footnote-84)

Can the board of directors appoint an *ad interim* CEO of the company in the event of the expiration of the term of office of the management company that performed the functions of the sole executive body. The court considers that if it complies with the company's charter, it can.[[85]](#footnote-85)

Fragments of the decision of the Arbitration Court of the Astrakhan region of October 30, 2015 which was supported by the Supreme Court of the Russian Federation[[86]](#footnote-86): "If the formation of executive bodies is carried out by the general meeting of shareholders, the company's charter may provide for the right of the board of directors (supervisory board) of the company to decide on suspending the powers of the company's sole executive body (director, general director). The company's charter may provide for the right of the board of directors (supervisory board) to decide to suspend the powers of the managing organization or manager. Simultaneously with the above decisions the board of directors (supervisory board) of the Company shall decide on the establishment of a temporary sole executive body of the company.

If the formation of the executive bodies is carried out by the general meeting of shareholders and the sole executive body of the company (director, general director) or the managing organization (manager) cannot perform his duties, the Board of Directors".

The rights of a shareholder were restored by a judicial act, but the changes to the share register were not introduced. Does the shareholder have a chance to challenge the decisions of the meeting of shareholders held in his absence?

The AGM took place, does it make sense to challenge the decisions of the board of directors adopted in accordance with Article 54 of the Federal Law on Joint-Stock Companies, after its convening and preparation?

Judicial acts in the above case answer negatively to both questions.[[87]](#footnote-87)

Article 68 of the Federal Law on Joint-Stock Companies stipulates that "the procedure for convening and holding meetings of the board of directors (supervisory board) of a company is determined by the company's charter or the company's internal document." Can street bulletin board notification be considered appropriate? The courts found it legally incorrect.

Inadequate notification of a minority out of five members of the board of directors – a basis for invalidating the decisions of the board of directors? The answer under certain circumstances of the dispute can be positive.[[88]](#footnote-88)

Next case is interesting with the use of the institute of “actual approval” by the members of the board of directors of the transaction. In this case the transaction of the Company amounted to 43% of the book value of the assets, it should have been approved by the company’s board (consisting of three members), but it was approved by the general meeting of shareholders, which was attended by 2 of the 3 board members. The court found it legitimate.[[89]](#footnote-89)

Extract from the Resolution of the Arbitration Court of the Moscow District of July 21, 2016: "The courts concluded that the transaction was approved by the general meeting of shareholders of the company, as evidenced by the minutes of the extraordinary meeting of shareholders dated November 10, 2014 No. 10/11.

The courts came to a legitimate conclusion that the transaction in question is valid and the will of the company's shareholders and members of the board of directors was aimed at concluding this transaction.

The courts correctly noted that in the statement of claim the claimant abuses his rights by requiring the invalidation of a transaction in order to evade its execution and cause damages to the defendant, who is the lender of the claimant in bankruptcy case No. A57-27255/15.

The courts also took into account that the minutes of the extraordinary meeting of the company's shareholders were signed by 2 persons (on behalf of the participants), who are also 2 of 3 members of the board of directors.

The courts found that the value of the property, the alienation of which is possible in the future, is 42.9% of the value of the company's assets, i.e. approval of the transaction being challenged by the claimant was possible by the Board of Directors, and such approval was actually obtained."[[90]](#footnote-90)

The Supreme Court of the Russian Federation supported this position ( Resolution of the Supreme Court of the Russian Federation of October 17, 2016 No. 305-ES16-12997). [[91]](#footnote-91)

The shareholder found it convenient to send proposals to the AGM agenda by e-mail. Does the board of directors have the right to refrain from considering such proposals? The position of the court: if such a method is not provided for by the company's charter, and such a proposal is not certified by an electronic digital signature, it has the right not to consider that proposal.[[92]](#footnote-92)

Extract from the Resolution of the Supreme Court of the Russian Federation of August 22, 2016 No. 308-ES16-9520: "The company's charter does not provide for the possibility of sending a proposal on the formation of the agenda of the general meeting of shareholders of the company by e-mail without using a digital signature, therefore courts came to the conclusion that the claim shall be dismissed." [[93]](#footnote-93)

# Chapter 3 Challenging Actions and Decisions of the Sole Executive Body

According to Section 1 of Article 65.2 of the Civil Code shareholders have the right to challenge the decisions of the company’s bodies which entail civil consequences in cases and under procedure outlined by law.

Under Section 6 of Article 67.2 of the Civil Code the violation of the shareholders’ agreement might constitute the grounds for rescinding the decision of the company’s body as a result of upholding a claim of the party to the agreement if at the moment of making the decision all shareholders were parties to the agreement.

Meanwhile, the rescission of the decision of the company's body as set out by Section 6 of Article 67.2 of the Civil Code does not lead to invalidity of transactions entered into on the basis of such a decision *per se*.

Formerly neither the Law on JSC nor the provisions of the Civil Code allowed for the possibility of challenging the decisions of the sole executive body. However Paragraph 27 of the Resolution of the Supreme Arbitration Court of the Russian Federation “On certain matters of applying the Federal Law “On Joint Stock Companies” indicates that the decision of the sole executive body of a joint stock company might be challenged in a judicial procedure by filing a claim for rescission of it both in cases when the possibility of such challenging is set out by law and not, if the decision made does not meet the requirements of the law and other normative acts and violates the rights and legitimate interests of shareholders.

Formerly questions were arising regarding the possibility of challenging the decision of the sole executive body. Nowadays the practice with respect to these novations is not developed yet.

Conclusion of a court practice: decisions (orders) of a person, performing functions of the sole executive body on bonus payments to employees are to be rescinded if these decisions do not comply with internal rules and regulations, labor agreements and trade union contract (if concluded) other local normative documents, governing pay-roll fund in a company.[[94]](#footnote-94)

Conclusion of a court practice: shareholders have the right to challenge the CEO’s decisions made on behalf of the JSC with regard to subsidiaries. It should be noted that in the situation concerned the joint stock company was the sole shareholder in the subsidiaries.[[95]](#footnote-95)

Meanwhile, the independent claims for rescission of the sole executive body’s decisions are relatively rare. And the victory of the claimant usually comes with great difficulty. Why? First of all, because more often the legitimacy of the orders of the sole executive body is examined exclusively when considering labor disputes and other disputes within jurisdiction of the courts of general jurisdiction.

The unlawfulness of the actions of the sole executive body is rarely recognized by state commercial courts.

Extract from the Review of the practice of resolving disputes related to challenging the decisions and actions of the management bodies of companies approved by the Presidium of the Federal Arbitration Court of the Ural District, Protocol No. 19 of December 11, 2009:

"The legality of the actions of the executive body of the company to conclude a transaction is assessed when the court considers matters of compliance with the law of the transaction by the company.

A shareholder in a limited liability company filed a claim to a state commercial court against the company requiring invalidation of the actions of the company's CEO to conclude a transaction – a contract for the provision of security services. The rationale for the claim indicated that the contract was signed by the CEO in violation of the company's charter without obtaining the consent of the general meeting of shareholders of the company to make such a transaction

The court of first instance upheld the claim. The court proceeded from the fact that the challenged action of the CEO contradicts the requirements of the company's charter and violates the shareholders’ rights to participate in the management of the company's affairs.

By the decision of the court of appeal, the decision was reversed, the claims were dismissed because of the following.

The claimant challenged the action of the company's CEO related to the signing of the contract on the grounds provided for invalidating the transaction as completed with excess of powers. At the same time, a judicial act that entered into legal force in another case denied invalidation of the said agreement on that basis.

The court of cassation made no change to the decision of the court of appeal, noting the following.

According to Section 3 of Article 43 of the Law on LLC the decision of the board of directors (supervisory board) of the company, the sole executive body of the company, the collegial executive body of the company or the manager, made in violation of the requirements of this Federal Law, other legal acts of the Russian Federation, the company's charter and violating the rights and legitimate interests of a company shareholder, might be rescinded by the court upon the claim of the shareholder of the company.

The possibility of the independent challenging in a court of law by a shareholder of a company of the actions of the sole executive body of a company to conclude a transaction is not provided for by the norms of the current legislation. Such actions are subject to examining when considering the matter of compliance of the transaction with the law.[[96]](#footnote-96)

Some courts consider the claims to invalidate the actions of the sole executive body illegal and contrary to the Arbitral Procedure Code of the Russian Federation. A case No. A40-26979/17-58-231 (decision of the Moscow Arbitration Court of November 10, 2017) is one example.[[97]](#footnote-97) The claimant – the sole shareholder of the LLC required to invalidate actions of the sole executive body to appoint incumbent sole executive body. The court refused to upheld this claim, however, the corresponding order of the sole executive body was rescinded. Note that the grounds for that were the general rules of the law and the charter on the formation of the sole executive body.

At the same time, we recognize that state commercial courts agree with the claimant’s requirements to declare the actions of the sole executive body illegal are accessory (additional, derivative) to the requirements: 1) for damages by executive directors; 2) on the provision of documents of the company, as well as when state commercial courts consider the administrative disputes of companies with state bodies, in fact, in the same circumstances.

The refusal to provide documents to shareholders is not illegal, as there is a corporate conflict in a company (despite the fact that the court ordered to to submit the documents to the claimant).

Extract from the decision of the Arbitration Court of Moscow of April 24, 2015 in case No. A40-189476/13 (supported by the courts of higher instances):

“The court also considered the claimant’s requirement to declare actions of the CEO of Master-M LLC, Mr. Alexei Puchkov, unlawful with regard to the refusal to submit documents for an audit.

Considering that there is a corporate conflict in the company, also assessing the correspondence of the claimant and the respondent concerning the provision of documents, the court concludes that the claimant did not provide adequate evidence in accordance with Article 65 of the Arbitral Procedural Code of the Russian Federation, confirming the fact of the illegality of the actions of the CEO of Master-M LLC, Mr. Puchkov

Pursuant thereto the court dismisses this claim." [[98]](#footnote-98)

The actions of the sole executive body on the provision of documents cannot be considered illegal, as the law obliges the company, and not the sole executive body.

Extract from the Resolution of the Supreme Court of the Russian Federation of December 25, 2014 N 307-ES14-5739.

Concerning the invalidation of the actions of the company's CEO, Mr. Semenenko, on failure to provide the claimants with the above documents, the courts dismissed the claim, stating that the company, rather than its CEO, was the person, obligated to provide documents to shareholders.

An indirect lawsuit against the sole executive body in connection with the imposition of a fine by the Central Bank of the Russian Federation for non-submission of documents to the shareholder, since the sole executive body is not personally responsible for this.

Extract from the Resolution of the Supreme Arbitration Court of the Russian Federation dated December 5, 2016 No. 306-ES16-17579:

"Reversing the judicial act of first instance and dismissing claims, the appellate court, whose conclusions were upheld by the district court, guided by Articles 10, 15, 53 of the Civil Code of the Russian Federation, the provisions of the Federal Law dated November 24, 1995 No. 208-FZ "On Joint-Stock Companies", Federal Law dated April 22, 1996 No. 39-FZ "On the Securities Market", the Regulation on the Disclosure of Information by Issuers of Issuable Securities, approved by the Order of the FSFM of Russia dated October 4, 2011 No. 11-46/pz-n, the explanations given in the Resolution of the Plenum of the Supreme Arbitration Court of the Russian Federation dated July 30, 2013 No. 62 "On some matters of compensation of damages by persons forming the bodies of the legal entity", finding that the no decisions on disclosure/non-disclosure, drafting and disclosure of quarterly reports, lists of affiliated entities, drafting and disclosure of information in the form of statements of material facts by Mr. Milovanov, acting as the sole executive body was made, neither the above-listed norms of the current legislation, nor the company's charter stipulate the obligation of the sole executive body to make these decisions, the company was made accountable a legal entity by the court decisions in question, the guilt of the CEO was not established, concluded that the fact of establishing the guilt of a company in committing an administrative offense and holding it accountable does not evidence the unconditional presence of guilt in the actions (omission) of Mr. Milovanov as the sole executive body in committing an administrative offense by the company.

The courts of appeal and cassation instances took into account that VNIPIgazdobycha OJSC has a separate structural subdivision - the corporate relations department (until 2014 - the Case Management Service), for which, in accordance with the regulations on the department (service) and job descriptions of the department (service) employees has the responsibility for preparing the annual report of the company, on the drafting and disclosure of quarterly reports, lists of affiliated entities, drafting and disclosure of information in the form of statements of material facts in the manner prescribed by the Regulations on information disclosure by issuers of securities. In addition, another structural unit has been created in the company - the legal support sector, one of the functions of which, according to the sector’s regulation, is legal support of corporate policies and procedures, including legal support of the company’s activities on compliance with Federal Law No. 208-FZ. In 2013, 2014, the necessary specialists were recruited to the case management service, the department of corporate relations, the legal support sector.

In this connection, courts concluded that in the case at hand it cannot be argued about the unconditional responsibility of the sole executive body for the unlawful actions of the company's structural units.

Additionally, the courts of the appeal and cassation instances took into account that during the period when the respondent was in the position of CEO (since 1997) VNIPIgazdobycha OJSC became the largest taxpayer, from 1997 to 2015, the assets of VNIPIgazdobycha increased from 92,060,000 RUB up to 8,946,622,000 RUB, that is, almost a hundred times, which evidences the good faith, rationality and effectiveness of Mr. Milovanov as the CEO of OJSC VNIPIgazdobycha."[[99]](#footnote-99)

# Conclusion

The positions of the courts regarding the challenging decisions of the general meeting, in general, appear to be correct. With respect to the right of the trustee to challenge the decisions of the general meeting on its own behalf, we should agree with the position of those courts that recognized such a right, indicating that the trustee can take any *de jure* and *de facto* actions in relation to the property in accordance with the agreement. Any other conclusion is contrary to the provisions of the Civil Code on trust management. The answer to the question whether the person who previously exercised the powers of the CEO has the right to challenge the decisions of the general meeting, if he is not a shareholder, is negative. The CEO, who is not a shareholder, is not an interested party in the case of challenging the decision of the general meeting. With regards to the positions of the courts, which indicated that the CEO has the right to challenge the decisions of the general meeting on termination of their powers, the following should be pointed out. The termination of powers of the CEO is the right of shareholders and does not require any grounds. Therefore, the CEO, whose powers have been terminated, may challenge the relevant decision of the general meeting only on the grounds of violation of the procedure. The practice is non-uniform also on the question whether the request to hold the decision of the general meeting adopted. We support the position that such a request should be dismissed by the court because the court cannot substitute the general meeting of shareholders in its exclusive competence.

For the most part the positions of the courts on issues related to challenging the decisions of the board of directors appear to be correct. However, we cannot agree with a number of the courts’ conclusions. For instance, with respect to the possibility of rescinding the decision of the board of directors as a result of upholding a claim of its member, when his vote could not affect the decision. The court practice of dismissal of a board member’s claim pursuant to the fact that the claimant’s voting could not influence the decision-making process is flawed. Arbitration courts should assess such possibility or impossibility on the case-by-case basis, considering all circumstances of the case, and not on the basis of merely an arithmetic ratio of votes. Voting on the agenda item is preceded by discussion, therefore the position of a member of the board of directors may affect the distribution of votes and, consequently, the decision-making process.

As for the issue of illegitimacy of the composition of the board of directors, it seems more preferable that the rescission of decisions adopted by the general meeting of shareholders on the election of directors shall not entail unconditional nullity of subsequent decisions of the board of directors. Decisions of the board of directors taken prior to rescission of decisions on his election that do not violate the rights of shareholders and current legislation should be considered valid. This conclusion is consistent with the provision of Paragraph 6 of Article 68 of the Law on Joint-Stock Companies on the right of the court to uphold the decision being challenged, which did not entail losses or other adverse consequences for the company or the shareholder.

As for the challenging actions and decisions of the sole executive body the actions of the sole executive body are declared illegal by the state commercial courts rather rarely. Such judicial approaches stem from the institution of the claimant’s obligation to choose a proper method of protection of the right.

# List of Used Literature

I. Regulatory legal acts:

1. The Civil Code of the Russian Federation (Part One) (Federal Law of 30 November 1994 No. 51-FZ (as amended));
2. Federal Law of 26 December 1995 No. 208-FZ (as amended) “On Joint-Stock Companies”;
3. Regulations on Additional Requirements to the Procedure for Preparing, Convening and Holding a General Meeting of Shareholders approved by Order of the Federal Financial Markets Service of Russia of February 2, 2012 No. 12-6

II. Court practice:

1. Resolution of the Plenum of the Supreme Arbitration Court of the Russian Federation of July 30, 2013 No. 62 “On some issues of compensation of losses by persons composing the management bodies of a legal entity”
2. Resolution of the Plenum of the Supreme Arbitration Court of the Russian Federation of November 18, 2003 No. 19 “On some matters of application of the Federal Law ‘On Joint-Stock Companies’”;
3. Resolution of the Plenum of the Supreme Arbitration Court of the Russian Federation of May 16, 2014 No. 28 “On some issues related to challenging significant transactions and related-party transactions”;

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1. Section 27 of the Resolution of the Plenum of the Supreme Arbitration Court dated November 18, 2003 “On Certain Questions of the Application of the Federal Law “On Joint-Stock Companies” [↑](#footnote-ref-1)
2. Resolution of the Federal Arbitration Court of the North-West District of June 19, 2012 in case No. A21-2749/2011; Resolution of the Supreme Arbitration Court of the Russian Federation of June 28, 2012 No. VAS-2919/12 in case No. A56-55612/2008 [↑](#footnote-ref-2)
3. *Ibid* [↑](#footnote-ref-3)
4. Resolution of the Supreme Arbitration Court of the Russian Federation of February 2, 2012 No. VAS-176/12 in case No. A10-1096/201 [↑](#footnote-ref-4)
5. Federal Arbitration Court of the Povolzhskiy District, Federal Arbitration Court of the Volga-Vyatka District "Recommendations of the Scientific-Advisory Council on the application of corporate law and the norms of the law on insolvency (bankruptcy)" (approved by the Presidium of the Federal Arbitration Court of the Povolzhskiy District on April 26, 2010) [↑](#footnote-ref-5)
6. Resolution of the Supreme Arbitration Court of the Russian Federation No. VAS-5211/10 in case No. A56-60491/2008 [↑](#footnote-ref-6)
7. Resolution of the Federal Arbitration Court of the North-West District of August 27, 2013 in Case No. A56-41135/2012 [↑](#footnote-ref-7)
8. Resolution of the Federal Arbitration Court of the  West Siberian District of October 14, 2010 in case No. A45-2332/2010 [↑](#footnote-ref-8)
9. Resolution of the Federal Arbitration Court of the North Caucasus District of April 14, 2011 in case No. A32-19972/2010 [↑](#footnote-ref-9)
10. Resolution of the Federal Arbitration Court of the Moscow District of November 21, 2012 in case No. A40-114971/11-34-1038 [↑](#footnote-ref-10)
11. Resolution of the Arbitration Court of the North-Western District of November 5, 2014 in case No. A21-5759/2013 [↑](#footnote-ref-11)
12. Resolution of the Federal Arbitration Court of the North Caucasus District of October 1, 2013 in case No. A53-3054/2013; Resolutions of the Supreme Arbitration Court of the Russian Federation of October 28, 2013 No. VAS-14817/13 in case No. A53-3054/13 [↑](#footnote-ref-12)
13. Resolution of the Federal Arbitration Court of the Moscow District of May 13, 2011 No. KG-A40/3751-11-1.2 in case No. A40-58134/10-104-481 [↑](#footnote-ref-13)
14. Resolution of the Federal Arbitration Court of the Moscow District of May 13, 2011 No. KG-A40/3751-11-1.2 in case No. A40-58134/10-104-481 [↑](#footnote-ref-14)
15. Resolution of the Federal Arbitration Court of the Volga District of April 3, 2012 in case No. A12-6793/2011 [↑](#footnote-ref-15)
16. Resolution of the Federal Arbitration Court of the North Caucasus District of October 1, 2010 in case No. A15-2296/2009 [↑](#footnote-ref-16)
17. Resolution of the Federal Arbitration Court of the Moscow District of September 29, 2008 No. KG-A41/8861-08 in case No. A41-K1-1061/08 [↑](#footnote-ref-17)
18. Resolution of the Federal Arbitration Court of the West Siberian District of April 26, 2013 in case No. A75-1719/2012 [↑](#footnote-ref-18)
19. Section 5 of Article 181.4 of the Russian Civil Code [↑](#footnote-ref-19)
20. Resolution of the Federal Arbitration Court of the Moscow District of February 29, 2012, in case No. A41-19574/11 [↑](#footnote-ref-20)
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22. Resolution of the Federal Arbitration Court of the East-Siberian District of July 4, 2014 in case No. A33-18569/2013 [↑](#footnote-ref-22)
23. Resolution of the Supreme Arbitration Court of the Russian Federation of February 8, 2013 No. VAS-598/13 in case No. A79-5172/2012 [↑](#footnote-ref-23)
24. Resolution of the Federal Arbitration Court of the North Caucasus District of July 21, 2014 in case No. A32-19575/2013 [↑](#footnote-ref-24)
25. *Ibid* [↑](#footnote-ref-25)
26. Resolution of the Supreme Arbitration Court of the Russian Federation of February 8, 2013 No. VAS-598/13 in case No. A79-5172/2012 [↑](#footnote-ref-26)
27. Ibid [↑](#footnote-ref-27)
28. Resolution of the Arbitration Court of the North-Western District of June 11, 2015 No. F07-3401/2015 in case No. A56-48234/2014 [↑](#footnote-ref-28)
29. Resolution of the Arbitration Court of the Moscow District of August 21, 2015 No. F05-8665/2015 in case No. A40-138652/2013 [↑](#footnote-ref-29)
30. Dolinskaya, V. General Meeting of Shareholders. M., 2016. p. 80 [↑](#footnote-ref-30)
31. Resolution of the Supreme Court of the Russian Federation of December 14, 2016 in case No. A40-175814/14 [↑](#footnote-ref-31)
32. Resolution of the Seventh Arbitration Court of Appeal of September 23, 2015 in case *No. A45-2833/2015* [↑](#footnote-ref-32)
33. [Resolution of the](consultantplus://offline/ref=65FDC8A616E54AE084BAED00D22FFBB99C0F2FEB85B9FE4B199FDEF38EA055E197ABCB75F86E4293A592A50AE1T7S1R) Supreme Court of the Russian Federation of May 10, 2016 in case No. 304-ES16-3769 [↑](#footnote-ref-33)
34. Resolution of the Supreme Court of the Russian Federation of May 10, 2016 No. 304-ES16-3769 [↑](#footnote-ref-34)
35. Resolution of the Judicial Panel for Economic Disputes of the Supreme Court of April 13, 2016 in case No. A26-10818/2012 [↑](#footnote-ref-35)
36. Resolution of the Supreme Court of the Russian Federation of November 28, 2016 in case A08-7139/2015 [↑](#footnote-ref-36)
37. Resolution of the Supreme Court of the Russian Federation of August 26, 2015 in case No. A40-101684/2015. [↑](#footnote-ref-37)
38. Section 6 of Article 68 of the Law on JSC. *Cf*. Section 7 of Article 49 of the Law on JSC r [↑](#footnote-ref-38)
39. Section 27 of the Resolution of the Plenum of the Supreme Arbitration Court of the Russian Federation No. 19 of November 18, 2003 . [↑](#footnote-ref-39)
40. Section 6 of Article 68 of the Law on JSC. *Cf*. Section 7 of Article 49 of the Law on JSC [↑](#footnote-ref-40)
41. Section 6 of Article 68 of the Law on JSC  [↑](#footnote-ref-41)
42. Resolution of the Federal Arbitration Court of the Moscow District of February 20, 2013 in case No. A40-79044/11-134-195  [↑](#footnote-ref-42)
43. *Ibid*  [↑](#footnote-ref-43)
44. Resolution of the Federal Arbitration Court of the East-Siberian District of May 21, 2012 in case No. A33-11316/2008 . [↑](#footnote-ref-44)
45. Resolution of the Supreme Arbitration Court of the Russian Federation of May 21, 2012 No. VAS-5793/12 in case No. A12-2922/2011; Resolution of the Supreme Arbitration Court of the Russian Federation of November 25, 2009 No. VAS-14830/09 in case No. A12-15295/2008 . [↑](#footnote-ref-45)
46. Section 26 of the Resolution of the Plenum of the Supreme Arbitration Court of the Russian Federation of November 18, 2003 No. 19 "On some issues of application of the Federal Law ‘On Joint-Stock Companies’”, Resolution of the Federal Arbitration Court of the Moscow District of May 22, 2013 in case No. A40-33224/12-158-318  [↑](#footnote-ref-46)
47. Resolution of the Federal Arbitration Court of the Far Eastern District of June 10, 2015 No. F03-2315/2015 in case No. A73-1537/2014  [↑](#footnote-ref-47)
48. Resolution of the Federal Arbitration Court of the Ural district of August 29, 2011 No. F09-5071/11 in case No. A71-10692/2010  [↑](#footnote-ref-48)
49. Resolution of the Federal Arbitration Court of the Moscow District of May 12, 2012 in case No. A40-105908/10-45-785  [↑](#footnote-ref-49)
50. Resolution of the Federal Arbitration Court of the North-West District of March 29, 2012, in case No. A52-1832/2011 [↑](#footnote-ref-50)
51. Resolution of the Federal Arbitration Court of the Central District of October 13, 2014 in case No. A54-4141/2013 [↑](#footnote-ref-51)
52. Definition of the Supreme Arbitration Court of the Russian Federation of August 25, 2009 No. 10640/09 in case No. А13-9308/2008 [↑](#footnote-ref-52)
53. Resolution of the Federal Arbitration Court of the Far Eastern District of September 12, 2013 No. F03-4281/2013 in case No. A73-16552/2012; Resolution of the Federal Arbitration Court of the Moscow District of December 13, 2010 No. KG-A41/13687-10 in case No. A41-11072/10 [↑](#footnote-ref-53)
54. Resolution of the Federal Arbitration Court of the Far Eastern District of September 12, 2013 N F03-4281/2013 in case No. A73-16552/2012 . [↑](#footnote-ref-54)
55. Resolution of the Federal Arbitration Court of the Moscow District of October 7, 2009 No. KG-A40/9180-09 in case No. A40-17952/08-84-159  [↑](#footnote-ref-55)
56. Resolution of the Federal Arbitration Court of the Volga District of December 23, 2009 in case No. A65-17374/2008; Resolution of the Federal Arbitration Court of the Volga District of October 5, 2009 in case No. A65-6339/2009; Resolution of the Federal Arbitration Court of the North-West District of November 24, 2010, in case No. А13-121/2010; Resolution of the Federal Arbitration Court of the North-West District of September 15, 2010 in case No. A66-15243/2009; Resolution of the Federal Arbitration Court of the North-West District of October 21, 2009 in case No. A13-10259/2007  [↑](#footnote-ref-56)
57. Resolution of the Federal Arbitration Court of the Moscow District of December 13, 2010 No. KG-A41/13687-10 in case No. A41-11072/10  [↑](#footnote-ref-57)
58. Resolution of the Supreme Arbitration Court of the Russian Federation of February 27, 2010, No. VAS-1887/10, in case No. А76-10662/2008-7-564  [↑](#footnote-ref-58)
59. Resolution of the Federal Arbitration Court of the North Caucasus District of June 26, 2012 in case No. A32-22027/2011  [↑](#footnote-ref-59)
60. Information letter of the Presidium of the Supreme Arbitration Court of the Russian Federation of November 25, 2008 No. 127  [↑](#footnote-ref-60)
61. Section 5 of Article 68 of the Law on JSC  [↑](#footnote-ref-61)
62. Ibid  [↑](#footnote-ref-62)
63. Section 27 of the Resolution of the Plenum of the Supreme Arbitration Court of the Russian Federation No. 19 of November 18, 2003  [↑](#footnote-ref-63)
64. Resolution of the Federal Arbitration Court of the North-West District of November 15, 2012 in case No. A44-3281/2012; Resolution of the Federal Arbitration Court of the Volga District of October 16, 2012 in case No. A55-4331/2011  [↑](#footnote-ref-64)
65. Resolution of the Arbitration Court of the West Siberian District of June 23, 2015 No. F04-19502/2015 in case No. A70-10398/2014  [↑](#footnote-ref-65)
66. Ibid  [↑](#footnote-ref-66)
67. Resolution of the Arbitration Court of the Moscow District of October 23, 2014 No. F05-11841/14 in case No. A40-3402/14  [↑](#footnote-ref-67)
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79. Resolution of the Federal Arbitration Court of the North-West District of November 28, 2005 No А56-3908/2005  [↑](#footnote-ref-79)
80. # Decision of the Federal Arbitration Court of Moscow of October 31, 2017 in case No. А40-195309/2016

    [↑](#footnote-ref-80)
81. Resolution of the Federal Arbitration Court of the Moscow District of May 28, 2012 in case No. A40-104508/11-137-238 [↑](#footnote-ref-81)
82. Resolution of the Federal Arbitration Court of the Far Eastern District of January 20, 2017 in case No. A-7898/2016 [↑](#footnote-ref-82)
83. Resolution of the Federal Arbitration Court of the Central District of January 21, 2017 in case No. A23-198/2016 [↑](#footnote-ref-83)
84. Resolution of the Federal Arbitration Court of the Far Eastern District in case No. A73-11609/2016.

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85. Decision of the Arbitration Court of the Astrakhan region of October 30, 2015 in case No. A06-4891/2014 [↑](#footnote-ref-85)
86. Resolution of the Supreme Court of the Russian Federation of October 21, 2016 in case No. A06-4891/2014 [↑](#footnote-ref-86)
87. Resolution of the Supreme Court of the Russian Federation of December 8, 2016 in case no. A55-11002/20 [↑](#footnote-ref-87)
88. Resolution of the Arbitration Court of the North-Western District of March 28, 2016 in case No. A56-82019/2014 [↑](#footnote-ref-88)
89. Resolution of the Arbitration Court of the Moscow District of July 21, 2016 in case No. A40-186355/2015 [↑](#footnote-ref-89)
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95. Resolution of the Federal Arbitration Court of the North-West District of April 15, 2014 in case No. A56-38334/2011 [↑](#footnote-ref-95)
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98. Decision of Arbitration Court of Moscow of April 24, 2015 in case No. A40-189476/13 [↑](#footnote-ref-98)
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