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CORPORATE DISPUTES COMPLICATED BY A FOREIGN ELEMENT AND METHODS FOR THEIR RESOLUTION

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Abstract
of the thesis for a Candidate Degree in Law Sciences

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INTRODUCTION

Topicality of the research topic. One of the most important components of the globalization process is the expansion of the practice of using foreign capital in the formation of assets of legal entities, which requires taking measures to create effective mechanisms for resolving corporate disputes complicated by a foreign element, as a tool to increase the investment attractiveness of the country. The imperfection of the legislation in this part for a long time was an obstacle to this, prompting the search for legal means of subordinating such disputes to foreign laws, in particular, the English one. The legislator practically did not offer anything as an alternative to the judicial procedure for their resolution, questioning even the arbitrability of corporate disputes. Outside the legal framework, in fact, there were other ways of settling them, with the exception of mediation, which could not but cause concern against the background of a very diverse foreign practice.

The situation began to change with the introduction of amendments to the Arbitration Procedure Code of the Russian Federation of July 24, 2002 No. 95-ФЗ (hereinafter referred to as the Arbitration Procedure Code of the Russian Federation)[1], which currently refers to negotiations, mediation and judicial conciliation, leaving the list open (Article 138.2). However, the practical implementation of these provisions raises many questions, especially if the other party to the dispute is a foreign individual or legal entity, since in this case the question arises not only about the applicable law and the resolution of related disputes, but also about the choice of the applicable procedure, which may not be provided for by Russian legislation. The procedures for judicial consideration of corporate disputes are not devoid of contradictions either.

The existing problems are aggravated by the lack of a uniform legislative and doctrinal approach to understanding the essence of corporate disputes, including the problem of the inconsistency in the usage of the concept of a corporation by the legislator, and the uncertainty of the relationship between corporate disputes and conflicts. At the same time, the prospect of referring to foreign experience does not

[1]V.: Collected Legislation of the Russian Federation. 2002. No. 30. Art. 3012.

look so unambiguous, given the different approaches to defining these categories. In particular, in foreign jurisprudence, one can find an extremely broad interpretation of corporate disputes, as any unresolved conflicts with the participation of corporations. The alternative ways of resolving disputes are even more diverse, some of which literally grew out of private methods first recorded in one or another legal order as a means of resolving a conflict that had arisen, which was greatly facilitated by the flexibility of the common law system. Selective borrowing of this experience, including by countries of the continental system of law, led to the formation of a fairly large number of variants of the formed models, which were not initially perceived as a universal and invariable standard.

The activity of new institutional structures of the national (for example, the Association of Corporate Legal Advisers of America - ACCA, the Paris Center for Arbitration and Mediation (CMAP) and international (in particular, the International Institute for Conflict Prevention and Resolution (CPR)) level, specially created for this purpose and normatively fixing non-standard procedures for alternative dispute resolution, began to exert a certain influence on these processes.

The degree of scientific development of the problem. The problems of resolving corporate disputes are increasingly attracting the attention of scientists. In particular, the works of V.K. Andreev, T.A. Grigorieva, D.I. Dedov, A.V. Kashirin, V.A. Laptev, T.M. Medvedeva, S.D. Mogilevskii, O.V. Osipenko, A.A. Serebryakova, I.N. Solovyov, S.Yu. Filippova and others. Issues of legal regulation of arbitration, mediation and other forms of alternative resolution of private law disputes, including those existing in foreign practice raise equal interest to specialists (V.O. Abolonin, N.I. Gaidaenko-Sher, E.P. Ermakova, O.Yu. Skvortsov and others). A number of works are devoted to the problems of resolving corporate disputes. In particular, the thesis researches of A.R. Andreeva "Legal regulation of corporate disputes under the legislation of the Russian Federation" (M., 2011), A.A. Danilyan "Corporation and corporate disputes" (Moscow, 2006) can be mentioned. However, the issues of settling corporate disputes, complicated by a foreign element, in all the variety of problems that arise in this case, so far have not been the subject of a separate research.

The object of the thesis research was social relations arising in the process of resolving corporate disputes complicated by a foreign element. The **subject of the thesis research** is the regulatory legal acts of the Russian Federation and a number of foreign countries, some of which can be considered as a source of rich experience in legal regulation of the procedure for resolving corporate disputes (Great Britain, USA, France); while others can be considered as an object for analysis of the implementation effectiveness of borrowings made (Republic of Kazakhstan, Hong Kong). The practice of their application has also become an object of attention.

The goal of the thesis research was to conduct a comprehensive scientific and practical analysis of various aspects of the legal regulation of the resolution of corporate disputes complicated by a foreign element, to propose and substantiate directions for improving Russian legislation in this area, taking into account foreign experience. Its achievement was facilitated by the solution of the following **objectives**:

1) determination of the nature and types of corporate disputes;

2) identification of the forms of the presence of a foreign element in a corporate dispute;

3) analysis of conflict issues in resolving corporate disputes complicated by a foreign element;

4) identification of problematic issues in the implementation of the judicial procedure for resolving corporate disputes;

5) analysis of conciliatory procedures for resolving corporate disputes, including negotiations and mediation;

6) identification of the features of the implementation of adversarial alternative procedures for the settlement of corporate disputes, such as arbitration (arbitration proceedings);

7) determination of the features of the combined procedures acceptable for the resolution of corporate disputes.

The methodological basis of the thesis research consisted of the use of general scientific and specific scientific methods. The use of the dialectical method contributed to the knowledge of the interrelationships of legal phenomena and processes, the study of existing doctrinal approaches, rule-making and law enforcement practice provided an appeal to such general scientific theoretical research methods as analysis and synthesis, systemic and structural approaches. The specificity of the research subject predetermined the use of formal legal, comparative legal methods, and historical legal method.

The theoretical basis of the research includes scientific and theoretical elaborations of Russian and foreign specialists dealing with the problems of determining the legal status of corporations, as well as resolving corporate disputes, including alternative ways of settling them. Its **regulatory framework**, taking into account the subject of research, constitutes of: 1) Russian legislation, including the Constitution of the Russian Federation of December 12, 1993, the Civil Code of the Russian Federation (part one) of November 30, 1994 No. 51-ФЗ (hereinafter - the Civil Code of the Russian Federation)[2], federal laws, including Federal Law of 08.02.1998 No. 14-ФЗ "On Limited Liability Companies" (hereinafter - the Law on LLC)[3], Federal Law of 26.12.1995 No. 208-ФЗ "On Joint Stock Companies" (hereinafter - the Law on JSC[4]) , Federal Law of 27.07.2010 No. 193-ФЗ "On an alternative procedure for resolving disputes with the participation of a mediator (mediation procedure)" (hereinafter - the Law on Mediation)[5], Federal Law of 29 December 2015 No. 382-ФЗ "On Arbitration (Arbitration Proceedings) in the Russian Federation" (hereinafter referred to as the Arbitration Law)[6], as well as implementing regulations; 2) the legislation of foreign countries (Belgium, Great Britain, Italy, China, Singapore, Ukraine, France, Germany, Japan, etc.); 3) international treaties and recommendatory documents of international organizations;

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[2] V.: Collected Legislation of the Russian Federation. 1994. No. 32. Art. 3301.
[3] V.: Collected Legislation of the Russian Federation. 1998. No. 7. Art. 785.
[4] V.: Collected Legislation of the Russian Federation. 1996. No. 1. Art. 1.
[5] V.: Collected Legislation of the Russian Federation. 2010. No. 31. Art. 4162.
[6] V.: Collected Legislation of the Russian Federation. 2016. No. 1 (part I). Art. 2.

4) local regulations of organizations specializing in the resolution of commercial disputes, and internal documents of legal entities.

The empirical basis of the research is formed by Russian and foreign court practice on corporate disputes, reflecting the peculiarities of the application of the current legislation and determining the directions of its development.

The scientific novelty of the thesis research is determined by the fact that it is the first comprehensive study of corporate disputes complicated by a foreign element, during which

− features of a corporate dispute, complicated by a foreign element; problems of choosing the law to be applied to resolve it; the relationship between the features of a corporate dispute with the organizational and legal form of a legal entity and implemented models of corporate governance; the impact on the determination of the international jurisdiction of corporate disputes of the simultaneous existence of the Brussels and Anglo-American jurisdictional systems; differences in approaches to determining the arbitrability of corporate disputes in the Anglo-American and continental systems of law were revealed;

- the assessment was given of: the provisions of the Russian legislation in terms of securing the methods of resolving corporate disputes; the effectiveness of various methods of their settlement, including such alternative mechanisms as negotiations, mediation, arbitration, judicial conciliation and participatory (collaborative) procedure, atypical for the Russian legal order, mini-litigation, private litigation, “mediation-arbitration”, independent expertise to establish factual circumstances of the case, conciliation.

- the necessity for unification and harmonization of methods for resolving disputes, expanding the practice of international assistance in civil cases, as well as introducing certain amendments to Russian legislation, was substantiated.

The scientific novelty of the study was reflected in the provisions submitted to the defense:

1. It is concluded that it is necessary to apply a broad and narrow interpretation of a corporate dispute, reflecting the statics and dynamics of contradictions arising between participants in corporate relations. In a broad sense, it covers any

contradictions affecting the interests of the corporation that arise between the subjects of corporate relations, in a narrow sense - it is the result of the conflict of interests of legal entities with the corporate structure and its participants and / or management bodies, as well as other interested parties, unresolved under the conditions of the chosen model of corporate governance and potentially capable of escalating into a corporate dispute.

2. The author connects the specifics of corporate disputes with a variety of organizational and legal forms of corporations and the management models implemented in them, which can determine various causes of occurrence, subject composition and methods of resolving a corporate dispute.

3. It has been substantiated that the specificity of a corporate dispute, complicated by a foreign element, is contingent on: 1) the location of its parties under the jurisdiction of various states, which predetermines the variety of organizational and legal forms of corporations, the management models implemented in them, the legal status of participants in corporate relations and the contradictions caused by this; 2) the connection of legal facts that are important for the emergence, development and termination of corporate disputes with the territory of a foreign state, the legislation of which may establish special requirements for corporate agreements to be concluded, the formalization of the powers of a representative of the corporation, as well as the procedure and conditions for the placement of securities of the corporation; 3) the legal regime of objects located on the territory of a foreign state, the rights to which are the subject of a corporate dispute, complicated in this case by various approaches to their turnover capacity, content, procedure for the implementation and protection of rights to them.

4. Assessing the practice of choosing the law to be applied in resolving corporate disputes complicated by a foreign element, the author concludes that the doctrine of "internal affairs" is vulnerable in the context of globalization and the necessity to protect the national interests of host states, the difficulty of such a choice in the context of the unsettled practice of transnational migration of corporations and its normative ensuring, competition of conflict of laws in certain aspects of corporate relations, primarily contractual and tort, as well as the practice of using various legal

means that provide the possibility of state interference in the internal affairs of a corporation, including mandatory prescriptions regarding various aspects of the corporation's activities, a public policy clause, attribution certain issues of the corporation's activities to a different legal sphere to exclude the possibility of a choice of law, noting the advantages of the doctrine of the real location of the corporation, which allows ensuring transparency of its activities and effective protection of potential participants in corporate disputes.

5. The author substantiates the necessity of taking into account the specifics of the Brussels and Anglo-American jurisdictional systems, when determining the international jurisdiction of corporate disputes. The Brussels and Anglo-American jurisdictional systems differ in the breadth of discretionary powers of the courts considering the issue of compliance with the rules of jurisdiction, the goals of making an appropriate decision, as well as in relation to the problem of initiating parallel proceedings, noting, that the latter creates the preconditions for choosing a jurisdiction that is more advantageous in terms of the expected result of resolving the dispute.

6. The author concludes that the problems in the use of mediation to resolve corporate disputes complicated by a foreign element, caused by the existence of various models of mediation, the heterogeneous status of mediators, as well as difficulties in the implementation of a mediation agreement in a foreign jurisdiction can be resolved by including states on legal assistance in agreements provisions on the extension of the practice of recognition and enforcement of court decisions to mediation agreements.

7. It is concluded that the influence of a foreign element in corporate disputes on the assessment of their arbitrability, the subjective and objective criteria of which differ in the continental and common systems of law. While in the general system of law they are not essential, since the possibility of transferring a corporate dispute to arbitration refers to the admissibility of resolving a specific type of dispute, in the continental system the criteria of subjective and objective arbitration play a key role in determining the possibility of its transfer to arbitration.

8. Considering the combined procedures for resolving corporate disputes, the author comes to the conclusion that the process of convergence of legal systems in the context of legal globalization led not only to selective borrowing of dispute resolution mechanisms developed in the common law system by countries of the continental system of law, but also to the dissemination of the experience of the latter in the countries of the Anglo-American system. At the same time, legal barriers are largely leveled out due to the emphasis on the actual component of the implemented procedures, the content of which can vary, among other things because of the fact that most of them are not characterized by legislative consolidation.

The theoretical significance of the thesis research consists in identifying, working out and systematizing existing approaches to defining the essence of corporate disputes and ways of resolving them in relation to legal relations complicated by a foreign element, taking into account the provisions of Russian and foreign doctrine, legislation and judicial practice, as well as formulating conclusions that make it possible to reveal the specifics of such disputes and the ways to resolve them. Its **practical significance** is determined by the fact that the results obtained make it possible to determine the directions for improving Russian legislation regulating the legal aspects of resolving corporate disputes, as well as international cooperation in the field of unification and harmonization of the relevant legal mechanisms. In addition, the research results can be used to form special legal disciplines and teach courses in civil, business, corporate, and private international law.

Approbation of the research results. The provisions, conclusions and proposals formulated in the thesis research were tested during the discussion and peer review of the research at the meetings of the department of the law faculty of the Russian Presidential Academy of National Economy and Public Administration. The main provisions and conclusions of the thesis work are reflected in the published works of the author, and in addition are discussed at scientific and practical conferences:

I. Articles published in publications recommended by the Higher Attestation Commission of the Ministry of Science and Higher Education of the Russian Federation for the publication of the results of thesis research:

1. Conflict issues of resolving corporate disputes complicated by a foreign element. Chekulaev S.S. Aziatsko-tihookeanskij region: ekonomika, politika, pravo. (Asia-Pacific Region: Economics, Politics, Law.) 2019. Vol. 21. No. 4. P. 116-124.;

2. Features of agreements on the jurisdiction of corporate disputes, complicated by a foreign element. Chekulaev S.S. Zakon i pravo (Legislation and Law) 2020. No. 10. p. 89-94;

3. Features of the use of arbitration in the resolution of corporate disputes, complicated by a foreign element. Chekulaev S. S. Vestnik Tverskogo gosudarstvennogo universiteta (Bulletin of Tver State University) Series: Law 2021 No. 1 (65) p. 135-141;

4. Features of corporate disputes, complicated by a foreign element: conflict issues when determining the nationality of a legal entity. Chekulaev S.S. Vestnik Moskovskogo universiteta. (Moscow University Bulletin.) Series 11. Law 2021 No. 2 p. 76 - 89.

II. Articles in publications recommended by the Russian Presidential Academy of National Economy and Public Administration for publishing articles on jurisprudence:

1. Some problems in the application of conciliation procedures in the resolution of corporate disputes, complicated by a foreign element. Chekulaev S. S. Gosudarstvennaya sluzhba (State service) 2021 No. 1 p. 56 - 64;

2. Application of mediation procedures in the resolution of corporate disputes in corporations. Chekulaev S.S., Smetanko P.P. Gosudarstvennaya sluzhba (State service) 2017, vol. 19. No. 2 (106). P. 115-119.055;

III. Articles published in publications included in international citation bases (WoS, Scopus, Springer) for the publication of the results of thesis research:

1. A comparative analysis of Russian and Chinese energy supply legislation. Chekulaev S., Karpova Y., Drachev A. Journal of advanced research in law and Economics. 2018. t. 9 No. 7. P. 2284-2289.

IV. Other articles:

1. Mediation as an alternative way of pre-trial dispute resolution in Russia and the United States. Chekulaev S.S., Karpova Yu.S. Zakon i pravo (Legislation and Law) 2017. No. 7. p. 52-55.157;

2. Comparative legal analysis of the concept of "corporation" on the example of the countries of the Asia-Pacific region. Chekulaev S.S., Ivashkina O.S. Gosudarstvennaya sluzhba. (State service.) 2017. V. 19. No.4 (108). P. 87-89.056;

V. Materials of international, all-Russian and interregional scientific and practical conferences:

1. Zoom-conference, Kutafin Moscow State Law University (Moscow State Law Academy) International Legal Forum "Contemporary Problems of Law and Economics in Europe and Asia" September 14 - 15, 2020. Speech "Some problems of the application of conciliation procedures in the resolution of corporate disputes complicated by a foreign element from the countries of the Asia-Pacific region."

The structure of the thesis is determined by the topic under study, as well as by the goal and objectives. The thesis research includes an introduction, two chapters that combine seven paragraphs, a conclusion, and a list of sources used.

The content of the thesis

The introduction indicates the topicality of the chosen topic, the degree of elaboration of the problem, the object and subject of the study, its goals and

objectives, the normative, theoretical and empirical basis, the methodology used, the novelty of the study and provisions confirming the latter, submitted for defense, allowing to talk about the significance of the results obtained.

The first chapter "Features of corporate disputes, complicated by a foreign element, and conflict issues of their resolution", which includes three paragraphs, is devoted to the definition of the specifics of such disputes, as well as the problems of choosing the law to be applied to resolve them.

The first paragraph "The concept, essence and types of corporate disputes" is devoted to the analysis of the existing in the Russian and foreign doctrine approaches to the definition of the characteristics of corporate disputes. On this basis, it was concluded that when characterizing a corporate dispute, it is necessary to proceed from its broad and narrow interpretation, reflecting the statics and dynamics of contradictions arising between the participants in corporate relations. In a broad sense, it captures any contradictions affecting the interests of the corporation that arise between the subjects of corporate relations, in a narrow sense - it is the result of the conflict of interests of legal entities with the corporate structure and its participants and / or management bodies, as well as other interested parties, unresolved under the conditions of the chosen model of corporate governance, potentially capable of escalating into a corporate dispute. Moreover, its existence is impossible in legal entities that do not have a corporate structure, due to which the category of "corporate disputes" in the legislative interpretation presented in Art. 229.1 of the Arbitration Procedure Code of the Russian Federation, should be considered as a consequence of the implementation of an attempt to unify judicial procedures for considering and resolving conflict situations arising from organizational and managerial relations, including those arising in organizations that are not corporations by nature, and therefore cannot be an adequate legislative characteristic of their essence and causes of occurrence, at least in terms of the subject composition. At the same time, the lack of institutionalization of the governing body in business societies of "one person" does not exclude its emergence, but largely determines its specificity.

It was noted that the existing theories of corporate governance do not provide a universal solution to the problem of the existence of corporate disputes due to their diversity; however, with an emphasis on certain sources of contradictions, they make it possible to identify their specifics and take the necessary measures to prevent them. In addition, they allow identifying new grounds for the classification of corporate disputes. In particular, from the standpoint of the agency theory, the theory of leadership, as well as the theory of transaction costs, which are based on the idea of resolving the inevitable contradictions arising from the division of ownership and control over assets, the following subdivisions should be singled out: disputes between shareholders and managers; disputes between small and large owners; disputes between owners of equity and debt capital. In its turn, the theory of interested parties allows us to look at the latter type of conflicts much broader, including in its orbit other subjects, which, however, cannot include public authorities, the illegal use of resources of which is a means of achieving the goals of other subjects. It is doubtful whether the population of an administrative-territorial unit is considered to be a participant in a corporate dispute, in the economy of which the company plays a significant role, despite the implementation of the concept of social responsibility, since it does not generate any legally enshrined obligations, the failure of which can be considered a source of conflict, for the corporation. Finally, the theory of resource dependence allows distinguishing several categories of disputes caused by the relationship between parent and subsidiary companies: between shareholders, as well as shareholders and management; between the parent or subsidiary company and interested parties; between the parent company and the management of the subsidiary, the source of which may be different approaches to establishing control over the activities of the latter.

The second paragraph "Forms of the presence of a foreign element in a corporate dispute" defines the features of its manifestation in corporate relations, which are most clearly visible in their subject composition.

Considering a corporation as a party to a corporate dispute, the candidate for the degree draws attention to the fact that its specificity is largely determined by the variety of organizational and legal forms of corporations and implemented models

of corporate governance, the main of which are American, British, French, German and Japanese. While the first two lead to a clash of interests between shareholders and the board of directors and / or managers, the third and fourth lead to conflicts between separate groups of shareholders, the latter, to a greater extent, to a conflict with stakeholders. At the same time, in the context of legal globalization, these approaches cannot be called universal.

It is noted that when determining the parties to a corporate dispute, it is necessary to take into account the variety of legal (family, contractual, service and labor) and economic (based on ownership, including cross ownership, a certain share of the authorized capital) ties between the controlling and controlled companies created in foreign jurisdictions. The legitimacy of orphan claims can be assessed from the standpoint of scientific concepts justifying the responsibility of the parent company for the actions of the subsidiary, as well as the ability of the shareholders of the latter to claim damages from the controlling company, namely: 1) the doctrine of "piercing the corporate veil", proceeding in this case from the fact that subsidiary corporations are created solely for the purpose of concealing the assets of the parent company from recovery at the claims of creditors. Its particular cases in foreign jurisprudence are the theory of the "instrument" and the theory of the "alter ego"; 2) the doctrine of a single enterprise, according to which a group of companies in the conditions of their economic integration is considered as one economic unit that functions in the interests of the entire group or its parent company, and not individual members, which gives reason to consider the parent company as a party to a corporate dispute in which a subsidiary was initially involved.

One of the main participants in the corporate dispute are shareholders, whose rights may differ significantly due to the incomplete implementation of the principle “one share - one vote” in national jurisdictions, as well as the number of shares they hold, which gives grounds to single out majority and minority shareholders. Their relations in foreign jurisprudence are explained from several theoretical positions: the concept of property interest; contract theory; fiduciary theory; general enrichment theory; the concept of corporate democracy; ethical theory; as well as theories of fair distribution, each of which, in fact, explains the sources of conflicts

between shareholders and the potential ways to resolve them. At the same time, the problem of reconciling the interests of shareholders and the positions of interested parties has two solutions that do not exclude their combination:

1) introduction of a fiduciary model of the corporation with a positive obligation of directors to ensure the achievement of a balance between the property interests of shareholders, the interests of stakeholders and public goods, which is more characteristic of American law;

2) implementation of the idea of representing the interests of two or more groups, including employees, on the board of directors (or supervisory board) forced to coordinate their efforts in making management decisions, which is inherent in continental law and partially in corporate practice in Great Britain.

The source of conflict between shareholders and creditors, in particular, bondholders, are: dividend payments, dilution of claims, asset substitution, and underinvestment. At the same time, the protection mechanisms of the latter differ significantly. The covenant practice inherent in Anglo-American law, which is gradually being introduced in the countries of the continental system along with other mechanisms to protect the rights of bondholders, is attractive to investors.

Complication of corporate disputes by a foreign element due to the commission of legally significant actions in a foreign jurisdiction may be caused by the implementation of the issue of securities abroad, as well as the commission of other actions that are legally significant for the corporation (conclusion of corporate agreements, registration of a representative office). The presence of a foreign element in a corporate dispute may also be contingent on the fact that the subject of the disagreements that have arisen is on the territory of a foreign state, which can be both property and rights to it.

The third paragraph "Conflict issues of resolving corporate disputes complicated by a foreign element" is devoted to the problematic issues of determining the law applicable to the rights, obligations and responsibilities of the parties in their resolution. The defender of thesis connects the uncertainty in this issue with several circumstances: 1) the vulnerability of the doctrine of "internal affairs" in the context of globalization and the need to protect the national interests

of the host states; 2) the ambiguity of legislative approaches to the way of defining lex societatis, where the doctrine of real location gains a strong position, which allows to ensure the transparency of the corporation's activities and effective protection of potential participants in corporate disputes; 3) the unsettled practice of transnational migration of corporations and its regulatory support, since it is perceived ambiguously in various legal orders; 4) the risk of the existence of competition of conflict of laws in certain aspects of corporate relations, primarily contractual and tort; 5) the possibility of using various legal means that provide the possibility of state intervention in the internal affairs of the corporation, including mandatory instructions regarding various aspects of the corporation's activities, a clause on public policy, referring certain issues of the corporation's activities to another legal sphere to exclude the possibility of a choice of law.

The second chapter "Ways of resolving corporate disputes", consisting of four paragraphs, reveals the features of the implementation of the relevant judicial and extrajudicial (adversarial, conciliatory and combined) procedures.

The first paragraph "Judicial procedure for resolving corporate disputes" reveals the problems of determining international jurisdiction, concluding prorogatory agreements, implementing the forum non convenience doctrine, taking into account its various interpretations in national legal order, and the problem of correlation with the Brussels jurisdiction system, as well as the forum shopping doctrine.

This allows the defender of thesis to come to the conclusion that the judicial procedure for resolving a corporate dispute, having undoubted advantages, especially for the weak side of a corporate legal relationship, complicated by a foreign element, has a number of features due to the choice of a competent court. In particular, with regard to the international jurisdiction of corporate disputes, it is necessary to take into account the existence of two actually incompatible jurisdictional systems, differing both in the breadth of the discretionary powers of the courts considering compliance with the rules of jurisdiction, the goals of making the appropriate decision, as well as attitudes towards the problem of initiating parallel proceedings:

- Brussels, focusing on a predictable, normatively defined, choice of a competent court, which, as a general rule, is a state court at the location of a legal entity, determined in accordance with the national norms of private international law of the court, which allows solving the problem of parallel proceedings on the basis of lis alibi pendens formal rule;

- Anglo-American, which focuses on ensuring due process, including through the application of the forum non conveniens doctrine, which makes it possible to determine the appropriate court taking into account a large number of factors, ranging from the existence of an objective connection of the disputed legal relationship with the territory covered by the jurisdiction of the court, ending with a subjective assessment of the motives for the choice of the court by the plaintiff and the potential for effective proceedings in a foreign court considered as a perceived alternative, which actually makes it possible to ignore the problem of parallel proceedings.

The existing collisions can be partially overcome by means of prorogatory agreements. At the same time, for the purposes of applying the provisions on the possibility of reaching an agreement on jurisdiction over corporate disputes, the charter of a corporate organization should be considered as an agreement covering both the relationship between its participants and the relationship between them and the legal entity established by them, and by virtue of this being binding on them. Acquisition of the status of a corporation participant implies unconditional adherence to the agreement on the jurisdiction of corporate disputes. The limits of the prorogatory agreement are determined by the action of peremptory jurisdiction. At the same time, the inclusion in the Arbitration Procedure Code of the Russian Federation of the provision on the inadmissibility of changing the exclusive competence of a foreign court is a manifestation of international politeness, at the same time it takes into account the potential risks of non-enforcement of the decision in the state, whose exclusive jurisdiction will be ignored.

The second paragraph "Conciliation procedures for resolving corporate disputes" discloses the specifics of negotiations and mediation. The author characterizes negotiations as a form of direct interaction between parties with

opposite interests, consisting in an oral or written discussion of any joint actions that they are ready to take to settle and resolve a dispute between them. At the same time, the general negative features of the negotiation process are in many ways the reverse side of such advantages as informality and voluntariness. In addition, the effectiveness of negotiations is inversely proportional to the stage of development of the conflict, the number of participants and the level of disparity between the parties, including that expressed in the difference in their legal status.

The defender of thesis notes that excessive formalization of the negotiation process is not capable of increasing its efficiency, which is predetermined by the willingness of the parties to compromise. By virtue of this, the legislator should confine him/herself to securing the fundamental principles of their implementation (voluntariness, freedom of choice of the subject and format of negotiations, equality of negotiation opportunities, good faith) and responsibility for their unfair conduct, giving the parties the right to conclude agreements on the negotiation procedure, which can specify the conditions and procedure participation in them, distribution of costs, and measures of responsibility.

Considering various formats of mediation for resolving corporate disputes, the defender of thesis comes to the conclusion that it can be: 1) non-institutionalized, when the parties independently choose a mediator, regardless of its legal status and any legislative prescriptions regarding the procedure for implementing the relevant procedures; 2) institutionalized, involving the formation of intermediary structures that meet the requirements established by law, both in terms of the qualifications of intermediaries and the procedure for realization of the implementation of conciliation procedures. Depending on the specifics of the choice and status of the mediator, and the rules for the distribution of costs, they can be subdivided into judicial (judicial conciliation) and non-judicial (mediation).

The advantages of mediation as a method of resolving disputes are noted, due to: its flexibility; the ability to choose a mediator in accordance with his skills and area of expertise; relatively low costs; the relative speed of the proceedings; predictability of results; confidentiality; lack of legal responsibility for failure to reach an agreement; the possibility of considering all, including non-legal, aspects

of the dispute, as well as deviating from the standard of proof used by the court and using a wider range of legal remedies. Along with this, it is concluded that its use in corporate disputes complicated by a foreign element is difficult due to the existence of various models of mediation, the heterogeneous status of mediators, and difficulties in the execution of a mediation agreement in a foreign jurisdiction. The solution to this problem is seen both in the harmonization of legislation and the creation of procedures for the recognition and execution of mediation agreements, at least taking the form of amicable agreements.

The third paragraph "Adversarial procedures for resolving corporate disputes" is devoted to their arbitration, all aspects of which are imprinted by the specifics of corporate disputes. At the same time, the key issue discussed in both Russian and foreign doctrine is the arbitrability of such disputes, which is assessed in different ways.

Their subjective arbitrability (ratione personae) is associated: 1) with the legal personality of individuals and legal entities, determined by their personal law; 2) the possibility of participation in international commercial arbitration of states, state bodies and legal entities of public law, which is assessed in different ways: from an actual ban (USA, Iran) and the establishment of certain restrictions (Belgium) to free participation (most states); 3) the possibility of participation in arbitration of third parties, which, as a rule, requires the consent of all participants; 4) the admissibility of a singular succession in relation to the arbitration clause, which can be resolved on the basis of a rebuttable presumption of the parties' intention to put the assignee in the place of the assignor on the same conditions; 5) the proper formalization of the powers of representatives.

Objective criteria of arbitrability (ratione materiae), arising from the essence of a corporate dispute, allow all states to be subdivided into those adhering to the presumption of arbitrability of corporate disputes (Brazil, France), establishing certain restrictions as preconditions for the exercise of such a right (Italy, Russia, Germany) and attributing corporate disputes to the exclusive competence of the state court (Ukraine).

At the same time, in the common law system, the criteria of arbitrability do not play a significant role, since the possibility of referring a dispute to arbitration refers to the admissibility of a particular type of dispute by arbitration, due to which what is covered by the category of "subjective arbitrability" is considered by English law as a matter of whether an individual can bring a claim under an arbitration agreement, and the issue of objective arbitrability is considered either in the context of substantive defense of claims under an arbitration agreement or as a matter of jurisdiction.

The specifics of corporate disputes also affect the resolution of other issues of arbitration, including: 1) the choice of the type of arbitration, the possibility of which is significantly limited in favor of institutional arbitration; 2) the place of arbitration, which in Russian legislation is used in a narrow sense as a place for holding meetings, and in a broad sense as the territory of a state; 3) the choice of arbitrators, which includes two components: the need to involve all participants in the corporation in the election process and agree on their positions regarding the proposed candidates, due to which the model of their appointment by the arbitral institution chosen by the parties is recognized as more acceptable; 4) the choice of law to be applied, which, in the absence of the explicit will of the parties, in countries of the continental system of law, as a rule, is determined by lex arbitri, and in countries of common law, is subject to the standard developed by case law to establish the true intention of the parties; 5) the execution of the arbitral award in the context of its res judicata or inter omnes action, given that the requirements for corporate disputes may have consequences not only for the persons directly involved in the proceedings, but also for other participants in the corporation.

At the same time, the ambiguous wording of clause 7 of Art. 7 of the Arbitration Law, creates the preconditions for a narrow and broad interpretation of the arbitrability of corporate disputes between Russian legal entities. Considering that the limitation is established only in relation to the disputes mentioned in this part devoted to the inclusion of the arbitration agreement in the charter of the corporation, the literal interpretation of the relevant provisions allows us to conclude that recourse to Russian arbitration is mandatory if the following conditions are met:

1) the legal entity was created in the Russian Federation and is not public; 2) the number of shareholders - owners of voting shares does not exceed one thousand; 3) the arbitration agreement is included in its charter. With a broad interpretation widespread in the Russian doctrine, it is concluded that all corporate disputes with the participation of Russian legal entities are unambiguously linked to the territory of the Russian Federation, which does not agree well with the idea of increasing the attractiveness of the Russian arbitration system.

In order to protect the interests of minority shareholders who are not directly involved in the discussion of the arbitration agreement and the terms of the arbitration procedures, additional guarantees may be established in the form of timely notification of the relevant corporate event, ensuring obligatory representation of their interests, granting the right to withdraw from the company with compensation of the market value of their stocks and shares in the authorized capital, as well as challenging the relevant decision in court on the grounds provided for by law.

The fourth paragraph "Combined forms of resolving corporate disputes" reveals the features of the most common procedures in foreign practice, including participatory procedure, mini-litigation, conciliation, etc.)

The author notes that the formation of combined procedures for resolving corporate disputes is the result of the search for optimal organizational and legal means for this, the direction of which is largely determined by the peculiarities of the national legal culture. The specifics of law enforcement, arising from the peculiarities of the perception of law, led to the formation of most of them in the depths of common law, although certain procedures, in particular, conciliation, are historically associated with the continental system. At the same time, the process of convergence of legal systems in the context of legal globalization led not only to the selective borrowing of dispute resolution mechanisms developed in the common law system by continental law countries, but also to the dissemination of the latter's experience in the countries of the Anglo-American system. At the same time, legal barriers are largely leveled due to the emphasis on the actual component of the implemented procedures, the content of which may vary.

Most of the combined procedures are not characterized by their legislative consolidation, due to which ideas about them are formed on the basis of doctrinal approaches and rules developed by generally recognized intermediary structures. In Russia, the regulatory framework for their implementation could be created by the Chamber of Commerce and Industry of the Russian Federation, taking into account its role in the development and popularization of arbitration proceedings and mediation. From a wide range of combined procedures for resolving corporate disputes, it is possible to recognize the participatory procedure, mini-litigation, the combination of mediation with arbitration, conciliation and independent examination to establish the factual circumstances of the case, the choice between which should be based on the nature of the dispute. It should be borne in mind that the implementation of some of them is possible only if one of the parties to the dispute is under the jurisdiction of the state, the legislation of which provides for it.

In the **conclusion**, findings and conclusions are formulated based on the results of the study.