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THE GOOD FAITH PRINCIPLE
IN CORPORATE RELATIONSHIPS
OF COMMERCIAL LEGAL ENTITIES

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Research relevance. The need for a comprehensive development of problems of implementing the principle of good faith in corporate legal relations of commercial legal entities is due to moral, socio-economic, regulatory factors, those of law enforcement, law-making and doctrinal order.

Currently, there is no unified system of moral values in the Russian society. Meanwhile, with the adoption of constitutional amendments in July 2020 which strengthen the state's social obligations to the society, the importance of value orientations for the legal matter has acquired particular importance.

From the legal and cultural points of view, the basic regulators of the global and national legal order have always been such evaluative concepts as «good faith», «reasonability», «fairness». And the more developed legal thought became, the more subjected to comprehension were moral and ethical principles and their influence on the legal system of the Russian state and society. Active introduction of moral norms into modern Russian civil law predetermined the relevance of their doctrinal research on the subject of the interrelations between moral and legal principles. Increasing the social value of civil law, its individual sub-sectors, including corporate law, and institutions - this is the goal, the achievement of which, according to the Constitution of the country, should ensure the legal, democratic, social Russian state (*moral aspect*).

The low level of corporate culture, the underdeveloped social responsibility of business entities, which were formed against the background of the socialist economy transformation into a market economy, the privatization of state enterprises, unstable financial markets, sensitive macroeconomic situation and lack of a regulatory framework of entrepreneurial activity have considerably lowered the pace of socio-economic development of Russia. Hence, adequate legal regulation of corporate relations, based on the good faith principle, should guarantee honesty, decency, reliability, social responsibility of commercial corporate legal entities, ensure the implementation and protection of the rights and interests of corporate members and their counterparties and establishment of the

new forms of public-private partnership¹ in the context of national socio-economic development of the country (*socio-economic aspect*).

In the domestic civil law good faith is a relatively new category. The «good faith» term is mentioned in the RSFSR Civil Code of 1922² (hereinafter referred to as the 1922 RSFSR CC). Art. 152 of the RSFSR Civil Code of 1964³ (hereinafter referred to as the 1964 RSFSR CC) dealt only with a bona fide purchaser and a dishonest owner. For the first time, good faith requirement was introduced into the matter of civil law, item 3 of Art. 6 of the Fundamentals of Civil Legislation of the USSR and the Republics of 1991⁴, which states: «Participants in civil legal relations are assumed to be in good faith, since the opposite has not been proven».

To date, the terms «in good faith», «good faith and bad faith purchaser», «good faith and bad faith actions» are reflected in many provisions of the Civil Code of Russia⁵ (hereinafter referred to as the RF Civil Code), including items 3–4 of Art. 1, item 3 of Art. 53, Art. 302, item 3 of Art. 307 and others. The «good faith» concept is also used in civil and arbitral procedural legislation (part 1 of Art. 35 of the Civil Procedure Code of the Russian Federation⁶, hereinafter – RF CPC; part 2 of Art. 41 of the Arbitration Procedure Code of the Russian Federation⁷, hereinafter – RF APC), which stipulates that, when exercising procedural rights, the persons involved in the case must behave in good faith.

The Decree of the President of the Russian Federation of July 18, 2008 № 1108 «On Improving the Civil Code of the Russian Federation»⁸ approved the

¹ See: Shchukina T.V. The form of strategic planning of the Russian economy - public-private partnership: on the issue of legal regulation // Issues of economics and law. 2021. № 153. P. 27-32.

² The RSFSR Civil Code of 1922. // Izvestiya VTSIK. 1922. № 256.

³ The Civil Code of the RSFSR 1964 // Vedomosti of the RSFSR Supreme Council. 1964. № 24. Art. 407; the RSFSR Code of Laws. 1988. Vol. 2. Art. 7.

⁴ Fundamentals of Civil Legislation of the USSR and the republics of 1991 (approved by the Supreme Council of the USSR on 31.05.1991 № 2211-1) (ed.of 26.11.2001) // Vedomosti of the RF CPD and the SC of the USSR. 1991. № 26. Art. 733..

⁵ The Civil Code of the Russian Federation // Collected RF legislation. 1994. № 32. Art. 3301.

⁶ Civil Procedure Code of the Russian Federation // Collection of RF Legislation. 2002. № 46. Art. 4532.

⁷ Arbitration Procedural Code of the Russian Federation // Collection of the RF Legislation. 2002. № 30. Art. 3012.

⁸ On the Improvement of the Civil Code of the Russian Federation: Decree of the President of the Russian Federation of July 18, 2008 № 1108 (ed.of July 29, 2014) // Collection of the RF legislation. 2008. № 29. Art. 3482.

Concept for the Civil Legislation Development of the Russian Federation⁹ outlining the need to establish the good faith principle at the level of the RF Civil Code as a general legal provision to strengthen moral principles and «improve the efficiency of the civil regulation». Thereafter, Federal Law of December 30, 2012 № 302-FZ «On Amending Chapters 1, 2, 3 and 4 of Part One of the Civil Code of the Russian Federation»¹⁰, item 3 of Art. 1 of the Civil Code of the Russian Federation enshrined the principle of good faith, which participants in civil legal relations must adhere to in establishing, exercising and protecting civil law rights and in performing civil duties. With this in mind, the good faith principle has acquired determining value for the implementation of such civil law categories as the analogy of law, unfair competition suppression, determination of the limits for the civil rights exercise, inadmissibility of law abuse, vindication, etc.

However, the issue of the essence of the good faith behavior of the subjects of corporate relations, which were included in the subject of civil law in the process of amending items 3–4 of Art. 1 of the RF Civil Code, remains unclear. Meanwhile, the influence of the good faith principle on the relations in commercial corporate legal entities, primarily business partnerships and companies, deserves special attention. In this regard, the theoretical justification for the implementation of the good faith principle in civil law exemplified by corporate legal relations of commercial legal entities is a relevant civil law development vector, ensuring the adequate application of its norms (*regulatory aspect*).

The need to study the criteria for good faith behavior of corporate relations participants of commercial legal entities is also caused by practical need, in particular, in resolving corporate disputes. The fact is that the judicial bodies do not always correctly identify the criteria for the ethical behavior of the subjects of legal relations in resolving corporate conflicts, according to the arbitration

⁹ The Concept of Development of Civil Legislation of the Russian Federation (approved by the decision of the RF President Council on codification and improvement of civil legislation of October 7, 2009) // Vestn. VAS RF. 2009. № 11. P. 12.

¹⁰ On Amendments to Chapters 1, 2, 3 and 4 of Part One of the Civil Code of the Russian Federation: Federal Law № 302-FZ of December 30, 2012 // Collected RF legislation. 2012. № 53. Art. 7627.

practice¹¹. Therefore, it is essential to research the legal regulation of these social relations both for the protection of corporate conflicts participants (members of a corporation, the individual executive body, counterparties), and for the development of the unified, adequate judicial practice in this category of cases (*law enforcement aspect*).

The involvement of the good faith principle in the civil law matter, on the one hand, has become a progressive step towards the domestic civil law development, and on the other hand, has generated many questions, both theoretical and practical. Due to the heterogeneity of the civil law subject and, as a result, the diversity of relations being part of its content, identification of the criteria of the good faith of the participants in these social connections turned out to be a challenging issue. In particular, a theoretical and practical study of the good faith principle in the paradigm of the civil law related categories seems relevant to clarify its social and legal content, identify the objective reasons for expanding the scope, including in corporate legal relations of commercial legal entities and the importance of good faith for their operation

(*lawmaking aspect*).

Certain aspects of moral and spiritual principles in law have already been researched by foreign and domestic philosophers and jurists. The issue of morality and law interaction is reflected in the works by such representatives of the classical German philosophy of law as I. Kant, G. W. F. Hegel, J. G. Fichte, F. W. J. Schelling, H. L. A. Hart, L. L. Fuller and others. In Russian philosophical and legal science, N. N. Alekseev, F. M. Dostoevsky, K. Nevolin, L. I. Petrazhitsky, V. S. Solovyov, B. Chicherin and others.

The genesis and evolution of the «good faith» category was studied in different periods of the domestic legal thought history.

¹¹ See, for example: Resolution of the Arbitration Court of the Far Eastern District of May 19, 2015 № F03-1778/2015; Resolution of the Seventeenth Appellate Arbitration Court of June 21, 2016 № 17AP-4412/2016-AC; Resolution of the Arbitration Court of the Ural District of October 31, 2016 № F09-9308/2016 // Electronic Justice. Arbitration case file database. URL: <https://kad.arbitr.ru> / (date of access: 01.10.2020).

In the pre-revolutionary jurisprudence, the issue was studied by S. A. Belyatskin, E. V. Vaskovsky, Yu. S. Gambarov, A. Gordon, G. Dernburg, N. O. Nersesov, I. B. Novitsky, D. I. Meyer, S. V. Pakhman, I. A. Pokrovsky, Ya. A. Kantorovich, V. I. Sinaisky, I. M. Tyutryumov, G. F. Shershenevich, who considered good faith in the context of property (good faith possession) and obligation law.

In Soviet jurisprudence, M. M. Agarkov, S. S. Alekseev, V. K. Babaev, S. N. Bratus, D. M. Genkin, V. P. Gribanov, V. I. Emelyanov, O. S. Ioffe, Yu. Kh. Kalmykov, O. A. Krasavchikov, N. S. Malein, V. P. Mozolin, I. B. Novitsky, G. A. Sverdlyk, V. A. Tarkhov, E. A. Khalfina, B. B. Cherepakhin, E. A. Fleishits, who interpreted good faith as a criterion of personal freedom of subjects of civil law and social service, characteristic of both private and public law.

In the modern civil law science, issues related to the principle of good faith have been developed in the works by S. I. Arkhipov, O. I. Bazhenov, V. A. Belov, V. S. Belykh, E. E. Bogdanova, M. I. Braginsky, G. V. Verdinyan, V. V. Vitryansky, V. A. Vaipan, A. V. Volkov, G. A. Gadzhiev, B. M. Gongalo, T. V. Dozhdev, T. Yu. Drozdova, N. V. Katerin, M. M. Kolesnikova, D. L. Kondratyuk, L. O. Krasavchikova, P. V. Krasheninnikov, O. A. Kuznetsova, M. F. Lukyanenko, A. V. Mayfat, A. L. Makovsky, E. Yu. Matrosov, S. D. Mogilevsky, M. V. Novikov, T. V. Novikova, E. A. Pribytkova, A. S. Ryasina, Yu. K. Tolstoy, O. N. Sadikov, M. N. Semyakin, K. I. Sklovsky, E. A. Sukhanov, M. V. Telyukina, P. S. Fedoseev, F. I. Khamidullina, P. V. Chelyshev, L. A. Chegovadze, A. A. Chukreev, L. V. Shchennikova, A. M. Erdelevsky, A. V. Ulyanov, V. F. Yakovlev and others.

Currently, civil law considers good faith, along with such categories as reasonableness, justice, law abuse prevention, as the basis of civil law in general, the link between its matter and morality. At the same time, the present civil law science lacks monographic studies on the issue of the good faith principle implementation in corporate legal relations of legal entities, in general and commercial ones, in particular. In this regard, the theoretical understanding of the

problems of the good faith principle operation in corporate legal relations of commercial legal entities deserves special development, updating and clarifications, since their activities form the material and economic foundations of the life of Russian society, which predetermine the effectiveness of other spheres of its existence (*doctrinal aspect*).

The degree of scientific elaboration of the topic. In legal science, the problem of the principles of law, including the principle of good faith, has not been overlooked by scientists and practitioners. The interpretation of the category of good faith concentrates ethical, aesthetic, philosophical views, value preferences, provided by the legal culture of Russian society. From a general theoretical perspective good faith was studied in the works of such jurists as L. I. Petrazhitsky, M. M. Agarkov, V. N. Babaev, S. S. Alekseev, I. E. Kabanova, M. A. Polyakov. And such writers as Yu. A. Serikov, A. V. Yudin, N. G. Eliseev considered the meaning and role of the category of good faith in the doctrine of procedural law.

Numerous dissertations have focused on the moral and ethical categories in law. In the general theoretical aspect, the moral categories of law were studied by I. D. Mishina («Moral Values in Law», 1999), V. V. Bulgakov («The Concept of Justice in Law», 2001), A. L. Vyazov («The Principle of Justice in modern Russian law and law enforcement: theoretical and legal research», 2001). In the criminal-legal aspect, the issue of moral principles was studied in the works by S. A. Galaktionov («The principle of justice: criminal-legal aspect», 2004), A. M. Gerasimov («Morality in criminal law», 2006), N. V. Konovalchuk («The principle of justice and its implementation in the criminal law of the Russian Federation», 2009). O. A. Dizer wrote about moral categories in administrative law («Administrative and legal protection of public morality», 2019), in labor law - O. V. Shcherbakova («The influence of moral norms and moral principles on the legal regulation of labor relations», 2017). Such authors as T. Yu. Drozdova («Good faith in Russian civil law», 2007), T. V. Novikova («The concept of good faith in Russian civil law», 2008), A. V. Tatarnikov («The principles of rationality and good faith in the civil law of Russia», 2010), E. E. Bogdanova («Good faith of the

participants in contractual relations and the problems of protecting their subjective civil rights», 2010), E. V. Vasilenko («Categories of «good faith» and «reasonableness» in civil law», 2012). Certain researchers covered the issues of good faith while studying other issues of civil law. These are, for example, A. V. Popova («The principle of good faith in international commercial circulation: legislation and judicial practice of the Russian Federation and member countries of the European Union», 2005), S. A. Ivanova («The principle of justice in civil law», 2006), S. D. Radchenko («Abuse of the right in the civil law of Russia», 2007), E. A. Sorokina («The category of good faith in the Western tradition of law: historical and theoretical aspect», 2009), M. F. Lukyanenko («Estimative concepts of civil law: theoretical and legal analysis and law enforcement practice», 2010), Yu. D. Zhukova («Illegal behavior of the head of a business company as a basis for liability for causing losses to the company as a result of transactions on his behalf», 2013), I. A. Smirnova («Responsibility of the management bodies of business entities. Entrepreneurial and legal aspects», 2013).

A number of scientists, in particular G. Adamovich, A. Melnik, M. A. Rozhkova, D. V. Lomakin, T. V. Kolosovskaya, S. A. Chekhovskaya, S. I. Lutsenko, A. A. Ivanova, E S. Pirogova, V. V. Dolinskaya, A. Yu. Bushuev, D. I. Stepanov, I. S. Shitkina, O. A. Makarova, O. V. Osipenko, S. Yu. Filippova, D. I. Dedov et al., considered only certain (related) aspects of the good faith principle implementation in corporate legal relations of certain commercial legal entities or regardless the specific subjects of civil circulation, in particular, corporation participants, counterparties when contracting, etc.

The above said confirms the relevance of the dissertation research, determines its theoretical and practical importance and the urgent need for its civilistic doctrinal development.

The research object is social connections formed on the basis of the principle of good faith behavior of the subjects of corporate legal relations of commercial legal entities.

The research subject is the theoretical and practical aspects of civil law regulation of the implementation of good faith as the fundamental principle of the corporate legal relations of commercial legal entities, where the starting point is the moral and spiritual principles of philosophical and legal thought.

The aim of the dissertation research is a comprehensive analysis of the problems of civil law implementation of the good faith principle in corporate legal relations of commercial legal entities.

To achieve this aim, the following **objectives** were set:

- reveal and explore the moral and spiritual principles of legal thought;
- analyze the legal, doctrinal and law enforcement aspects of the good faith development as a moral and legal category;
- characterize good faith as a legal principle and consider its relationship with corresponding principles of the civil law;
- explore the legal specifics of corporate legal relations of commercial legal entities from the perspective of the good faith principle implementation;
- consider the process of the good faith principle implementation in exercise of the right to participate in corporate legal relations of commercial legal entities;
- study the process of the good faith principle implementation in exercising the powers of the individual executive body of corporate commercial legal entities;
- characterize the process of the good faith principle implementation when concluding civil law transactions on behalf of corporate commercial legal entities;
- formulate conclusions, recommendations, proposals of a theoretical, law-making and law-enforcement order on the implementation of the good faith principle in corporate legal relations of commercial legal entities.

The methodological basis of the research is the general scientific dialectical methods of cognition: analysis, synthesis, empirical and axiological methods. Also, the study uses specific scientific methods, such as systemic, comparative legal, and historical ones.

In the framework of general scientific methodology, the thesis uses a systematic approach to solving the goals and objectives of the research, which

involves an integrated revealing of the specifics of the good faith principle implementation in corporate legal relations of commercial legal entities.

Using the method of system-structural analysis, the legal phenomenon and legal categories as its components are studied in the system of social, economic, political processes. Norms of civil law, law enforcement, and above all - judicial practice, civil and general legal doctrine formed the empirical basis of the research.

Through the axiological method, the research focuses on value, moral and ethical aspects of the good faith principle implementation in the corporate legal relations of commercial legal entities.

The use of the comparative legal method contributed to a comprehensive study of foreign experience in the legal regulation of the good faith category, which has long been known to foreign jurisdictions, as well as to defining and justification of the concept of fiduciary rights and obligations of the subjects of corporate legal relations.

Due to the historical method, the research demonstrates in the chronological order the genesis and evolution of good faith as a moral and spiritual principle and its transformation into a legal principle through the prism of historical facts and events.

The theoretical basis of the research involved:

- works of philosophers and jurists – representatives of the classical German philosophy and the Russian philosophical and legal science: I. Kant, G. W. F. Hegel, J. G. Fichte; F. M. Dostoevsky, V. S. Solovyov, K. Nevolin, B. Chicherin, N. N. Alekseev, L. I. Petrazhitsky et al.

- scientific research on the moral principles of law by such scholars as S. S. Alekseev, F. I. Khamidullina, N. V. Katerin, P. V. Chelyshev, E. Yu. Matrosova, E. A. Pribytkov et al.;

- works of domestic pre-revolutionary, Soviet and Russian jurists: E. V. Vaskovskiy, Yu.S.Gambarov, D. D. Grimm, N. L. Duvernois, D. I. Meyer, S. A. Muromtsev, K. P. Pobedonostsev, I. A. Pokrovsky, V. I. Sinaisky, G. F. Shershenevich;

- related to the research subject conceptual ideas of legal scholars of the Soviet period and the present time: T. E. Abova, S. S. Alekseev, M. M. Agarkov, V. K. Andreev, V. A. Belov, Yu. G. Basin, E.V. Bogdanov, V.A. Boldyrev, M. I. Braginsky, S. N. Bratus, A. V. Venediktov, A. P. Vershinin, V. V. Vitryansky, G. A. Gadzhiev, B. M. Gongalo, V. P. Gribanov, T. I. Illarionov, O. S. Ioffe, S. M. Korneev, N. M. Korshunov, O. A. Krasavchikov, E. A. Krashenninnikov, A. L. Makovsky, I. B. Novitsky, A. V. Popova, V. V. Rovny, B. M. Seynaroiev, G. A. Sverdlyk, M. N. Semyakin, A. P. Sergeev, E. A. Sukhanov, M. V. Telyukina, B. B. Cherepakhin, E.P. Chornovol, V. F. Yakovlev and others;

- conclusions of such foreign civilists as B. Markesinis, H. Unberath, A. Johnston, R. Zimmermann, S. Whittaker, H. Beale, M. Bartoszek, K. Gareis, M. E. Eisenberg, L. Ribstein, B. Nosworthy and others.

The normative basis of the research consists of the Constitution of the Russian Federation, the Civil Code of the Russian Federation, other federal laws and legal acts, as well as regulatory legal acts of certain foreign countries, international and regional associations (EU, CIS, etc.).

The empirical basis of the research is represented by acts of the Constitutional Court of the Russian Federation, the European Court of Human Rights, the Supreme Court of the Russian Federation and the Supreme Arbitration Court of the Russian Federation, federal arbitration courts of districts and primary arbitration courts, as well as the foreign law enforcement practice.

The scientific novelty of the research is determined by the fact that it is one of the first attempts to develop a concept for the good faith principle implementation in corporate legal relations of commercial legal entities. As a result, the legal category of good faith was defined, as well as such categories as «members of a corporation», «the right to participate in a corporation», «the right to manage a corporation». The relations and interconnection of the good faith principle with the related moral and ethical principles of civil law are analyzed. Provisions on the implementation of the good faith principle, along with the principles of justice and reasonableness, as a fundamental principle of civil law are

substantiated. Characteristic features of the good faith principle implementation in corporate legal relations of commercial legal entities are highlighted, and main directions for the good faith principle implementation in corporate legal relations of commercial legal entities are analyzed.

The scientific novelty of the research is revealed in the following statements **submitted for Dissertation presentation.**

1. The dissertationist argues the statement that the origins of the «good faith» estimated category and subsequently the legal principle of domestic civil law, do not go back to the norms of Roman law, as some civilists believe, but to the ancient Greek, German, French and English theorists' treatises, which were further critically reconsidered and developed in the scientific works of the Russian philosophers and jurists. In this connection, the author substantiates the identification of three stages in the evolution of civilistic thought on the good faith category, each of which is characterized by the scientists' specific approach to determining its essence and functional purpose in law.

I. The pre-revolutionary stage, when good faith was elevated to the level of spiritual value and cultural good.

II. The Soviet stage, when good faith is seen as a limitedly functioning postulate in the context of social dogma.

III. The modern stage, when good faith is interpreted as an objective-subjective category that plays the role of a behavioral standard for the subjects of law, and is recognized by society as a moral and spiritual principle and a criterion for applying the rules of law, in general and corporate law, in particular.

2. Despite the fact that, according to the domestic concept of improving civil legislation, the principle of good faith is characterized as universal, the dissertationist justifies the need to specify it in relation to individual civil, including corporate, legal relations, as its effect is manifested in the context of specific subjective rights and subjective legal obligations, and the civil law effect largely depends on the empirical choice by the legislator of its application to certain situations.

The specific character of the good faith principle implementation is predetermined by the social and legal nature of corporate legal relations of commercial legal entities, which are classified by the dissertation author into the main ones, that is, the relations developing in terms of participation in the corporation and its management, and derivatives - the relationship between the corporation and the individual executive body; between participants under a corporate agreement; arising from the conclusion of major transactions and transactions with interest.

3. The thesis defends the provision that good faith, justice, reasonableness and prevention of abuse of the right are legal categories which must be considered as a system of interrelated and interdependent concepts, each of which has its own functional purpose:

a) good faith - a legal category elevated to the principle of civil law, which determines the behavior of the subject of civil legal relationship, which is formed in conditions of mutual trust, balance of other participants' interests, and acts as a social value basis, a civil law principle stabilizing civil turnover;

b) justice - a legal category of law which stimulates the achievement of an ideal balance of interests of participants in civil circulation, including through the requirement of good faith behavior, which, along with the principles of equality of parties, freedom of contract, inviolability of private property, plays the role of one of the main tools for its ensuring;

c) reasonableness - a legal category that forms objective volitional prerequisites for the implementation of the provisions of civil law institutions and can play the role of an independent legal principle; at the same time, it acts as one of the criteria of the good faith principle, and hence, of the justice in general: the moral cannot be unreasonable;

d) prevention of law abuse - a legal category elevated to the principle of civil law, according to which participants in civil circulation are obliged to act within the limits of good faith behavior; in this respect, abuse of right acts as a

phenomenon opposite to good faith (i.e., as bad faith), but the understanding of the latter is mediated by the criteria of good faith behavior.

4. Highlighting the specifics of applying the civil law category of good faith in corporate legal relations, the dissertationist justifies the need to proceed from understanding it as an objective-subjective phenomenon:

- the implementation of good faith in corporate legal relations in an objective sense implies a certain behavioral standard, a set of fiduciary rights and obligations that a participant and a head of commercial legal entity should be guided by when exercising their corporate rights and obligations;

- good faith in corporate legal relations in the subjective sense is implemented on the basis of the following criterion: the subject of corporate legal relations «knew or should have known».

5. The author of the dissertation provides a definition to the good faith principle, which is a basic, universal moral and ethical paradigm of the civil law regulation and the limits of judicial discretion in corporate legal relations of commercial legal entities, such as: the exercise by members of corporations of the absolute right to participate; realization by members of corporations of the right to manage, including within the framework of corporate agreement; behavioral standards of a commercial entity management bodies; entering into civil law transactions on behalf of corporations.

6. Based on the fact that the legislator has proposed a fragmentary open-ended list of qualifying features of legitimate interest of a minority participant in obtaining information, the dissertationist justifies the need to legally determine their exhaustive list and assign the founders of all corporate commercial legal entities, without exception, to be fixed in the statutory documents.

Synthesizing various criteria developed in judicial practice and the legal doctrine representatives' judgments on corporate interest in the context of the good faith principle implementation, the dissertation author proposes her own definition of the legitimate interest of a minority participant in the exercise of the right to receive information, and highlights its features.

A justified interest in obtaining information by minority shareholders of a corporation is the one that prevents from subsequent abuse and encroachment on the joint interest of the company as a whole, as well as the interests of other subjects of corporate relations.

The signs of legitimate interest in obtaining information by a minority participant are: planning the sale of their shares or share (contribution) in the authorized capital (including during bankruptcy proceedings); preparation for going to court with a demand to challenge the decision of the management bodies or the contract concluded by the corporation, or to hold the management bodies liable; preparation for participation in the general meeting of shareholders (participants).

7. The dissertationist is the first to substantiate the model of proper behavior of a corporation director, where the basis for the trusting attitude towards them from the company and its participants is their professional and business qualities, which gives them wide opportunities in managerial decision-making. By revealing the fiduciary rights and obligations of the individual executive body of a commercial corporation through the criteria of good faith and reasonableness, the dissertationist proves that the reasonableness of their actions predetermines their good faith behavior in general. With this in mind, the author singles out the relationship between the objective and subjective criteria of the good faith behavior of the head of the corporation. The objective criteria include such professional qualities of an individual as managerial competence, erudition in the field of marketing, labor and economic legislation, and the subjective parameters of the head of a corporation behavior include entrepreneurial intuition, leader qualities, and desire to take responsibility.

8. Based on the analysis of the modern judicial practice, which goes beyond the highest courts position, which consists in taking into account only two grounds for recognizing a transaction as invalid - conspiracy and obvious damage, the dissertation author, in the concept of the good faith principle, formulates an updated unified standard of bad faith of a counterparty when challenging

transactions with reference to item 2 Art. 174 of the Civil Code of the Russian Federation. This standard is expressed in the following open-ended list of abuses by an unscrupulous counterparty of a commercial legal entity and the management bodies of the latter:

a) failure by the counterparty to provide proof of determining the property market value on the eve of conclusion of the disputed contracts;

b) lack of announcement on the part of the head of a commercial corporation about the intention to sell the disputed real estate objects, belonging to them, on the open real estate market;

c) conclusion of disputed transactions with an unfair counterparty within a short period of time on conditions that do not correspond to the market ones;

d) the conclusion of a transaction by the head of a commercial organization in the context of corporate conflict.

A unified standard of bad faith behavior should be applied in the practice of courts at various levels, as well as directly by participants of litigation with reference to item 2 Art. 174 of the Civil Code of the Russian Federation.

9. Proceeding from the analysis of generalizations developed by the Supreme Court of the Russian Federation in different periods, the dissertationist identifies a number of conditions that lower courts, and also participants in bankruptcy cases, must take into account when determining the legal nature of financing a commercial corporation in the form of a loan agreement. These conditions include:

- the existing crisis situation in the corporation, as well as a plan for overcoming the crisis situation arising at the company management level;

- lack of publicity (publication) for the financial transaction of issuing a loan;

- creating an illusion of financial solvency before creditors;

- the potential risk of inefficiency of the chosen measure of the enterprise reorganization and, as a result, the risk of losses, which can subsequently be

assigned to the participant (shareholder) who carried out additional capitalization of the debtor, etc.

Under these conditions, the behavior of a controlling person providing financing in the form of a loan agreement should be considered in bad faith if such a corporate creditor claims further to be registered together with other independent creditors in a bankruptcy case of a commercial organization.

Theoretical and practical significance of the research. The given paper systematizes and enriches the existing knowledge of the research subject, identifies unresolved issues and indicates directions for the subsequent scientific development in the field of civil law regulation of corporate relations of commercial legal entities based on the principle of good faith.

Based on the theoretical study of the problems of the good faith principle implementation in corporate relations of commercial legal entities, a number of proposals are made to improve the current civil legislation in this field, in particular, Art. 1, 65.2, 53.1, 1081 of the RF Civil Code, Art. 44 of the Federal Law «On Limited Liability Companies», Art. 71 of the Federal Law «On Joint Stock Companies». In addition, to regulate the behavior of participants and heads of corporate commercial legal entities, the expediency is substantiated of developing and approving by the RF Ministry of Social and Economic Development of the Corporate Governance Code, which structure is provided in the Appendix.

The conclusions and provisions of the given work can be used for further scientific research in the field of studying the principles of civil law, law-making activities for their implementation in legal matter, in the educational process for «Civil Law», «Business Law», «Corporate Law» courses and in re-training programs for practitioners, as well as the practice of regulating corporate relations and the activities of commercial legal entities.

For today, the results of the research are of practical interest and have been used at the **«Ural Mining and Metallurgical Company» OJSC (Uspensky av, 1, Verkhnyaya Pyshma, Sverdlovsk region, Russia, 624091; Tel.: (34368) 9-62-**

00, (343) 379-48-36, fax: (34368) 4-60-51, e-mail: info@ugmk.com, www.ugmk.com) while developing local regulatory acts for both UMMC and other commercial organizations involved, which transferred under the agreement the powers of the individual executive body of «UMMC» OJSC, as well as when preparing major transactions and transactions with interest by the designated legal entities, and taking into account the ESG factors (corporate governance factors), which is confirmed by the Act on the practical application of the provisions of the dissertation research on the topic: «The good faith principle in corporate legal relations of commercial legal entities» of February 21, 2022 № 11/28.

Aprobation of the research results. The thesis was prepared, discussed and reviewed at the Civil Law and Process Department of the Ural Institute of Management - branch of the Federal State Budgetary Educational Institution of Higher Education «Russian Presidential Academy of National Economy and Public Administration».

The main statements and conclusions of the given research were reflected in 19 scientific publications, including 6 publications in journals recommended by the Higher Attestation Commission under the Ministry of Science and Higher Education of the Russian Federation and the Academic Council of the RANEPa, in 3 publications from international citation databases (WoS, Scopus, Springer), in 10 publications in other collections.

Articles in the leading peer-reviewed scientific journals as determined by the Higher Attestation Commission.

1. Cherkasova, O. V. Justified interest as a criterion for the good faith behavior of a minority participant in exercising the right to receive information on Russian corporate law / O. V. Cherkasova // Legal Research. - 2019. - № 12 - P. 35–43.

2. Cherkasova, O. V. Formation of the good faith principle in the domestic civil law: historical, doctrinal, and law enforcement aspects / O. V. Cherkasova // Genesis: historical research. - 2020. - № 2. - P. 15–27.

3. Cherkasova, O. V. Abuse of rights by participants in business entities / O. V. Cherkasova // Bulletin of Arbitration Practice. - 2020. - № 5. - P. 27–35.

Articles in publications recommended by the RANEPА Academic Council to publish articles on jurisprudence.

1. Cherkasova, O. V. Legal status of subjects of corporate relations: doctrinal and law enforcement aspects / O. V. Cherkasova // Arbitration and civil process. - 2021. - № 2. - P. 3–7.

2. Cherkasova, O. V. Economic and legal essence of corporate relations: doctrinal and legal aspects / O. V. Cherkasova // Law and Economics. - 2021. - № 4. - P. 19–26.

3. Cherkasova O.V. Moral and ethical categories in civil law / O. V. Cherkasova // Lawyer. - 2021. - № 10. - P. 15-17.

Articles in publications included in international citation databases (WoS, Scopus, Springer) to publish the results of the dissertation research.

1. Cherkasova, O. V. Corporation as participant in economic relations / O. V. Cherkasova // The 13th International Days of Statistics and Economics / ed. by L. Tomáš, P. Tomáš. – Prague: Libuše Macaková, 2019. – P. 514–523.

2. Cherkasova O.V. Legal and social aspects of the state participation in the governance of the large corporations in Russia / Cherkasova, Oxana ; Sosnovskikh, Sergey // In: E3S Web of Conferences. - 2020. - Volume 222.

3. Sosnovskikh, S. Reasonable Entrepreneurial Risk: Behavioral Criteria for Corporate Managers / S. Sosnovskikh, O. Cherkasova // Russian Law Journal. - 2021. - Vol. 9. - № 1. - P. 58–80.

Other articles.

1. Cherkasova, O. V. The legal nature of corporate relations in the civil law doctrine / O. V. Cherkasova // Actual problems of private law: interuniversity collection of scientific papers / ed. E. P. Chornovol. - Ekaterinburg: Publishing House of UIU (b) RANEPА, 2017. - Iss. 9. - P. 17–22.

2. Cherkasova, O. V. Public legal entities as a subject of responsibility in corporate relations / O. V. Cherkasova // Municipality. - 2018. - № 9. - P.72–76.

3. Cherkasova, O. V. Correlation of the good faith principle with the corresponding principles of civil law / O. V. Cherkasova // Urgent issues of private law: interuniversity collection of scientific papers / resp. ed. E. P. Chornovol. - Ekaterinburg: Publishing House of UIU (b) RANEPa, 2019. - Iss. 10. - P. 23-30.

Besides, the statements were presented in the author's speeches at scientific and practical conferences:

IV Moscow Legal Forum (Moscow, 2016);

XII International scientific and practical conference «Kutafin Readings» (Moscow, 2016);

III International scientific and practical conference «Strategies for the Development of Social Communities, Institutions and Territories» (2016);

VII International scientific and practical conference «Law in the Modern World» (Ekaterinburg, 2017);

III International scientific and practical conference «Strategy for the Development of Social Communities, Institutions and Territories» (Ekaterinburg, 2017);

XII International scientific and practical conference (Kutafin Readings) (Moscow, 2017);

II All-Russian scientific and practical conference with international participation, dedicated to the Lawyer's Day (Kurgan, 2017);

International scientific symposium «Economics, Business & Finance» (Jurmala, 2018);

III All-Russian scientific and practical conference with international participation, dedicated to the Lawyer's Day (Kurgan, 2018);

XIV International conference «Russian Regions in the Focus of Change» (Ekaterinburg, 2019) and others

XV International scientific and practical conference «Russian regions in the focus of change» (Ekaterinburg, 2020).

The results of the research were tested in the course of lectures, seminars and practical classes on Civil law and Business law at B. N. Yeltsin, the first President

of the Russian Federation Ural Federal University and used in working out teaching materials for these courses, and were also used by the author in the practice of a legal adviser in the judicial and executive authorities. The analytical material can be used for the development of civil law as a branch of science, field of law and academic discipline.

The structure of the dissertation is determined by the subject, purpose and objectives of the research. The dissertation consists of an introduction, two chapters, with three sections each, conclusions, a list of references and an appendix.

The content of the work

The Introduction indicates the relevance of the chosen topic, the degree of the problem elaboration, determines the object and subject of the research, its goals and objectives, normative, theoretical and empirical framework and methodology used. The Introduction also reveals the research novelty and sets forth the confirming provisions, which are submitted for the thesis presentation, thus formulating the theoretical and practical significance of the obtained results.

The first chapter «Genesis and evolution of good faith as a moral and legal category and its transformation into a legal principle» includes three sections and is devoted to the moral and spiritual origins of the good faith formation as a legal category, a legal principle in the historical, law enforcement and doctrinal aspects, as well as the legal nature of cooperative legal relations and the specifics of the good faith principle implementation in corporate legal relations of commercial legal entities.

The first section *«Legal, doctrinal and law enforcement aspects of the formation of good faith as a moral and legal category»* defines the origins of moral and spiritual views in law and analyzes their manifestation at different development stages of the foreign and domestic philosophy of law. It highlights

key milestones of the good faith category development in legal norms, and also its genesis and evolution in terms of civil law doctrine.

The second section *«Good faith as a legal principle and its relationship with the corresponding principles of civil law»* provides the definition of good faith and differentiation of moral and ethical principles in civil law in terms of their functional purpose. It also determines the role and significance of the good faith principle for the functioning of civil law together with such related civil law principles as the principle of justice, reasonableness and law abuse prevention.

The third section *«Legal nature of corporate legal relations and specifics of the good faith principle implementation in corporate legal relations of commercial legal entities»* examines the issue of legal nature of corporate legal relations based on their unique subject composition, which contributed to the achievement of legal certainty referring to such concepts as «membership in a corporation», «the right to participate in a corporation», «the right to manage a corporation». Moreover, the section analyzes the specifics of applying the subjective-objective phenomenon of good faith in terms of corporate legal relations of commercial legal entities.

The second chapter «Main directions of the good faith principle implementation in corporate legal relations of commercial legal entities», which includes three sections, is devoted to the problems of the good faith principle implementation in relation to the subjects of corporate relations of commercial legal entities. In addition, the second chapter considers the issue of the good faith principle implementation when concluding transactions on behalf of corporate commercial legal entities.

The first section *«Implementation of the good faith principle when exercising the right to participate in corporate legal relations of commercial legal entities»*, reveals the developed in the doctrine and judicial practice features of good faith and bad faith behavior when exercising the right of a minority shareholder to receive information, during a general meeting of participants, with an additional capital issue. From the perspective of the good faith principle implementation, the issue of participation in corporate legal relations of such

specific founders (participants) of corporate commercial legal entities as public legal entities is revealed.

The second section of this chapter *«Implementation of the good faith principle in the exercise of the management powers of corporate commercial legal entities»*, formulates the standards of the good faith and reasonable behavior of the head of a commercial corporation.

The third section *«Implementation of the good faith principle when transacting on behalf of commercial corporate legal entities»* focuses on analyzing a number of situations of the law enforcement practice connected with the conclusion of transactions on corporate grounds, including: major transactions and transactions with interest, transactions related to the purchase and sale of a share (shares), transactions to provide a loan, in terms of good faith and bad faith behavior of their participants.

The Conclusion of the dissertation formulates the main conclusions on the research topic, as well as proposals for improving current legislation, in particular, Art. 1, 65.2, 53.1, 1081 of the RF Civil Code, Art. 44 of the Federal Law «On Limited Liability Companies», Art. 71 of the Federal Law «On Joint Stock Companies».

The Appendix provides the structure and separate provisions related to the implementation of the good faith principle and the Corporate Governance Code in corporate legal relations of commercial legal entities.