

**Federal State Budgetary Educational Institution  
of Higher Education  
RUSSIAN ACADEMY OF NATIONAL ECONOMY AND PUBLIC  
ADMINISTRATION UNDER THE PRESIDENT  
OF THE RUSSIAN FEDERATION**



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**PROHIBITIONS AND RESTRICTIONS ON THE RIGHT TO  
PARTICIPATE IN THE MANAGEMENT OF BUSINESS ENTITIES**

Specialty 5.1.3. private law (civil) sciences

**DISSERTATION ABSTRACT**  
for the degree of PhD in Law sciences

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Moscow – 2026

**Relevance of the dissertation research topic.** The right to participate in the management of business entities is one of the key corporate rights ensuring the alignment of the will of all participants of the business entity to achieve common goals. It should be noted that in recent years, there has been a stable trend towards expanding the ways of establishing prohibitions and restrictions on this right, which are necessary to ensure the stability of corporate legal relations, combat dishonest behavior of participants, adapt to sanctions pressure, protect strategic assets, and limit the influence of unfriendly participants (shareholders).

Based on the provisions of Article 8 of the Constitution of the Russian Federation, it follows that freedom of economic activity is guaranteed in the Russian Federation. However, excessive permissiveness in the absence of necessary restrictions can lead not to the most complete realization of the principle of freedom of economic activity, but to a violation of the rights and lawful interests of its participants. The introduced restrictions and prohibitions on the right to participate in the management of business entities should be considered not as an exception to the principle of freedom of economic activity, but as a means of its actual implementation.

However, it should be noted that the legality of such prohibitions and restrictions has repeatedly been examined by the Constitutional Court of the Russian Federation, for example, in the Decree of the Constitutional Court of the Russian Federation dated March 13, 2018, No. 580-O, March 13, 2018, No. 581-O, and No. 582-O. Doubts were raised regarding the compliance of subparagraph "f" of paragraph 1 of Article 23 of the Federal Law No. 129-FZ dated August 8, 2001, "On State Registration of Legal Entities and Individual Entrepreneurs," which prohibits the registration of legal entities, with the Constitution of the Russian Federation. However, according to the Constitutional Court, the provisions of the aforementioned law cannot be considered excessive, disproportionate, or incompatible with constitutionally significant values limiting the constitutional rights of citizens, which is quite controversial.

Excessive use of restrictions (not always justified) can lead to even greater problems, such as "constraining" economic initiative, fears of engaging in active economic activities, and an inability to realize the potential of economically active populations. An illustrative example of this situation is the prohibition on participation in the management of business entities, which is imposed on persons declared bankrupt, and also affects bona fide bankrupts whose financial insolvency is not related to erroneous managerial decisions and does not pose a threat to the interests of the entity or its creditors. According to data from Federal Reserve for 2025, the number of court bankruptcies of individuals and sole proprietors reached 568 thousand, which is 31.5% more than in 2024. A significant portion of bankrupt persons could be beneficial to the economy. It is evident that a universal ban on management for all bankrupts without exception ceases to be justified, as it does not differentiate clearly between obviously dishonest persons and those whose insolvency resulted from objective market circumstances.

At the same time, in some cases, a reverse situation is observed, where restrictions and prohibitions are formally established but do not actually produce the desired result, which also creates legal uncertainty and can lead to abuse or conflicts between participants of business entities. For example, when a person is disqualified, they still retain the opportunity to participate in the management of business entities until the relevant court ruling becomes final, allowing such a person to continue influencing key internal corporate decisions for some time. The time gap between the court ruling on disqualification and its entry into force creates a "gray zone" that dishonest participants of business entities can exploit to make unscrupulous decisions.

The analysis of the doctrine and legal practice indicates the absence of a systematic approach to establishing prohibitions and restrictions on the right to participate in the management of business entities. The examined bans and limitations are fragmentary, often incidental in nature, and represent disparate measures enacted situationally. Only recent events related to unprecedented sanctions pressure have led to the realization that restrictions and prohibitions should

form an internally consistent system rather than be a mere reaction to external challenges. In this regard, the study of prohibitions and restrictions on the right to participate in the management of business entities is relevant not only for business companies and their participants but also for civil turnover as a whole.

**The degree of development of the scientific problem.** Theoretical approaches to defining the essence, legal nature, and characteristics of "prohibitions" and "restrictions" are studied in fundamental and applied works by domestic authors: S. S. Alekseev, N. N. Alekseev, N. G. Bratko, D. D. Grimm, O. S. Ioffe, V. P. Kamyschanovsky, A. V. Malko, N. N. Rybushkin, M. M. Sultygov, Yu. N. Slepchenko, F. N. Fatkullin, and others.

Research on the "*limits*" in law is devoted to the works of the following scholars: D. A. Abezina, A. P. Anisimova, A. M. Gulyaeva, G. A. Gadzhiyeva, N. D. Grigorieva, V. P. Gribanova, V. P. Krasheninnikova, D. I. Meyer, A. A. Podmarev, N. S. Potapenko, A. A. Stepanova, and others.

Issues related to the restriction of corporate rights have been considered in the works of: A. S. Alexandrov, A. V. Gabov, A. S. Vlasov, O. I. Gentovt, A. V. Gutenev, M. A. Ioncev, V. A. Laptev, I. S. Shitkina, and others.

Research dedicated to questions related to the content of the right to participate in the management of business entities includes works by: V. K. Andreev, O. V. Gutnikov, S. I. Luschenko, V. A. Laptev, Yu. G. Leskova, I. S. Shitkina, and other scholars.

Separate types of prohibitions and restrictions have been studied in the works of: S. D. Mogilevskiy, A. V. Gabov, I. S. Shitkina, A. E. Osipova, O. I. Gentovt, M. Yu. Tikhomirov, O. V. Osipenko, and others.

The studies dedicated to the issue of prohibiting bankrupt individuals from participating in the management of business entities include works by S. L. Budylin, V. I. Grigoriev, Yu. S. Povarov, S. A. Slesareva, and others.

The prohibition on participation in the management of business entities established for persons subject to disqualification has been examined by

O. V. Osipenko, P. V. Kalenksy, A. S. Gomnov, R. A. Lubsky, V. A. Klimov, T. A. Gumerov, Yu. S. Kharitonova, A. A. Mokhov, and others.

Research on the issue of prohibiting state civil servants from participating in the management of business entities has been conducted by M. V. Karpichev, A. M. Khuzhin, K. V. Cherkasov, A. S. Sergeev, S. G. Kiselev, S. P. Grishaev, and others.

The limits of restricting the right to participate in the management of business entities through corporate agreements have been explored in the works of A. S. Aleksandrova, A. V. Bulat, M. A. Egorova, A. E. Osipova, L. V. Russkikh, S. Yu. Filippova, and others.

Some problematic issues related to restricting shareholders' rights during voting have been addressed in the works of I. T. Tarasov, G. F. Shershenevich, I. A. Samoylova, V. G. Krylov, I. S. Shitkina, A. V. Gabov, D. V. Lomakin, and other authors.

Separate problematic aspects of restricting the right to participate in the management of business entities during inheritance and division of jointly acquired property of spouses have been reflected in the works of A. N. Levushkin, I. S. Shitkina, A. V. Gabov, I. A. Samoylova, E. A. Kozina, T. A. Batrova, Yu. S. Kharitonova, and other scholars.

**The purpose and objectives of the dissertation research.** The aim of the dissertation is to develop theoretical and practical provisions that, collectively, allow for the formulation of a uniform approach to understanding the types, grounds, and consequences of establishing prohibitions and restrictions on the right to participate in the management of business entities. Additionally, it aims to propose scientific recommendations for addressing legal gaps and resolving legal conflicts in the studied area.

The achievement of the research goal is facilitated by solving the following **tasks**:

- to investigate doctrinal approaches to the correlation between the concepts of "prohibition," "restriction," and "limit";

- to reveal the content of corporate law regarding participation in the management of business entities;
- to demonstrate the diversity of types of prohibitions and restrictions on the right to participate in the management of business entities;
- to examine the specifics of prohibiting bankrupt individuals from participating in the management of business entities;
- to analyze the distinctive features of disqualification as a basis for establishing a prohibition on participation in the management of business entities;
- to explore the specifics of legislative prohibitions on state civil servants' participation in the management of business entities;
- to determine the limits of restricting the right to participate in the management of business entities within a corporate agreement;
- to investigate methods and consequences of restricting shareholders' rights during voting;
- to consider the features of restricting the right to participate in the management of business entities through inheritance and division of jointly acquired property of spouses.

**Object and subject of the dissertation research.** The object of the dissertation research is the social relations that develop during the establishment of prohibitions and restrictions on the exercise of the right to participate in the management of business entities in the legislation of the Russian Federation and foreign countries.

**The subject of the dissertation research.** The subject of the dissertation research is the norms of Russian and foreign legislation, judicial practice, doctrinal sources dedicated to problematic issues of prohibitions and restrictions on the exercise of corporate rights to participate in the management of business entities.

The theoretical and methodological basis of the dissertation research. The foundation of the theoretical constructs of the dissertation research is presented by the works of prominent civil law scholars on the system of legal entities and the

place of corporate organizations / non-profit corporate organizations within them (E. A. Sukhanov, S. D. Mogilevsky, N. V. Kozlova, T. V. Soifer).

**Theoretical basis of the research** consists of the works of scientists: monographs, dissertation studies, scientific articles, educational literature on issues related to the study of "prohibitions," "restrictions," and "limits" in law (S. S. Alekseeva, N. N. Alekseeva, N. G. Bratko, D. D. Grimm, V. P. Gribanov, O. S. Ioffe, V. P. Kamyschan, A. V. Malko, N. N. Rybushkin, M. M. Sultygov, Y. N. Sleptchenko, F. N. Fatkullin, and others), as well as works of scientists directly related to establishing specific prohibitions and restrictions on the implementation of corporate rights to participate in the management of business entities (A. S. Alexandrov, A. S. Vlasov, O. I. Gentov, A. V. Gutenev, M. A. Ioncev, V. A. Laptev, I. A. Samoylova, S. D. Mogilevsky, I. S. Shitkina, A. V. Gabov, D. V. Lomakin, A. N. Levushkin, Y. S. Kharitonova, Y. S. Povarov, V. G. Krylov, and others).

The methodological basis of the dissertation research consists of general scientific and special scientific methods. The general scientific methods used in the research include: the universal dialectical method, deduction and induction, analysis and synthesis, systemic research method, method of generalization and systematization. The special scientific methods include: comparative legal, historical-legal, formal-legal, legal modeling, and others.

**The informational base of the dissertation research.** The informational base includes: the Constitution of the Russian Federation, the Civil Code of the Russian Federation, Federal Law No. 14-FZ of 08.02.1998 "On Limited Liability Companies," Federal Law No. 208 of 26.12.1995 "On Joint Stock Companies," Federal Law No. 127-FZ of 26.10.2002 "On Insolvency (Bankruptcy)," Federal Law No. 79-FZ of 27.07.2004 "On State Civil Service of the Russian Federation," and other federal laws, as well as the provisions of subordinate normative legal acts adopted in their implementation (decrees of the President of the Russian Federation, resolutions of the Government of the Russian Federation, other normative legal acts of government authorities) concerning various aspects of establishing prohibitions

and restrictions on the right to participate in the management of business entities. Foreign legislation on issues of establishing prohibitions and restrictions on the exercise of corporate rights to participate in the management of business entities from such foreign countries as Canada, China, Germany, the United Kingdom, Denmark, and other foreign states.

The informational base of the dissertation research also includes resolutions of the Constitutional Court of the Russian Federation, resolutions of the Plenums of the Supreme Court of the Russian Federation, resolutions of the Higher Arbitration Court of the Russian Federation, containing interpretations of the norms of civil and corporate legislation, judicial practice of arbitration courts (more than 80), addressing specific contentious issues related to the establishment of prohibitions and restrictions on the right to participate in the management of business entities. In addition to these sources, the author also extensively used charters and internal documents of business entities (15 of which are reflected in the text of the dissertation).

**The validity and reliability of the research results** are ensured by forming conclusions based on the analysis and interpretation of normative legal acts of the Russian Federation, law enforcement acts, charters and internal documents of business entities, scientific studies (dissertations, monographs, scientific articles, conference theses), as well as by applying various scientific research methods by the author, which allow for the development of the necessary approach and direction in forming original authorial conclusions.

The provisions presented for defense and possessing scientific novelty represent the main results achieved in reaching the research goal and solving the relevant tasks. They reflect the author's position regarding the specifics of establishing prohibitions and restrictions on the right to participate in the management of business entities. The scientific novelty of the dissertation lies in the fact that an important scientific task has been solved: a theoretical base has been developed for further scientific research into mechanisms for establishing and applying prohibitions and restrictions on the exercise of the right to participate in the

management of business entities. The conclusions and provisions formulated in the study allow for a new approach to assessing the legal consequences of such prohibitions and restrictions, determining criteria for their admissibility, and proposing directions for legislative improvement.

*The author has formulated the following provisions for the dissertation defense:*

1. It is substantiated that a "restriction" of the right to participate in the management of business entities narrows the possibility of implementing the management rights belonging to the participants, while a "prohibition" on exercising the right to participate in management can exclude the possibility of implementing both the corporate right as a whole and its individual powers. The restriction of the corporate right to participate in management of business entities can be lifted through actions taken by a person with limited rights aimed at eliminating the reasons associated with its establishment, whereas a prohibition does not permit such an opportunity. The distinction between "restriction" and "prohibition" is based on the following fundamental differences, expressed in:

- 1) on the grounds of their establishment and removal;
- 2) on the establishment; period
- 3) on the degree of influence on the legal status of the participants in business entities.

The establishment of a "prohibition" or "restriction" on the exercise of the right to participate in the management of business entities or its individual powers does not entail their exclusion from the content of the legal status of the participants in these societies (the provision, submitted for protection, *corresponds to paragraphs 6 and 9 of the passport of specialty 5.1.3. Private Law (Civil Law) sciences*).

2. It is proved that the realization of powers included in the content of the right to participate in the management of business entities can be carried out both through active actions of the authorized person and through passive behavior, initiated by other participants of the business entity or the entity itself.

*Active* powers should be considered those for which a participant of the business entity needs to perform specific actions aimed at creating certain legally significant consequences both for himself and for the entity as a whole. Active powers express the will of the participants of the business entities and imply initiative within the framework of established corporate procedures.

*Passive* powers are exercised without the need for the authorized person to perform any active actions that lead to certain legally significant consequences. The realization of passive powers occurs at the initiative of other participants in the business entity or the entity itself, without the need for active actions on the part of the authorized person (*the provision, submitted for protection, corresponds to paragraphs 6 and 9 of the passport of specialty 5.1.3. Private Law (Civil Law) sciences*).

3. It has been established that the charters of business entities specify the participants' right to participate in the management of the entity's activities, as well as establish the general procedure for its implementation, while the specific powers constituting the content of this right are determined by legislation. The list of powers included in the content of corporate rights to participate in the management of business entities is established by special corporate legislation and can be considered closed (exhaustive), as it cannot be supplemented in the charters of business entities.

The charters of business entities may specify the procedures for implementing individual management powers, establishing internal procedures and regulations for their exercise (for example, the specific mechanism for convening the general meeting of participants, regulations for conducting voting, forms of notifications about the procedure for holding the general meeting, etc.), but they cannot provide for new management powers that go beyond the legislatively established framework (*the provision, submitted for protection, corresponds to paragraph 6 of the passport of specialty 5.1.3. Private Law (Civil Law) sciences*).

4. It has been established that during the situational transformation of the right to participate in the management of business entities into a corporate obligation, the content of the legal status of the participants (members) of the entity changes. In this

process, some of their rights, which are part of the subjective corporate right to participate in the management of the entity's activities, due to the occurrence of certain legally significant circumstances, acquire the nature of an obligation. Failure to fulfill this obligation can be qualified as abuse of rights and may serve as grounds for excluding a participant from the entity.

The situational transformation of the corporate right to participate in management is not absolute.

Corporate rights to participate in the management of business entities have a mixed character because, even considering the situational transformation, individuals endowed with such rights retain a certain set of powers, and only a part of these powers, within the content of the researched right, transform into obligations.

The transformation of some powers within the content of the corporate right to participate in management into obligations is driven either by the necessity of making critically important decisions for the continuation of the entity's activities or by the conclusion of a corporate agreement among participants (*the provision, submitted for protection, corresponds to paragraph 6 of the passport of specialty 5.1.3. Private Law (Civil Law) sciences*).

The necessity of establishing a differentiated approach to regulating the participation of bankrupt individuals in the management of business entities is justified, according to which:

- for a bona fide bankrupt citizen, it is proposed to maintain the prohibition on participation in the management of business entities, but with an exception. This exception would allow such a person, without the assistance of a trust manager, to independently exercise the voting rights when the general meeting makes decisions on issues that require unanimous approval of all participants or on issues without which the entity's work would be blocked or significantly impeded.

- for a dishonest bankrupt citizen, the prohibition on participation in the management of business entities will continue to apply without any exceptions. However, there will be the possibility of engaging a trust manager, which, on the

one hand, protects their rights and prevents exclusion from the entity due to inactivity that impedes the entity's activities. On the other hand, it preserves the impossibility of their personal participation in corporate governance. *(The provision submitted for protection corresponds to paragraph 6 of the passport of specialty 5.1.3. Private Law (Civil Law) sciences).*

6. The necessity of ensuring the independence of the trust manager when transferring securities to state civil servants into trust management has been substantiated. The independence of the trust manager can be achieved by coordinating their candidacy with the commission for compliance with the requirements for the conduct of state civil servants and conflict of interest regulation, to which they will be accountable. An exception to the obligation of the trust manager to report to the management founder (the civil servant), established in paragraph 4 of Article 1020 of the Civil Code of the Russian Federation, will ensure increased objectivity and independence of their activity, reduce the risk of influence and pressure from the management founder, and also minimize the likelihood of potential conflicts of interest. *(The position submitted for protection corresponds to paragraphs 6 and 8 of the passport of specialty 5.1.3. Private Law (Civil Law) sciences).*

7. It is justified that restriction of the corporate right to participate in the management of business entities in the corporate agreement is only possible if the criteria for its permissibility are met:

- the term and/or condition that terminates the restriction, i.e., the restriction introduced by the corporate agreement should not be indefinite, but for a certain period or until a specific legally significant event occurs;
- compliance with imperative legislative requirements;
- the purpose, i.e., the restriction must be aimed at achieving a legitimate goal of concluding the corporate agreement, which is to ensure stability of corporate governance, protect the interests of participants, prevent corporate conflicts, etc.;
- observance of the principle of voluntariness and proportionality, which means that, when signing the corporate agreement, the participant must fully

understand the nature and consequences of the restrictions imposed on them in managing the activities of the business entity. The restriction should not be excessive and should not lead to a de facto loss of rights.

A complete refusal to participate in the management of the business entity (including in exchange for monetary compensation) in the corporate agreement is inadmissible. Within the corporate agreement, powers constituting the content of the corporate right to participate in the management of business entities can be restricted (while observing the criteria for permissibility), but a full voluntary deprivation of the right to manage is impossible. (*The position submitted for protection corresponds to paragraph 6 of the passport of specialty 5.1.3. Private Law (Civil Law) sciences*).

### **Theoretical and Practical Significance of the Dissertation Research Results.**

The practical significance of the dissertation research is determined by its focus on improving legislation and law enforcement practices in the field of establishing prohibitions and restrictions on the right to participate in the management of business entities. The author proposes improvements to legislation regarding the prohibition on participating in the management of business entities in relation to bankrupt persons, demonstrates the necessity of ensuring the independence of the trust manager when transferring securities to state civil servants into trust management, suggests the introduction of criteria for the admissibility of restricting the corporate right to participate in the management of business entities in a corporate agreement, and also justifies the need to suspend the powers of the sole executive body in case of disqualification, among other measures.

The theoretical significance of the dissertation research lies in the fact that the positions submitted for protection will contribute to the development of civil and corporate law science, and can serve as a basis for further scientific research on this and related topics. The author identifies features and grounds for establishing prohibitions and restrictions on the right to participate in the management of business entities, shows the difference between a prohibition and a restriction of the right to

participate in management, clarifies the content of the studied right, and formulates the author's approach to the situational transformation of the right to participate in the management of a corporation into a corresponding corporate obligation, among other findings.

The presented results of the dissertation research can be applied in educational activities – for example, in training corporate lawyers. For instance, at the Institute of Law and National Security of RANEPA, the conclusions of the dissertation can be used within the discipline "Corporate Law" for students of the M. M. Speransky Faculty of Law, enrolled in specialty 40.05.01 "Legal Support of National Security" (civil law profile), as well as for students studying in specialty 40.03.01 "Jurisprudence" (civil law profile).

**Validation of the dissertation results.** The dissertation was completed, discussed, and approved by the Department of Entrepreneurial, Labor, and Corporate Law of the Institute of Law and National Security of the Russian Presidential Academy of National Economy and Public Administration (RANEPA). Its main content was reported at meetings, discussions were held, and it was reviewed.

The main provisions of the dissertation research are reflected in the author's presentations at eight international and all-Russian scientific conferences, in two articles (reports) published in collections based on the results of scientific-practical conferences, as well as in three articles published in scientific journals, including peer-reviewed scientific publications listed in the Higher Attestation Commission (VAK) of the Ministry of Education and Science of the Russian Federation, totaling 2.6 points.

**The structure of the dissertation** is determined by the aim and objectives of the research and includes an introduction, three chapters comprising nine paragraphs, a conclusion, and a list of references and literature.