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### EXEMPTION OF A JOINT STOCK COMPANY FROM THE OBLIGATION TO PROVIDE INFORMATION TO A SHAREHOLDER\*

Andrey V. Gabov<sup>1,2</sup>

<sup>1</sup> *Institute of State and Law of the Russian Academy of Sciences, Moscow, Russia*

<sup>2</sup> *Belgorod State National Research University, Belgorod, Russia*

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**The subject of research.** Issues concerning the exercise of the right of shareholders to receive information are analyzed. The focus is on the issues of exemption of a joint-stock company from providing information. The development of the institute of the information provision to shareholders by joint stock companies are consistently analyzed. The main trends in the development of this institute are shown: gradually narrowing the ability of shareholders to exercise their right to receive information through such means as restriction, differentiation and exemption from providing information. Special emphasis is placed on the institute of exemption from providing information.

**The purpose of the article** is to show the main drawbacks of the existing model of exemption of a joint-stock company from the obligation to provide information to shareholders and to formulate directions for the development of legislation. **The author's main scientific hypothesis** can be summarized as follows. The Federal law «On joint-stock companies» contained an initial defect in the description of information exchange between a shareholder and a joint-stock company. The shareholder's right to information was not described, in fact, it was «embedded» in the obligation of the joint-stock company to provide information. The subsequent changes to the law resulted in a narrowing of the rights of the shareholder, practically depriving the minority shareholder of the right to information. This defect has led to significant legal uncertainty when the joint-stock company exercises its right to be exempt from providing information. This uncertainty should be eliminated, because the regulatory goals for granting joint-stock companies an exemption from the obligation to provide information to shareholders (article 92.2 of the Federal law «On joint-stock companies» that counters sanctions pressure) are absolutely correct. At the same time, some of the grounds for exemption from the obligation to provide information to shareholders (article 92.1 of the Federal law «On joint-stock companies») must either be excluded or reformulated. The author notes the complete «break» between the current regulation and the ideas about information exchange between a shareholder and a joint-stock company, that initially inspired the creation of the law on joint-stock companies. The inclusion of sanctions in the law on joint - stock companies as a factor affecting the performance by a joint-stock company of its obligation to provide information to shareholders should be fully welcomed. However, the legal and technical design of the corresponding political and legal idea cannot be considered optimal. In this part, the legislation requires a complete renovation based on the principle of balancing constitutional values and the interests of the state, majority and minority shareholders.

**Description of research methodology.** The research is based on a systematic analysis, as well as the interpretation of Russian legislation and doctrine.

**Information about the main scientific results.** The development of legislation on joint-stock companies in terms of providing information is shown. It is shown that if legislator taking into account sanctions when regulating the obligation of a joint-stock company to provide information, the goals of legislative regulation fully comply with constitutional principles, but specific legal decisions cannot be considered optimal. **Conclusions.** It is concluded that development of legislation on joint-stock companies has led to a significant restriction of the ability of shareholders to receive information. The author formulated the priority of regulatory goals in countering sanctions pressure and offered specific directions for improving legal regulation.

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## 1. Introduction.

The concept of "providing information" is very ambiguous; it is used in a large number of different regulations for the purpose of regulating information exchange between different persons (bodies). Its most General definition is given in Article 2 of Federal law No. 149-FZ of July 27, 2006 "On information, information technologies and information protection", according to which "provision of information" (hereinafter referred to as the Law on information) is "actions aimed at obtaining information by a certain group of persons or transmitting information to a certain group of persons". In this law, "provision of information" is the antithesis of its dissemination, which is understood as "actions aimed at obtaining information by an indefinite circle of persons or transmitting information to an indefinite circle of persons" (Article 2 Of the law on information). It should be noted that such regulation has existed in our legislation since 2006; the Federal law of February 20, 1995 No. 24-FZ "On information, Informatization and information protection" did not establish such a division, although it used the concept of "providing information".

When evaluating the above-mentioned provisions of the Law on information, it should be taken into account that by the time it appears in certain branches of legislation:

- it has developed its own terminology that mediates the qualification of a person's actions aimed at transmitting information to a previously undefined / defined circle of people (and this terminology has not just "survived" the adoption Of the Law on information, but continues to be actively used in the relevant branches of legislation, as well as "penetrates" into other (new) branches of it), - we have developed our own understanding of what is meant by "providing information".

This includes legislation on joint-stock companies. In it, the concept of "providing information" is found, although in a very limited form, to regulate information exchange between a joint-stock company and a shareholder, already in documents of the early 1990s. Since the mid-1990s, this concept has also been used in the legislation on the securities market (Federal law No. 39-FZ of April 22, 1996 "On the securities market" (hereinafter – the Law on the securities market)), along with the concept of "disclosure of information". Later (by Federal law of August 7, 2001 Federal law No. 120-FZ "On amendments and additions to the Federal law "on joint-stock companies") the concept of "disclosure of information" will also be enshrined in Federal law No. 208 – FZ "On joint-stock companies" of December 26, 1995 (hereinafter-the Law on joint-stock companies). Thus, both the legislation on joint-stock companies and the legislation on the securities market have developed their own (General) terminology for qualifying actions to send information to a certain / indefinite group of persons – providing / disclosing information.

There is a significant difference between these institutions (provision and disclosure). It is based on the range of interests for which they exist. Understanding this difference is important because in a number of studies in the analysis of the shareholder's right to receive information is requested to consider and obligations of joint stock companies on disclosure of information [1, p. 163; 2, p. 36; 3, p. 335; 4, S. 32 – 39 etc.], which from our point of view, is fundamentally wrong. The Institute for providing information to shareholders was originally formed as an institution that ensures private interests – the interests of shareholders; "providing information" are actions specified in the law of persons aimed at obtaining (mandatory or otherwise) certain other persons of information; accordingly, the

development of this Institute determined the search of balance between the various interests of parties to corporate relationships, i.e., the interests of a definite group of people. The Institute of information disclosure [5] (in this case, we are talking about information disclosure in relation to the securities market, but the conclusions will be similar in the basis for other cases) is mainly aimed at protecting the public interest, which consists in the functioning of an efficient economy, of which the financial (and, accordingly, the stock market) is a part. One of the goals of this institution is to minimize the information asymmetry of various market participants, so that their decision-making is determined solely by economic factors, and not by priority access to information. This equalizes the initial position of market participants (i.e., we are talking about an initially uncertain circle of individuals), prevents abuse arising from the use of insider information, as well as selective and/or subordinated provision of information to various entities, which gives some of them unjustified economic benefits.

Speaking of terminology, it should be noted that both the information legislation, the legislation on the securities market and the legislation on joint-stock companies use the concept of "presentation of information"; it is impossible to call it completely similar to the concept of "provision of information", but we note that in some cases they are used as synonyms.

In the legislation on joint-stock companies, there is another common form of interaction between a shareholder and a joint-stock company – a "notification" or "message", which the joint-stock company (Articles 7, 52, etc. The law on joint-stock companies) is obliged to send to shareholders due to the direct requirements of the law. Some researchers believe that notification

(communication) and provision of information are different legal phenomena, on the basis that the obligation to notify specific persons is fulfilled when certain circumstances occur, regardless of any actions on the part of the notified persons [6, p.34]. We can only partially agree with this position. The obligation to send information to the shareholder about the General meeting of shareholders, as well as to send other notifications provided for By the law on joint stock companies, follows directly from the provisions of this law – it simply does not require sending a special request for information here. This is done to meet the interests of shareholders.

## **2. Providing information to the shareholder in accordance with the law on joint-stock companies.**

In its most General form, the institution of providing information to a shareholder is a reflection of the idea of the shareholder's right to participate in the management of a joint-stock company, which logically implies another right, which in the doctrine is called the "right to receive information". Some works and documents of a political and legal nature may use different terminology. Thus, the Concept of development of civil legislation of the Russian Federation, approved by the decision of the presidential Council for codification and improvement of civil legislation of October 7, 2009, contains the concept of "information rights of corporate participants" (hereinafter - the Concept of development of civil legislation of the Russian Federation).

The right to receive information arises for a person in relation to a certain (specific) joint – stock company after the person receives the legal status of a participant in the Corporation of a shareholder [7, p.153; 8, p. 11]-the acquisition of shares on various civil grounds and ceases after the loss of such status [9, p.

36]. The constitutional Court of the Russian Federation in its ruling of January 18, 2011 No. 8-O-P stated that "an integral part of the legal status of participants of joint-stock company in relations with the joint-stock company is entitled to information about the company, which is provided as the Civil code of the Russian Federation and a number of other laws that reveal the content of the right to information in the sphere of entrepreneurial activities, including the volume, amount and composition of the information provided".

Researchers write about this right of a shareholder either as an independent right (along with the right to management, dividends and liquidation value), or as an integral part of any of the basic rights of a shareholder enshrined in the definition of a share given in Article 2 Of the law on the securities market [10, p. 162; 11, p.123; 12, p. 73; 13, p. 323; 14, p. 43; 7, p. 391; 2, p. 34; 3, p. 334; 15, p. 97; 16, p. 84; 17, p. 418; 18, p. 13; 19, p. 83; 20, p. 59; 21, p. 22; 9, p. 32-33; 22, p. 31-38 and many other works].

After the adoption of the Civil code (1994) the shareholder's right to receive information was based on the General provisions on the right of the participants to receive information (Article 67 of the civil code ); the civil code special provisions on the right of the relevant shareholder has not been established, as well as offsetting of obligations by joint-stock companies. At present, such a General norm has changed – we now have before us the General nature of the right of any member of the Corporation "in the cases and in the manner provided by law and the constituent document of a Corporation, to information on the activities of the Corporation and be familiar with its accounting and other documentation" (Article 65.2 of the civil code) . However, the General

description of the right remains similar. And Article 67 of the civil code (in the previous edition), and Article 65.2 of the civil code do not establish the right to information as an absolute, the latter Article is even strengthened: if Article. 67 of the civil code indicated in the order, which was to be established by the constitutive documents, Article 65.2 of the civil code and indicates the occasions and also makes a reference to special laws, not only to the founding documents. In any case, the civil code of the Russian Federation left quite a significant field for the discretion of the legislator when formulating the mechanism for implementing the right to receive information.

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stock companies, follows directly from the provisions of this law – it simply does not require sending a special request for information here. This is done to meet the interests of shareholders.

Theoretically, the law had to consolidate in this mechanism two parts – a description of the rights, and description of duties – provide information, because, as rightly noted in the research "the duty to provide information... always corresponds to a very specific law to receive this information" [23, p. 23]; we are interested in the case, it is clear that the right of a shareholder to receive information corresponds the obligation of joint stock companies to provide information [2, p. 34; 24, p. 107; 25, p. 10].

We do not find this approach in the regulations that made up the legislation on joint-stock companies in the 1990s.

The beginning of the 1990s is the period of formation of both corporate relations and legislation on joint-stock companies. If we analyze the first regulations, we can clearly see that there was no system of ideas (economic, legal), views on how the right to receive information and the obligation to provide it should be described. Initially, the rules governing information exchange between a shareholder and a joint-stock company were rare, very general, and extremely brief. On the one hand, it can be said that there were no restrictions on access to information for shareholders, on the other hand, it can be noted that joint-stock companies also had every opportunity to refuse to provide information to shareholders in such circumstances.

There are clear and rational explanations for this. First, the culture of participation in corporate relations, as well as their legal regulation, simply did not exist, and the closest period when it was (the NEP period) did not leave any developments in terms of

special shareholder rights to information [26]. Secondly, the beginning of the 1990s was a period of formation of the new economy, which, according to economic researchers, was characterized by a "transitional type of ownership and control" [27, p. 80] and a banal struggle between insider shareholders and outsider shareholders; in such periods, the issue of shareholder rights to information is not a matter of management culture, but a matter of exchange. In the struggle for corporate control, it is a means of fighting for the rights of minority shareholders (and this period is just characterized by the time of ignoring the rights of minority shareholders [28, p. 44]), and when such control is intercepted, it is an unnecessary element on which you can "hang" the brand of a means of corporate blackmail.

The situation was significantly aggravated by the large-scale privatization, which resulted in thousands of state-owned enterprises taking the form of joint-stock companies, and in most cases with a large share of minority participants (due to the specifics of the methods used for privatization). The charters of such companies, which were adopted on the basis of the standard Charter, did not establish any provisions on the specifics of information exchange between a shareholder and a joint-stock company (since the specified standard Charter did not establish them either). The problematic nature of the issue is evidenced by the fact that special regulations were adopted to protect the interests of shareholders (for example, see: Decree of the President of the Russian Federation No. 1769 of October 27, 1993 "On measures to ensure the rights of shareholders").

Under these conditions, the Law on joint-stock companies was adopted in 1995. Its original version can be described in two ways in the part that interests us. On the one hand, this law did not establish any special right for a shareholder to receive information about a

joint-stock company. In essence, this right itself was described through the institution of providing information, through the so-called access of shareholders to information (Article 91 of the Law on joint-stock companies). It is this legislative technique (the establishment of the right, bypassing its meaningful description, through the obligation), as it seems, for a long time laid the potential for conflict in the relations of shareholders and joint-stock companies, which later served for numerous discussions and changes to the Law on joint-stock companies. On the other hand, in this law, the issues of information interaction between a joint-stock company and a shareholder were worked out in some detail for the first time in Russian history. We can say that the Law on joint-stock companies had an absolutely clear focus on ensuring the interests of shareholders, which follows from the comments to the provisions of this law given by its developers [29].

First, the law on joint-stock companies established a General provision that information about a joint-stock company is provided by the company in accordance with the requirements of the law on joint-stock companies and other legal acts of the Russian Federation (Article 90). This provision cannot be called specific; as it was formulated, its purpose could be defined as follows: to cover in General all cases when a joint-stock company provides information to any persons (bodies), including shareholders. However, as follows from the comment made by researchers who were directly involved in the development of the draft Law on joint - stock companies, the goal is different: to regulate the exchange of information between the joint-stock company and various state bodies [29, p.512-513] (which does not follow from the content of the Article).

Secondly, the law on joint-stock companies established a General rule on providing

information to shareholders themselves (Article 91). In accordance with paragraph 1 of this Article, information was provided in the form of access to documents provided for in paragraph 1 of Article 89 of the Law on joint-stock companies (with the exception of accounting documents and minutes of meetings of the company's collegial Executive body). According to clause 2 of art. 91 of the Law on joint-stock companies at the request of a shareholder, the company is obliged to provide him with copies of these documents and other documents of the company provided for by legal acts for a fee that could not exceed the cost of making copies of documents and paying for expenses related to sending documents by mail. It should be noted that the legal technique of this provision was extremely imperfect, since, formally being General in nature by the title of the Article, it, in reality, did not take into account specific cases of providing information to shareholders. It is interesting that in the commentary given by researchers who were directly involved in the development of the draft Law on joint-stock companies, the opinion was expressed that Article 91 of this law "supplements Article 52, which defines the information (materials) to be provided to shareholders in preparation for the General meeting of shareholders" [29, p.513]. We can hardly agree with this opinion; considering the connection between Articles 52 and 91 of the Law on joint-stock companies, we can assume something else: it was the provisions of Article 52, as a special case, that should have supplemented the provisions of Article 91. In reality, there was no connection at all between the Articles; they even used different legal means of providing information.

Third, in the original version of the Law on joint-stock companies, there were special cases of providing information to shareholders that were not related to the provisions of Articles 89-91 of the Law. In particular, such cases were

established to describe the preparation for the General meeting of shareholders (clause 2 of Article 47, clause 4 of Article 51, clause 52, clause 54, clause 1 of Article 55). Speaking of special cases, we must make a remark about the imperfection of terminology. The original version of the Law on joint-stock companies (partly this is still the case today), the word "provision" was often replaced by other forms.

Analyzing the model of providing information by a joint-stock company to shareholders, laid down in the original version of the Law on joint-stock companies, it should be noted that it, along with the right of a shareholder to request information, established a restriction on obtaining certain information ("...except for accounting documents and minutes of meetings of the company's collegial Executive body"). The reason for establishing such a restriction was called the greenmail risk [29, p. 513-514].

Thus, it can be assumed that the basis for regulating the provision of information to shareholders in the Law on joint-stock companies (its original version) was the idea not only of the possibility, but also the expediency in some cases to restrict a shareholder's access to information about a joint-stock company. The idea of the possibility of setting restrictions on obtaining information was developed in Russian pre-revolutionary legal studies (for example, see: [30, p. 444-445]), which concluded that it was appropriate to restrict shareholders' access to the books of a joint-stock company based on the idea of economic interest.

The law on joint-stock companies in its original version did not solve all the problems that arose in connection with the information exchange between the joint-stock company and the shareholder. This is not just a matter of individual legal and technical issues, but the fact that an optimal balance was not found

between the interests of various participants in corporate relations. All the subsequent development of legislation on joint-stock companies in terms of the development of the institution of providing information is mostly an attempt:

- find a balance between the interests of majority and minority participants and management,
- establish special modes of obtaining information for certain cases (including for special cases of providing information), and -
- determine the optimal requirements for the order of requesting information and receiving the requested information.

The first amendments to the law on joint-stock companies in terms of providing information date back to 2001 – Federal law No. 120-FZ of August 7, 2001 "on amendments and additions to the Federal law on joint-stock companies", Article 91 Of the law on joint-stock companies was revised. Commenting on the changes made by this law, it should be noted that the legislator has moved from the idea of simply restricting access to certain information to the idea of a differentiated approach to access to certain information. In particular, the right of access to accounting documents and minutes of meetings of the collegial Executive body of shareholders (shareholder) holding in aggregate at least 25 percent of the company's voting shares was established (the establishment of such differentiation was subsequently recognized as corresponding to the Constitution of the Russian Federation, as the constitutional Court of the Russian Federation made very clear in its Ruling No. 263-O of June 18, 2004). Differentiation took place not only by the criterion of ownership share, but also by the criterion of state participation – it was established that if a special right to participate in the management of the specified company is used in relation to an open company ("Golden share») such a

company provides representatives of the Russian Federation, a subject of the Russian Federation or a municipality with access to all their documents.

For all shareholders, it was important to establish by this law: the period within which documents were to be provided (within seven days from the date of submission of the relevant request) and the form of access – "familiarization at the premises of the company's Executive body". The relevant elements will become integral in the mechanism for providing information up to the present time.

Another important change made by this law is in Article 92 of the Law on joint-stock companies; if earlier this Article referred to the rules for publishing certain information by the company, now this Article regulates cases of mandatory disclosure of information by the joint-stock company. In essence, the Federal law of August 7, 2001 No. 120-FZ "on amendments and additions to the Federal law" on joint-stock companies " clearly delineated the Institute for providing information and the Institute for disclosing information.

An important document in which an attempt was made to find a balance between the interests of minority and majority participants of the joint-stock company and its management in terms of providing information was the Information letter of the Presidium of the Supreme Commercial Court of the Russian Federation No. 144 dated January 18, 2011. In this document, cases were formulated when a shareholder could be denied access to the requested information in court on the grounds of abuse of the right to receive information; it formulated the rule of " legitimate interest "of the shareholder in obtaining information (later transformed into the rule of "business purpose" In the law on joint-stock companies).

The reform of civil legislation in relation to legal entities in 2014 (Federal law No. 99-FZ of may 5, 2014) has had a significant impact on the state of the institution of providing information to shareholders.

After this reform, the provisions of the Law on joint-stock companies showed an obvious trend towards differentiating the provision of information for public and non-public joint-stock companies, formalized by Federal law No. 210-FZ of June 29, 2015 "on amendments to certain legislative acts of the Russian Federation and invalidation of certain provisions of legislative acts of the Russian Federation".

The most radical changes in the provision of information, including the development of differentiation of the regime for providing information by public and non-public companies, are related to the adoption of Federal law No. 233-FZ of July 29, 2017 "on amendments to the Federal law "on joint – stock companies" and Article 50 of the Federal law "on limited liability companies" (hereinafter-Federal law No. 233-FZ of July 29, 2017). The law (according to the explanatory note to the draft Federal law № 558976-5 "On amendments to certain legislative acts of the Russian Federation to improve mechanisms of implementation of rights of participants of economic societies on information" (which became the Federal law from July 29, 2017 No. 233-FZ) was directed to implement the orders of the President of the Russian Federation (PR-846) from 2 April 2011, according to which the Russian Government was instructed "to submit to the State Duma a draft Federal law, clearly and unambiguously regulate the mechanisms for exercising the right of minority shareholders to access information about the activities of public companies; ensure the improvement of control and supervision in this area, as well as corporate procedures for the implementation of this right." However, in



terms of the content of the changes, it can be noted that they go beyond the scope of this instruction.

As a result of the adoption of Federal law No. 233-FZ of July 29, 2017, we see further development of the idea of differentiating shareholders' access to information of a joint-stock company depending on the number of shares, the status of the company (public/non-public), as well as legislative registration of the Institute of business goals, the formation of grounds for refusal to receive information by a shareholder. (For estimates and comments on the changes made by this law, see the following works: [31, p. 52-55; 9, p. 31-40]). It is interesting to note the functional convergence of the institutions of providing information and disclosing information: the legislator tends to consider the latter as one of the possible substitutes for the former. In particular, clause 8 of Article 91 Of the law on joint stock companies specifies as one of the grounds for refusing a shareholder access to documents and information that the electronic version of the requested document at the time of the shareholder's request is disclosed in accordance with the procedure provided for by the securities legislation for disclosure of information.

Analyzing the General development of legislation on joint-stock companies in terms of providing information, we cannot disagree with the figurative comparison of D. V. Lomakin – "like a shagreen skin, the content of the shareholder's right to information has shrunk to pocket size" [9, p. 33]. The main "victims" of this approach are minority shareholders [32, p. 28-34].

In the light of such trends in the development of legislation, it is very interesting to look at another phenomenon that has been developing (since 2010) in terms of providing information in parallel with

the development of the idea of differentiating the regime for providing information to shareholders - the institution of freeing a joint-stock company from the obligation to provide information. Exemption from providing information is one of the extreme points in the scale of opportunities to obtain certain information, between the possibility of full access, restriction of information and differentiation of opportunities to obtain information. From the point of view of constitutional norms, the possibility of applying such an institution requires special analysis, since it means, in essence, nothing more than depriving a shareholder of the right to information (if the exemption concerns the entire volume of information about a joint-stock company) or diminishing it (if the exemption concerns part of the information).

### **3. Release of the joint-stock company from the obligation to provide information to the shareholder: goals, cases and problems of implementation.**

The first mention of the exemption of a joint-stock company from the obligation to provide part of the information appeared in the law on joint-stock companies after the adoption of Federal law No. 264-FZ of October 4, 2010 "on amendments to the Federal law "on the securities market" and certain legislative acts of the Russian Federation" (hereinafter – Federal law No. 264-FZ of October 4, 2010). According to the law, the Law on joint-stock companies was introduced Article. 92.1 "Exemption from the obligation to disclose or provide information provided for by the legislation of the Russian Federation on securities". According to this Article, a joint-stock company by a decision of the General meeting of shareholders adopted by a majority of three-quarters of the shareholders' votes - owners of voting shares participating in the General meeting of shareholders may, in

accordance with the securities legislation apply to the Federal Executive authority for the securities market (later indicated by the authority in connection with the restructuring of state regulation of the securities market was replaced by the Bank of Russia) with the statement about his release from the obligation to deliver information required by securities legislation.

In the analysis this change is necessary to note the following.

The new exemption rule did not apply to providing information to shareholders within the framework of the law on joint-stock companies itself. This rule applied only and exclusively to the cases of providing information provided By the law on the securities market. Accordingly, to understand this rule, it is necessary to take into account the changes made by Federal law No. 264-FZ of October 4, 2010 in Article 30 Of the law on the securities market. The reasons for the appearance of this Article are interesting; the study of the materials of the draft law shows that the changes should not have affected the institution of providing information at all. The analysis of Article 92.1 Of the law on joint-stock companies also shows that it does not regulate information exchange between a shareholder and a joint-stock company (see also: [33, p. 177-178]).

The corresponding regulation-the exemption of a joint-stock company from providing information to a shareholder-appeared In the law on joint-stock companies in 2017.

In accordance with this law, the law on joint-stock companies introduced a new Article-92.2 "Exemption from the obligation to disclose and (or) provide information related to major transactions and (or) transactions in which there is an interest", on the basis of which the Government of the Russian Federation received the right to determine:

- cases in which the joint-stock company has the right not to disclose (provide) information related to major transactions and (or) transactions in which there is an interest, and (or) has the right to make such disclosure (provide) in a limited composition and (or) volume, and

- persons in respect of whom the joint-stock company has the right not to disclose (provide) the specified information and (or) has the right to make such disclosure (provision) in a limited amount and (or) scope.

It is impossible to understand its purpose and meaning from the content of this norm. The explanatory note to the draft Federal law No. 318825-7 "on amendments to certain legislative acts of the Russian Federation" (which later became Federal law No. 481-FZ of December 31, 2017) is also very brief in content. The objectives of the new regulation are as follows: protection of the constitutional order, rights and legitimate interests of citizens and legal entities, ensuring the defense capability and security of the Russian Federation, including ensuring guaranteed financial support for state contracts under the state defense order and unconditional passage of payments under contracts within the framework of military-technical cooperation. In reality, the purpose of these changes is to take into account the sanctions factor in the activities of joint – stock companies that are residents of the Russian Federation [34, p. 70; 35, p.27]. Economic sanctions against Russia as a state, individual Russian citizens and legal entities (individual sanctions), and economic sectors have been imposed consistently since 2014, but until 2017, our law did not take the sanctions factor into account when providing information to Russian legal entities. The content of the newly introduced Article shows that the main task that the legislator solved by exempting from disclosure (provision) of certain information is to remove the risk of

expanding the sanctions list at the expense of Russian issuers.

When analyzing the provisions of Article 92.2 of the Law on joint-stock companies (in its original version), it draws attention to two points:

1) establishment of alternatives in the choice of lawful behavior. The wording of such an alternative at first glance suggested two behaviors: either not to provide information at all, or to provide it in a limited amount and / or scope. However, from the point of view of grammatical interpretation, given the repeated use of the double conjunction " and(or)", as well as the construction " disclosure (provision)", there were actually more alternatives about a dozen and a half; at the same time, the structure of the Article is such that the right to choose the behavior option is reserved for the subject itself – the joint-stock company. It is impossible not to criticize the fact that the content of the Article did not correspond to its title: "release" means to allow a person to refuse to provide information at all, whereas the Article actually indicated the possibility of not only releasing, but also restricting the provision of information;

2) restriction of the type of information – only and exclusively about major transactions and (or) transactions in which there is an interest.

As a follow – up to these changes, the government of the Russian Federation adopted resolution No. 10 of January 15, 2018 "on determining cases when a joint-stock company and a limited liability company are exempt from the obligation to disclose and / or provide information related to major transactions and / or transactions in which there is an interest" (hereinafter referred to as Government resolution No. 10 of January 15, 2018). This document (initially it concerned joint-stock companies and limited

liability companies ) identified two cases:

- making a transaction related to the implementation of the state defense order and the implementation of military-technical cooperation;

- making a transaction concluded with Russian legal entities and individuals in respect of which foreign States, state associations and (or) unions and (or) state (interstate) institutions of foreign States or state associations and (or) unions have introduced restrictive measures (these measures are referred to as "sanctions" for simplicity in this Article).

Both Article 92.2 of the law on joint-stock companies (in its original version) and resolution of the government of the Russian Federation No. 10 of January 15, 2018, adopted in its development, leave a more than ambivalent impression. The goals of regulation can be fully approved – they fully correspond to the idea of balancing constitutional principles, in this case with the priority of values such as sovereignty and security. However, the legal and technical side raises many questions.

The appearance of Article 92.2 of the law On joint-stock companies with this content is a milestone in the development of Russian legislation on joint-stock companies, which, however, has remained unnoticed. Meanwhile, we should pay attention to the fact that the legislator "rearranged" the authorized and obligated subjects with such amendments. If previously (during the creation of the Law on joint-stock companies) approach was that the shareholder had the right to receive information, a joint stock company is obliged to provide it, the ideology of the Institute of exemption (in the form of a full provision of information) is that now joint-stock company got the right not to provide information, and shareholder right to receive it was in fact (but not directly, because as we remember this right

generally is not established by the Law on joint-stock companies) denied. Let's emphasize that the shift is actually fundamental, especially given the way our legislation structures the right of a shareholder to receive information.

The subject structure of joint-stock companies that could use the Institute of exemption from providing information raises questions. Article 92. The law on joint-stock companies did not establish it at all, essentially referring issues to the Bylaw (which, in our view, is fundamentally incorrect in itself, since the Bylaw should regulate not the rights and obligations, but the procedure for their implementation/execution). Among such questions was the question of persons in respect of which the joint-stock company has the right not to provide full or partial information. Based on the technique of setting out the norm of Article 92.2 Of the law on joint-stock companies, "persons" meant third parties in relation to the joint-stock company providing information.

The "cases" described in the decree of The government of the Russian Federation No. 10 of January 15, 2018 are not clear in terms of the description of subjects. For example, to describe the first "case", the phrase "making a transaction related to..." was used, but what this connection may be – it was not specified, while "link" the transaction with the implementation of "the implementation of the state defense order and the implementation of military-technical cooperation" can be very many ways. There was no list of "persons" in this document, in fact, it could be said that they could be understood as all the persons who were mentioned in the description of "cases".

What we can say in part of the subjects by far, is the fact that Article 92.2 of the Law on joint-stock companies in the meaning as "cases", it said, was described in the

Government decree of January 15, 2018 No. 10, provided the law (exemption from provision of information) both joint-stock companies that are subject to sanctions, and joint-stock companies that are not under sanctions and are not even under threat of their introduction. In principle, this approach is acceptable for joint-stock companies operating in the military-industrial complex, but in this case, the description should have been different.

In connection with the new rules and taking into account how the regulation of the provision of information is structured In the law on joint-stock companies, the question arose: what actual cases were covered by the right of the issuing joint-stock company provided for in Article 92.2 of the Law on joint-stock companies? This question can be formulated somewhat differently (specify): does the new regulation cover the provision of information to shareholders that should be provided in preparation for the General meeting of shareholders, which includes the issue of approving a major transaction or a transaction in which there is an interest?

In larger transactions, we note that according to Article 78 of the Law on joint-stock companies the Board of Directors (Supervisory Board) of the company must approve the conclusion of a major transaction, which is included in the information (materials) provided to shareholders when preparing for holding the General meeting of shareholders, which deals with the issue of consent to the Commission of or subsequent approval of a major transaction. Considering that there are no exceptions for cases of providing information under Articles 52 and 78 Of the law on joint-stock companies in Article 92.2 the same law is not made, it can be concluded: the joint-stock company could use Article 92.2 and government resolution No. 10 of January 15, 2018, and not provide (or provide limited) in

the materials to the General meeting information about a major transaction that falls under one of the "cases" specified in Government resolution No. 10 of January 15, 2018.

However, having solved the problem in one place, the legislator did not take into account another: according to Article 79 Of the law on joint-stock companies, the decision on consent to or subsequent approval of a major transaction must specify the person (s) who is the party (s) to such a transaction, the beneficiary( s), the price, the subject of a major transaction and its other essential conditions or the procedure for determining them; the decision on consent to a major transaction may not specify the party to the transaction and the beneficiary if the transaction is concluded at auction, as well as in other cases, if the party to the transaction and the beneficiary cannot be determined by the time of obtaining consent to the transaction. Thus, by "hiding" the relevant data through one mechanism, the joint-stock company was obliged to "open" them (even partially) through another mechanism.

For related-party transactions, the situation is as follows. The "cases" established by RF Government resolution No. 10 of January 15, 2018 allow either not to apply the provision of Article 81 Of the law on joint stock companies that when preparing for the annual General meeting of shareholders of a public company, persons entitled to participate in the annual General meeting of shareholders must be provided with a report on transactions concluded by the company in the reporting year in which there is an interest, or to apply it with the withdrawal of some information. However, as in the case of large transactions, there is a clear gap with the provisions of Article 83 of the law on joint-stock companies in terms of the requirements for the content of the decision to approve the

transaction. At the same time," cases "did not cover clause 4 of Article 82 of the law on joint-stock companies, due to the use of a different terminology-it refers to" bringing" information, not providing it.

Strictly speaking, the legislator had to define not only "cases" when information about transactions is not provided or is provided in a limited form, but also introduce appropriate regulation in special Articles on the regulation of large transactions and related-party transactions, which was not done.

In answering this question, from our point of view, it is necessary to take into account the rules of interpretation of legal norms developed in the doctrine of domestic law.

The literal, grammatical interpretation shows that the joint-stock company could use the mechanism of Article 92.2 of the Law on joint-stock companies for all cases of providing information established by this law. In support of such results, the interpretation also indicates that no changes were made to the provisions of the Law on joint-stock companies regarding the provision of information in preparation for the General meeting of shareholders.

Interestingly, the results of systematic interpretation will be different. Here it is important to pay attention to which part of the Law on joint - stock companies the provisions on exemption from providing information were introduced in-Chapter XIII, after the provisions of Article 91 of the law. As we have already noted, the structure and content of the law on joint-stock companies are such that the provisions on providing information in preparation for the General meeting of shareholders (as well as some other special cases) are not related to the provision of information, which is regulated by art. 91 Of the law on joint-stock companies. Therefore, it can be assumed that Article 92.2 of the Law on joint-stock companies refers to the possibility of restricting the provision of information that

is specified in Article 91 of the same law and Article 92.2 of the Law on joint-stock companies does not relate to the provision of information in preparation for the General meeting of shareholders.

However, this interpretation seems to conflict with the goals of introducing a new regulation, namely the protection of sovereignty and security; and here we are already talking about a teleological interpretation. It seems that the priority of these constitutional values should be taken into account in the final answer to the question, and all doubts should be interpreted here in favor of achieving this main goal. Accordingly, the joint-stock company could use the mechanism of art. 92.2 Of the law on joint-stock companies for all cases of providing information established by the law on joint-stock companies.

Such interpretation results, in fact, lead to different conclusions about different parts of the mechanism for releasing a joint-stock company from the obligation to provide information:

- if we are talking about the provision of information relating to major transactions and (or) transactions in which the interest exists, the question arises about the compliance of this rule the constitutional principles and norms, because a complete deprivation of shareholders information in the preparation for the General meeting, which must be made the decision, creates obstacles to the exercise of shareholder rights the management of the company (in fact – it is hardly about deprivation of shareholders of their right to control). Here we must note a clear gap, which was marked not only with the basic ideas and rights of shareholders, which are the basis of our legislation on joint-stock companies, but also with the requirements of the state, expressed in formally non-mandatory (soft) rules. Thus, the corporate

governance Code (letter No. 06-52/2463 of the Bank of Russia dated April 10, 2014) States that "during the preparation and holding of the General meeting, shareholders should be able to freely and promptly receive information about the meeting and its materials..." (clause 1.1.3 of Part A);

- if we are talking about the right to provide information related to major transactions and (or) transactions in which there is an interest, in a limited composition and (or) volume, due to the protection of the joint-stock company and its counterparties from the risk of sanctions, such a legal tool fully complies with the constitutional principles and norms (even with all the legal and technical problems noted).

In 2018, the Institute of exemption of a joint-stock company from providing information to shareholders in Article 92.2 of the Law on joint-stock companies underwent a significant renovation after changes made by Federal law No. 514-FZ of December 27, 2018. Article 92.2 of the Law on joint-stock companies was amended by this law. Its name has also changed (now it was called (this name is still used) "Exemption from the obligation to disclose and (or) provide separate information"), and its content has also changed: the Government of the Russian Federation has the right to determine: cases in which the company has the right to disclose and (or) provide information subject to disclosure and (or) provision in accordance with the requirements Of the law on joint stock companies, in a limited composition and (or) volume; the list of information that the company has the right not to disclose and (or) provide; persons about whom information may not be disclosed and /or provided.

The Article established a mechanism for notifying the regulator of the disclosure and (or) provision of limited information: a joint-stock company must send a notification to the

Bank of Russia (in the prescribed form) containing information that is not disclosed and (or) not provided, within the time limits set for its disclosure and (or) provision.

In the development of this provision, as well as paragraph 6 of Article 30.1 Of the law on the securities market, the government of the Russian Federation adopted resolution No. 400 of April 4, 2019, in which: 1) a joint-stock company (the text uses a different concept – "Issuer") was granted the right to provide information in a limited composition and (or) volume in the established cases "regardless of the purpose and form... of providing information"; 2) a new list of "cases" was established»; 3) was determined by a special (in a separate Annex to the document) a List of information that issuers of securities have the right not to disclose and (or) not to provide, as well as individuals for which information may not be disclosed and (or) not provided (hereinafter – the List of information), including 18 positions:

The updated analysis of the provisions of Article 92.2 of the Law on joint-stock companies and adopted in its development of the RF Government decree of 4 April 2019 No. 400 gives grounds for the following conclusions.

First, the legislator quite radically changed the approach to the formulation of the right of a joint-stock company itself – the alternative was excluded - the joint-stock company received the right to provide information in a limited composition and (or) volume; that is, the possibility of complete refusal to provide information (even limited to specifying certain types of information) was excluded. Such a decision should be recognized as correct, based on the balance of interests of shareholders, interests of joint-stock companies and public interests. This change should have led to a change in the title of the article, since there is no longer any

question of" liberation".

This point-the dissonance of the article title and its content-was not corrected.

Secondly, the Law on joint-stock companies excluded the reference to the types of information that could not be provided; now the List of information is established by a Bylaw, which makes it possible to quickly change it.

Third, the description of "cases" is made in the Bylaw, which is common for the implementation of the provisions on exemption from disclosure (provision) specified in the Law on the securities market and for the implementation of similar provisions Of the law on joint-stock companies. This approach, from our point of view, is absolutely flawed, since it does not take into account the specifics of legal and technical techniques for specifying cases of providing information in the law on joint-stock companies, noted above (the presence of a General rule (art. 91), which in reality is not common, and a number of special cases of providing information (art. 51, 52, 62, 76, 78, 81, 84 etc.)). As a result, it turned out (this is clearly visible from the content of the list of information) that the decree of the government of the Russian Federation No. 400 of April 4, 2019 is mainly designed to implement the provisions of the law on the securities market, but not the Law on joint-stock companies. Obviously, it was necessary to make a special document for the implementation of each law to take into account the relevant specifics.

As a result, we are again forced to raise the question: what really cases extend the right of joint stock companies, provided updated Article 92.2 of the Law on joint-stock companies taking into account the descriptions of "cases", the data in the RF Government decree of 4 April 2019 No. 400? On the one hand, as we have already noted, the Bylaw introduced a rule on

"exemption" from providing information "regardless of the purpose and form of... providing information". In other words, we can assume that the answer to the question is now given unambiguously: for all cases specified in the Law on joint-stock companies, including cases of preparation for the General meeting of shareholders. However, this approach again raises the question of how does this right of a joint-stock company relate to the right of shareholders to manage this company in the form of participation in the General meeting and voting in it, since the relevant information is necessary for making a decision? This question does not have an answer within the framework of the current regulation, which cannot be considered correct, since we are talking about the basic principles (shareholder rights) on which the entire building of the current legislation on joint-stock companies is built.

Fourthly, it should be noted that the Bylaw again does not establish a list of persons about whom information may not be provided; in fact, these "persons" (the joint-stock company itself is not included in them, it is a priori a subject that uses the right of exemption from providing information) must again be "calculated", interpreting the description of "cases" and the list of information.

Fifthly, as is clearly visible, the number of "cases" specified in the Bylaw has increased significantly, but the wording of some of the "cases" has remained vague.

#### **4. Conclusions and suggestions.**

When creating legislation on joint-stock companies in the mid-1990s, the issue of describing the right of a shareholder to receive information about the activities of a joint-stock company for various reasons was not given sufficient attention; this right was

not explicitly established by law, its content; In the law on joint-stock companies, this right was "embedded" in the obligation of a joint-stock company to provide information. The wording of this duty was also not specific, but most importantly, the law did not have a coherent system of rules on the provision of information. Until 2017 these problems did not manifest themselves, but after changes were made to the law regarding the exemption from the obligation to provide information, it became critical. Unfortunately, this problem has not been resolved to this day, which seriously affects the rights of shareholders of joint-stock companies that use Russian anti-sanctions rules, and creates uncertainty in the rights and obligations of subjects of corporate relations.



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#### INFORMATION ABOUT AUTHOR

**Andrey V. Gabov** – Corresponding member of the Russian Academy of Sciences, Doctor of Law, Honorary doctor of Dostoevsky Omsk State University; <sup>1</sup>Chief researcher; <sup>2</sup>Scientific Director of the Law Institute

<sup>1</sup> *Institute of State and Law of the Russian Academy of Sciences*

<sup>2</sup> *Belgorod State National Research University*

<sup>1</sup> 10, Znamenka ul., Moscow, 119019, Russia

<sup>2</sup> 85, Pobedy ul., Belgorod, 308015, Russia

E-mail: andrey.gabov.00@mail.ru

RSCI AuthorID: 292511

IstinaResearcherID (IRID): 1224554

ORCID: 0000-0003-3661-9174

ResearcherID: Q-9357-2017

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