

Mecanismo civil para prevenir y resolver conflictos de intereses en el derecho privado ruso

Civil Mechanism Preventing and Resolving a Conflict of Interest in the Russian Private Law

DOI: <https://doi.org/10.17981/juridcuc.17.1.2021.06>

Fecha de Recepción: 2020/07/09 Fecha de Aceptación: 2020/12/03

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Para citar este artículo:

Svirin, Y., Vlasov, A., Sorokin, V., Simanova, M. y Kukhturskaya, C. (2021). Mecanismo civil para prevenir y resolver conflictos de intereses en el derecho privado ruso. *Jurídicas CUC*, 17(1), 153–172. DOI: <http://dx.doi.org/10.17981/juridcuc.17.1.2021.06>

Resumen

El artículo explora el mecanismo legal para prevenir y resolver conflictos de intereses en el derecho civil. En Rusia, a la prevención del conflicto de intereses se presta bastante atención en el derecho público, pero, desafortunadamente, no hay estudios dedicados a la investigación del conflicto de intereses en el derecho privado. Los autores han preparado un artículo analítico sobre la investigación en este campo del derecho, utilizando métodos de análisis comparativo y sistémico, síntesis, e investigación científica del aparato legal «conflicto de intereses en derecho privado». El objetivo es investigar la categoría conflicto de intereses en relación con el derecho privado, identificar dónde y en qué circunstancias ocurren con mayor frecuencia el conflicto de intereses, así como las razones determinantes del conflicto de intereses y las formas de resolverlo. Llegando a concluir que, el conflicto de intereses es una de las principales causas de conflictos corporativos entre los participantes en las relaciones corporativas; y al mismo tiempo, surge con mayor frecuencia, como consecuencia de la realización de los intereses de propiedad de las personas, así como la posibilidad de ciertas persona a ejercer influencia sobre otra, por ejemplo, un conflicto entre accionistas mayoritarios y minoritarios.

Palabras clave : Conflicto de intereses; conflicto legal; demandas indirectas; transacción

Abstract

The article studies the legal mechanism preventing and resolving a conflict of interest in civil law. The Russian public law pays much attention to the prevention of competitive interests but there are still no studies on a conflict of interest in private law. The authors have written this article to consider the relevant legal studies and draw their conclusions. Methods: The authors used the methods of comparative and systemic analysis, synthesis and scientific research to examine such a legal concept as a "conflict of interest in private law". The study aims at analyzing the category of competitive interests in relation to private law, determining its prerequisites, reasons and possible solutions. The authors have concluded that a conflict of interest often causes corporate conflicts among parties involved in corporate relations. Moreover, this type of conflicts arises due to the realization of individual property interests and the possibility of one person to influence the other, for example, a conflict between majority and minority shareholders.

Keywords: Conflict of interest; derivative actions; legal conflict; transaction

INTRODUCTION

Such a concept as a “conflict of interests” is widely used outside legal science (in particular, in conflict resolution studies, economics, sociology, etc.) and public law (Svirin, Petrov, Volkova, Matveeva, Gladkov & Ignatyev, 2016). However, the Russian civilist doctrine still lacks scientific monographs on a conflict of interest in civil law.

Its legal definition is provided by many legislative acts regulating public relations (the so-called anti-corruption legislations). Accordingly, a conflict of interest is a situation in which personal interests (direct or indirect) of a person, who is filling a position and assuming the obligation to take the necessary measures to prevent and resolve conflicts, affects or might affect the proper, objective and impartial performance of their official duties (the exercise of their authorities) (Letter of the Ministry of Labor of the Russian Federation No. 18-0/10/P-2061, 2018). The above-mentioned definition of this legal category contains a tautology and describes a conflict of interest through its goal-setting, i.e. resolving a conflict of interest. However, this definition is also used in by-laws within the framework of anti-corruption legislations.

Another legal definition of a conflict of interest is contained in laws on protecting the health of citizens (Federal Law, 2011 No. 323-FZ, cl. 1, art. 75 (as amended on April 24, 2020)). They define it as the contradiction between the personal interest of a medical worker (or another person specified by law) and the interests of their patients. The Russian Federation has developed dozens of laws that enshrine a different view on a conflict of interest but all these laws should regulate branch-specific relations. Therefore, the above-mentioned legal definitions are applicable for the purposes of the relevant branch-specific laws (for instance, corruption prevention or health care) and cannot be applied for the analysis of conflicts of interest within the framework of civil law since one of the key elements of this definition is a special actor that is absent in the framework of civil relations.

The purpose of this work is to study the legal category “conflict of interest” in relation to private law and identify where and under what circumstances conflicts of interest most often arise, as well as the reasons that determine conflicts of interest and methods of their resolution.

To achieve this goal, it is necessary to solve the following tasks: to study and give a doctrinal definition of a conflict of interest, determine the sphere of relations in which conflicts of interest most often arise, outline methods of resolving conflicts of interest, and investigate conflicts of interest in corporate relations, where the corruption component is most often manifested.

DISCUSSION

Entropy of conflicts of interest in Russian private law and their difference from legal conflicts

To define a “conflict of interest” in civil law, we should turn to the existing scientific doctrine that does not provide a unified concept. In particular, a conflict of interest is a legal situation (public relations) indicating a contradiction (conflict) between one’s interests in private and public law where the subject of law (an individual, official or legal entity) and/or subjects have different interests and, acting in the conditions of confrontation, they achieve their interests within the framework of law (Vissarov, 2008). However, this definition of a “conflict of interest” is rather broad and vague. Accordingly, interests are represented as phenomena that have social rather than legal significance. In this context, law as a whole is regarded as a social institute for resolving a conflict of interest based on generally accepted and obligatory norms.

From the viewpoint of linguistics, any conflict means a disagreement or dispute. Legal science considers the “conflict” term in different aspects. A conflict is a form of positional interaction of two or more persons, with at least one of the parties aware of contradicting interests, needs, values or methods of their implementation

and trying to overcome them based on the emotional validity of their position. For instance, [Ralko, Repin, Dudarev & Fomin \(2016\)](#) indicated, “Typical features of conflicts are as follows: subjectivity, contradictions and emotional components” (p. 116).

Legal science considers exclusively judicial (legal) conflicts, i.e. conflicts that are legal. Moreover, a conflict as a unified social phenomenon might go beyond the boundaries of specific legal relations between its parties since it includes extra-legal components (for example, commercial, psychological and other phenomena that are not related to the subject matter of legal science).

In addition, the current doctrine represents a legal conflict as judicial contradictions in legal relations, including:

- Between a norm developed for certain conditions and new public relations that are not completely or fully subject to this norm;
- Between a norm determining one’s legal personality and the legal status of a person who wants to enter legal relations;
- Between a norm providing for actual life circumstances as grounds for legal relations (judicial facts) and actual life circumstances that are unreasonably not included into legal facts or inaccurately reflected in law;
- Between rights and obligations, duties and responsibilities, parties, etc.;
- The possibility of particular goods to become objects of legal relations, etc. ([Zharova, 2016](#), pp. 142–143).

According to other scholars, a legal conflict should be understood as any dispute somehow related to legal relations of the parties (their legal significant actions or conditions). Therefore, the subjects, their motivation or the object of such a conflict have typical legal features and legal consequences ([Kudryavtsev, 1994](#)). In this regard, a legal conflict cannot be reduced to an exclusively judicial dispute since it is a broader concept.

The existing law enforcement practice has reached similar conclusions. For example, the Review of judicial practice on the application of law on business companies (approved by the Presidium of the [Supreme Court of the Russian Federation, 2019](#)) uses such a

term as a “corporate conflict” which is a more specific concept than a legal conflict.

The legal doctrine also does not provide a universal approach to the “interest” term. Some scholars consider it an integral part of subjective law, while the others include it into legal relations and regard as the basis of such relations (Karpichev, 2012).

According to one of the existing concept, a conflict of interest in legal science is understood as a contradiction between the interests that are protected by law (public and private interests, interests of an indefinite circle of people) and satisfied by the actions of another person authorized by the principal (appointee, agent, director or trustee) and the personal interests of this authorized agent (Dedov, 2004).

The category of a “conflict of interest in civil law” should be distinguished from a conflict of interest in other branches of law. Civil relations are characterized not by inner subordination as in public law but are based on such principles as the equality of parties and dispositivity.

Based on the doctrine of public law, a conflict of interest arises when a public servant has a personal interest that influenced or is likely to influence the impartial and objective performance of their duties.

Legal relations in which conflicts of interest most often arise

To study the mechanism for preventing and resolving conflicts of interest in civil law, we should initially determine the areas in which such conflicts might arise.

Conflicts of interest might arise in the following relations: agency relationships (between the representative and the representee); corporate relations; family relations (for example, a conflict of interest between the guardian and the one under wardship).

To avoid conflicts of interest, laws provide several restrictions. Thus, the Civil Code of the Russian Federation (ГКРФ, 1994) seeks to prevent a conflict of interest in agency relationships and establishes the following limitations:

- Ban on some contracts of personal nature;
- Ban on transactions made by representatives in relation to themselves and another person who is their representee, except for cases provided by law;
- The possibility of holding some transaction invalid on the representee's claim.

Within the framework of agency relationships, the above-mentioned restrictions have a preventive effect on the representative, i.e. they prevent possible violations and actions conditioned by mercenary motives and contrary to the representee's interests.

Clause 3 of Article 182 of the Civil Code of the Russian Federation (ГКРФ, 1994) serves as an abstract restriction. If any deal is made in violation of this prohibition, it will be disputable. At the same time, the earlier edition of this clause (had been in force before September 1, 2013) assumed that a violation of this norm conditioned the invalidity of any transaction. This ban aims at achieving two objectives.

First, this ban beguiles the representative out of concluding agreements that are not beneficial to the representee. While making a deal in their own interests and the interests of their representee, the representative will inevitably face a difficult moral choice—whose interests are more important. Due to many temptations, there is an extremely high risk that the choice will be made not in favor of the representee. The same applies to reciprocal representation agreements when the interests of some party are likely to be restricted.

Second, such a ban automatically reduces court costs since these institutions do not have to establish whether the representative's actions showed signs of abuse or generally meet the standards of good faith. In this context, this prohibition significantly simplifies the task of courts: to hold some transaction invalid, the representative just needs to create a situation in which the risks of a conflict of interest rise exponentially.

The relevant literature indicates that the representative cannot complete a deal that imposes contractual obligations on several persons and not inform them of this fact (Karapetov, 2018a).

The person entitled to challenge some transaction violating the above-mentioned rules is the representee. At the same time, the representative's deal made in respect of themselves or their representee upon the consent cannot be challenged. The representee might express their consent in different forms, including by appropriate actions.

In addition to the representee's approval, law establishes that a transaction cannot be declared void if it does not violate the representee's interests. This rule applies to both legal and voluntary representation. According to the current judicial practice, a transaction that does not formally violate of the Civil Code of the Russian Federation (ГКРФ, 1994, cl. 3, art. 182) can be recognized as invalid if the representative makes a deal with a person acting on behalf of the representee without authority and, subsequently, as an authorized representative approves this deal on behalf of the representee in accordance with the Civil Code of the Russian Federation (ГКРФ, 1994, art. 183).

Clause 3 of Article 182 of the Civil Code of the Russian Federation (ГКРФ, 1994) is also applicable to the bodies of a legal entity. Furthermore, Decree of the Plenum of the Supreme Court of the Russian Federation No. 25 (2015) "On Court Application of Certain Provisions of Section I, Part One of the Civil Code of the Russian Federation" emphasizes the need to consider the specific representation of a legal entity that acquires civil rights and assumes civil duties through its bodies, which involves the application of laws on legal entities. The bodies of a legal entity are subject to only certain provisions of the Civil Code of the Russian Federation (ГКРФ, 1994, Ch. 10). The Supreme Court of the Russian Federation rejected the possibility of applying of the Civil Code of the Russian Federation (ГКРФ, 1994, cl. 3, art, 182) when the law on certain types of legal entities establishes special rules for agreements concluded by a single-person executive body in relation to themselves or another person represented by them

(a single-person executive body) (Tsepov, 2019). To better understand Clause 1 of Article 174 of the Civil Code of the Russian Federation (ГКРФ, 1994), it is necessary to make a number of preliminaries regarding the Russian system of representation. The powers of a single-person executive body (director) within a legal entity do not belong to traditional representation. Following the example of the German legislation (in contrast with the French or English law), the Russian legal system clearly distinguishes between the representative of a legal entity and a regular representative.

Specific regulation is also established for the subjects of family relations. According to the Civil Code of the Russian Federation (ГКРФ, cl. 3, art. 37), the guardian, the trustee, their spouses and close relations shall have no right to affect any deals with the ward, with the exception of those involved in giving their own property to the ward as a gift or into a gratuitous use, or to substitute the ward in signing the deals or in conducting the court proceedings between the ward and the guardian's or the trustee's spouse and their close relations.

The most acute conflicts of interest in civil law occur in the field of corporate relations. Competitive interests in corporate relations are associated with the complex structure of their parties. Since they have different interests, this fact often results in corporate conflicts. Makarova (2005) distinguishes between two types of corporate conflicts: between the company bodies and its shareholders and between shareholders if this conflict affects the interests of society.

Corporate conflicts can be caused by different interests of:

- Certain members of some corporation;
- Some corporation and its members;
- Some corporation and its managers (a single-person executive body, the board of directors, etc.).

A conflict of interest is among the main causes of corporate conflicts between the parties involved in corporate relations. Moreover, such conflicts most often arise due to the realization of one's property interests and the possibility of one person to influence another (for

example, a conflict between majority and minority shareholders). In this case, a conflict of interest becomes a pre-conflict situation.

A conflict of interest in a joint-stock company might be caused by competitive interests of this company and its shareholder if the simultaneous realization of both interests is impossible. Within the framework of a conflict of interest, corporate interests are protected by law, which indirectly violates the interests of all its participants.

The legal regulation of such conflicts in civil law aims at creating a mechanism for their prevention and/or a procedure defining the actions of the parties involved in case of a conflict of interest. Such a mechanism is built over different legal constructs. In addition to civil law, it utilizes concepts from criminal, administrative, labor and other branches of law.

The existing legislation provides for the following structures to prevent and resolve conflicts of interest in the sphere of civil law:

- The introduction of special rules for making transactions;
- The imposition of fiduciary duties;
- The introduction of interested-party agreements.

In particular, the institute of interested-party transactions establishes a special procedure for deals made in favor of a person involved in a conflict of interest. To prevent a conflict of interest, the legislator introduced the concept of a “controller”, i.e. a person who has the right to directly or indirectly control more than 50% of votes in the supreme management body of the controlled organization, appoint (elect) its single-person executive body and/or more than 50% of the collegial management body of the controlled organization. In addition, a business entity is obliged to notify its non-involved members about a particular transaction. Interested-party transactions do not require prior consent but it can be obtained at the request of the single-person executive body, members of the collegial executive body, the board of directors (the supervisory board), if their formation is provided for by the charter of a particular company, or shareholders (a shareholder) who own at least 1% of the authorized capital of the above-mentioned company.

A significant contribution to the prevention of conflicts of interest was made by [Decree of the Plenum of the Supreme Court of the Russian Federation No. 27 \(2018\)](#) “On Challenging Major Transactions and Interested-Party Transactions” that systematizes judicial practice in relation to these institutes. It is worth mentioning that some legally significant actions that are not transactions in the traditional sense (for example, the conclusion of an employment agreement) are regarded as transactions within the framework of such institutes.

Labor law claims that employment contracts and agreements are not transactions. According to this approach, labor law is an independent branch of law regulating relations on the use of hired labor. This branch of law has its own subject of regulation (labor relations and other relations directly related to them) and its own method that differs from the techniques of civil law. Typical features of the labor method are as follows: the unequal status of parties (relations of authority and hierarchy between the employee and the employer), the formation of rights and obligations based on special legal facts (the conclusion of an employment contract, work permit), the development of specific ways to protect labor rights. The current civil legislation, including laws on transactions, does not regulate the conclusion and execution of labor contracts and additional agreements. Indeed, employment causes labor conflicts rather than civil ones. Thus, the consequences of invalid civil transactions cannot be applied to an employment contract. It is also impossible to return both parties to their initial position before the conclusion of the above-mentioned employment contract or assign each of them the obligation to reimburse everything received under this contract. However, this approach causes the issue of “golden parachutes” that is typical of modern Russia, i.e. payments received by an employee under their contract in case their employment is terminated in addition to payments established by the Labor Code. Since employment contracts providing the so-called golden parachutes can contradict the charter of a particular company, they can be declared invalid, non-subject to bilateral restitution or the application of provisions on extraordinary transactions.

The doctrine of legal science indicates this problem but legislators have not decided whether it is possible to challenge golden parachute agreements in a court to hold it invalid or change the amount of compensation to make it reasonable. Currently, there are no norms on holding an employment contract (or part thereof) invalid and there is no mechanism for reducing the amount of payments owed to employees. In this case, the head of any company will be obviously in a conflict of interest with the company itself since this person signed a golden parachute agreement on behalf of the company.

This problem has been considered in judicial practice. Despite the prevailing approach that it is impossible to regard an employment contract as a transaction in terms of civil law, a legal position has been established according to which provisions on interested-party transactions can be applied to employment contracts and additional agreements concluded with the head of some company. The relevant provisions are also contained in [Decree of the Plenum of the Supreme Court of the Russian Federation No. 27 \(2018\)](#): While considering labor agreements with other employees, courts rarely hold them invalid. On the one hand, courts regard golden parachute agreements as valid. On the other hand, they do not satisfy the employee's requirements under the general legal principle of prohibiting the abuse of their rights.

The Russian civil law also provides the following legal construct: the parties (particular or all of them) involved in a conflict of interest should disclose information about their affiliation and not disclose confidential information about the activities of their joint-stock company. If these obligations are violated, there is a special procedure to remove such persons from company management.

In addition, a transaction made by a legal entity can be held invalid “at the suit of this legal entity, its founder (member) or another person in whose interests this restriction is established”. The “another person” might be a bank that seeks to prevent the withdrawal of the debtor's assets and makes this legal entity include the corresponding restrictions on legal capacity in their charter that impede such an action. In this case, the bank has the right to challenge withdrawal

transactions violating these restrictions. A member of the governing board cannot act on behalf of the legal entity without a power of attorney. The imposition of special fiduciary duties on the party of a conflict of interest (governing board members) and the establishment of civil liability in case of their violation (for instance, the compensation of damages) can limit their possible arbitrariness. This flexible mechanism allows regulating conflicts of interest.

Conflicts of interest in corporate law and methods of their resolution

The Russian civil law enshrines the priority of corporate interests that needs to balance the position of some company in comparison with other entities since the company itself cannot directly serve its interests. According to the Civil Code of the Russian Federation (ГКРФ, 1994, cl. 1, art. 174), if claims against a transaction made on behalf of a legal entity are filed by company members or members of other governing bodies who usually do not act on behalf of this company without a power of attorney, the above-mentioned claims are regarded as filed on behalf of the company itself. In other words, law grants these persons the authority to perform such a legally significant action as challenging a transaction made on behalf of the company. In this case, such persons act as legal representatives, which is indicated in the Civil Code of the Russian Federation (ГКРФ, 1994, cl. 1, art. 65.2), in relation to the claims filed by company members. A similar approach should be applied to the claims filed by members of governing boards.

This type of protecting corporate interests is called derivative actions, i.e. the claims of company members in defense of its rights and legitimate interests (claims to recover the losses incurred by the company in its favor; claims on invalidating some company contracts and applying the consequences of their invalidity). The company acts as the plaintiff in a derivative claim (i.e. the person whose rights and legitimate interests were violated) and the relevant company members or members of its governing board act as legal representatives.

[Abolonin \(2014\)](#) states that the right of a company member to file a derivative claim in defense of the relevant legal entity is derived from their ownership of the charter capital. Thus, such a claim aims at protecting the rights and legitimate interests of the above-mentioned ownership, as well as the rights and legitimate interests of other company members. The defendant in a derivative claim challenging some transaction made by the general director is the counter party to the transaction under consideration.

Several problems are associated with derivative claims. In particular, it is unclear whether the interests of a particular company and its member who filed a derivative claim coincide. On the one hand, such company members defend their own interests by filing a lawsuit on behalf of their company. On the other hand, they face several problems in the process. For example, such a member has a limited opportunity to collect evidence on behalf of their company and their interests might diverge from corporate interests in a certain situation. To address this issue, judicial practice has developed the following solution: the burden of proof should be redistributed, including criteria for the director's fair play.

To harmonize the interests of the company member intending to file a derivative claim and the interests of other company members and the company itself, this company member should notify other company members and the company itself about their intention to file a derivative claim before actually filing it. In this regard, other company members and the company itself will be aware of such intentions, and the other company members who received the corresponding notification will be entitled to join the corresponding claim.

On September 1, 2013, the Civil Code of the Russian Federation was supplemented with Article 173.1, which questions the relationship between this article and Clause 1 of Article 174 of the Civil Code of the Russian Federation ([ГКРФ, 1994](#), art. 173.1). Article 173.1 of the Civil Code of the Russian Federation establishes the right to challenge a transaction carried out without the consent of a third party, body of a legal entity or state body, whose obtaining is needed

by virtue of law ([ГКРФ, 1994](#), art. 173.1). The key component of this renewed provision is the consent required by law. Thus, there is the fundamental difference in the application of these articles since the Civil Code of the Russian Federation ([ГКРФ, 1994](#), cl. 1, art. 174) covers cases where the relevant restrictions are established not by law but internal acts of some company regulating relationships between the representee and the representative (director).

[Karapetov \(2018b\)](#) highlights that restrictions can be imposed not only on the director's powers but also on the performance of any transactions by a legal entity according to its charter. In the latter case, a transaction made by a legal entity in violation of the statutory restrictions on the objectives of its activities can be challenged in conformity with the Civil Code of the Russian Federation ([ГКРФ, 1994](#), art. 173).

In addition to invalidating the transaction of a legal entity, there are other ways to protect corporate interests from the abuse of other persons. Under the Civil Code of the Russian Federation ([ГКРФ, 1994](#), cl. 3, art. 53), the person, who by force of the law or of the legal entity's constituent documents comes out on its behalf, shall act in the interests of the legal entity it represents honestly and wisely. Members of its governing bodies (supervisory or other councils, the board of directors, etc.) bear the same obligation. Along with the head of a legal entity and members of its governing body, persons who are able to determine the actions of a legal entity can be held liable for its wrongful acts. If these persons inflict losses to the above-mentioned legal entity while acting together, they are obliged to compensate these losses jointly, i.e. any of them might be required to recover the losses in full. Therefore, all the persons affiliated with a legal entity are required to act reasonably and in good faith. For instance, the director of some company performs the relevant duties reasonably and in good faith if this person takes the necessary and sufficient measures to achieve the goals for which a legal entity was established, including the proper execution of public obligations assigned to this legal entity by law. The criteria of good faith and reasonableness are enshrined in [Decree of the Plenum of the](#)

[Supreme Arbitration Court of the Russian Federation No. 62 \(2013\)](#)

“On Some Issues of Compensation for Losses by Persons Included in Legal Entities”. According to Clause 8 of the above-mentioned Decree, the satisfaction of a claim for damages by the director of some company does not depend on the possibility to recover the losses of the legal entity by other means of protecting civil rights, including by applying the consequences of the invalidity of the initial transaction, recovering the property of a legal entity from someone else’s illegal possession, collecting unreasonable earnings, as well as the invalidity of the transaction in question that entailed the losses of the legal entity. Thus, the compensation of losses is a full-fledged method of protecting the interests of a legal entity.

We should note that minority shareholders bear a heavy risk in a conflict of interest. Since they own a small package of shares, it imposes certain restrictions on the exercise of their rights. The rights of minority shareholders can be limited at the general meeting of shareholders as they are practically deprived of the opportunity to influence the final decision of the general meeting because of majority shareholders who have enough votes to make a decision that suits their interests.

Regarding representation in collective relations governed by labor law, a possible conflict of interest between a union (association) and its member is resolved solely by the exercise of the member’s right to freely leave the above-mentioned union (association). It is worth mentioning that the interests of all parties do not fully coincide in case of collective representation. After all, a union or association represents generalized and consolidated interests of its own members rather than the interests of each member. Therefore, the position of employers’ associations, trade unions or vocational organizations might not coincide with the opinion of an individual member, which is not critical and does not give any reason for terminating one’s membership. A member of such unions and associations is guided by the following thesis: “You sacrifice the pursuit of individual or private goods for the sake of greater, common goods”.

The prevention or settlement of a conflict of interest is relevant for representatives of employers whose personal interests can cause significant losses to a legal entity, as well as for representatives of individuals and employees known for committing wrongful acts if their actions might violate basic statutory rights and human freedoms. According to [Zaitsev \(2016\)](#), the interests of a legal entity can be partially protected by corporate legal acts and the terms of an employment contract concluded with its director. However, the interests of individuals with defects of will are not protected by law against unlawful inaction or abuse of their legal representatives.

There are specific procedures for resolving a conflict of interest if there are several directors in one company. The charter of such a company can provide that they act on behalf of the legal entity in question either jointly or independently. If some company has more than one director, each of them has the right to make transactions on their own behalf. If the charter provides for the appointment of joint directors, they can make corporate transactions only jointly. If such a rule is enshrined in the Unified State Register of Legal Entities, it is valid outside the realm of some company and, consequently, the statutory provision on the joint exercise of powers ceases to be the matter of “internal” restrictions. On the basis thereof, if one director violates the statutory provisions on the joint powers and execution of a transaction on behalf of some company, this act will be considered the abuse of powers. Thus, this situation relates not to a contentious transaction but the application of Article 183 of the Civil Code of the Russian Federation (the Effecting of the Deal by an Unauthorized Person). Accordingly, such a deal does not bind the company unless it decides to subsequently approve it.

CONCLUSIONS

Throughout the study and analysis of the regulatory framework, judicial practice and doctrinal sources, we drew the following conclusions:

1. In the field of private law, a conflict of interest might arise in the following relations: agency relationships (between the representative and the representee); corporate relations; family relations (for example, a conflict of interest between the guardian and the one under wardship); labor relations.
2. Civil law imposes certain restrictions on contracts within the framework of agency relationships and agreements concluded by persons acting on behalf of legal entities. These limitations have a preventive effect on representatives, ensure that they will not resort to foul play and abuse of rights.
3. If some agreement is concluded by the representative in a conflict of interest, this contract can be held invalid and the representee can submit a claim for compensation. By signing a contract in a conflict of interest, the representative might violate their contractual obligations (in case of the director, their fiduciary duties to act reasonably and in good faith). To prevent such conflicts related to the activities of business entities, it is logical to use such a legal construct as “the corporate approval of interested-party agreements”.
4. Despite the prevailing opinion that a concluded labor agreement cannot be regarded as a transaction, judicial discretion has been established in court proceedings according to which it is possible to apply provisions on interested-party agreements to labor contracts and additional agreements concluded with the head of some enterprise. On the one hand, courts recognize golden parachute agreements with top managers as valid transactions. On the other hand, courts do not satisfy the employee’s requirements under the general legal principle of prohibiting the abuse of their rights.
5. A conflict of interest in a joint-stock company might be caused by competitive interests of this company and its shareholder if the simultaneous realization of both interests is impossible. Within the framework of a conflict of interest, corporate interests are protected by law, which indirectly violates the interests of all its participants.

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