

## **STATE-OWNED CORPORATION DEVELOPMENT MANAGEMENT: ISSUES OF LEGAL, ECONOMIC AND CLUSTER ORGANISATION**

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**Key words:** state-owned corporation, industrial production capital assets, organizational-and-legal entity format.

This paper focuses on the topical issues of state-owned corporation performance in the Russian Federation; it offers analysis of legal and economic processes of development management; it describes the mechanism of cluster organization with regard to state-owned corporations.

Under conditions of economic gap between Russia and developed countries, raw-materials-oriented export operations, significant depreciation of industrial production capital assets and low labor productivity, it is critical to define the benchmarks of the national economy development and determine the governmental regulation directions involving (alongside with other things) modernization and potential growth of the domestic industry. Within the framework of systemic streamlining of the RF industrial and research potential, legislative definition was given to the new organizational-and-legal entity format – state-owned corporation (SOC) as a non-profit organization designed to accomplish the tasks of managing the key sectors of the Russian economy, carrying out the structural and technological policy and not targeting profit earning.

According to the Federal Law on Amending the Federal Law on Non-Profit Organizations (of July 8, 1999), the state-owned corporation (SOC) is defined as a non-membership non-profit organization established by the RF on the basis of property contribution with the purpose of performing social, managerial or other socially useful functions. The SOC is developed in compliance with the federal applicable law. The property transferred to the SOC by the Russian Federation shall be regarded as property of the state-owned corporation. The SOC shall not be liable for the Russian Federation; equally the Russian Federation shall not be liable for the state-owned corporation, except as otherwise provided by the law that stipulates its establishing. The SOC shall be entitled to perform entrepreneurial activity so far as this serves achievement of goals for the sake of which it was established and complies with these

goals. The state-owned corporation shall annually publish reports on using its property in compliance with the law, which stipulates establishing of the state-owned corporation. In cases and in the way provided by the federal applicable legislation that stipulates establishing of the state-owned corporation, the authorized capital can be formed out of portion of its property. The authorized capital determines the minimum size of the state-owned corporation's property guaranteeing interests of its creditors.

The state-owned corporation is entitled to increase the financial resources amount by means of placing available assets of funds, carrying out activity directed towards direct profit earning (which indeed is not limited). In particular, state-owned corporations may participate in legal entities' authorized capital including mutual investment funds and non-profit organizations, provide financial resources on a payback, refundable and fixed-term basis.

The role of the RF President and the Government in the state-owned corporations' activity is described in the relevant laws. Thus, the Federal Law on the Russian Corporation of Nanotechnologies (of 19.07.2007, No. 139-FZ) specifies that the Russian Federation President shall appoint and dismiss the corporation's general director. The Russian Federation Government:

1) appoints and dismisses the corporation supervisory board members including the chair of the corporation supervisory board, with the exception of the corporation general director who is member of the supervisory board of the corporation by virtue of his/her position;

2) determines the remuneration of the corporation's general director;

3) defines directions, way and conditions of investing temporarily available assets of the

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corporation as well as the maximum size of the corporation's temporarily available assets to be invested.

Interrelations between the SOC and the budget system are executed as far as payment of taxes to the federal and local budgets, payment of interest for loans provided from the centralized subsidy budget (mainly in view of capital investments, donations and credits) is concerned.

Currently, development of state-owned corporations became one of the instrumental directions of the RF economic policy. Below are the state-owned corporations that are in operation or in establishment phase:

- ◆ Foundation for Assisting Reforms in the Housing-and-Utilities Sector;
- ◆ Russian Corporation for Nanotechnologies ("Rosnanotech");
- ◆ State-Owned Corporation for Constructing Olympic Facilities ("Olympstroy");
- ◆ State-Owned Corporation for Assisting Development, Manufacturing and Export of High-Tech Products ("Rostekhnologii");
- ◆ State-Owned Corporation for Atomic Energy ("Rosatom").

Opportunities of developing state-owned corporations in such fields as grain export, fishery, housing and road construction, medications supply, machine-tool construction are considered. It is likely that the Mail of Russia will be reorganized into a state-owned corporation. The jurisdiction of state-owned corporations is continuously increasing with the coverage of major long-term investment tasks ("Olympstroy") as well as current branch-specific objectives ("Rosatom").

Certain entities described as state-owned corporations formally exist in other organizational-legal formats operating as open-type joint-stock companies (with the majority stock belonging to the state) or federal state-owned unitary enterprises. Examples of that sort of entities include the United Aircraft Building Corporation and the United Shipbuilding Corporation (established in form of open-type joint-stock companies) as well as the FGUP State-Owned Corporation for Organizing Air Traffic in the Russian Federation and the FGUP State-Owned Investment Corporation.

The organizational-legal form of a state-owned corporation is essentially controversial, but at the same time it possesses a number of

evident strengths. On the one hand, a state-owned corporation accumulates in its established funds certain property transferred to the corporation by the state to be used for well-defined purposes; on the other hand, a state-owned corporation acts as a government-established entity to manage financial resources that have strictly-defined social orientation. Besides, state-owned corporations are entitled to increase the financial resources volume by means of efficient allocation of available assets of the funds, thus carrying out economic activity.

Consequently, a state-owned corporation shall be understood as an essentially new pattern of ownership – private-public, in which it is planned to benefit from advantages of both patterns, because state-owned corporations are not limited by the budget financing and are able of closely interacting with the entrepreneurial-activity operators. Development of state-owned corporations can become an integrant part of the private-public partnership in the Russian Federation enabling solution of tasks related to interaction of the public authorities and the business community within the framework of corporate state, development of the world economics and the global financial system.

Hence, establishing of the state-owned corporations is directly linked both to reinforcement of the government's role in the economic relations and to creation of the so-called "break-through technologies" as well as new manufacturing branches.

For example, according to the opinion of I.V. Ershova, "tomorrow is with the state-owned corporations. Their development in various economic spheres will really enable simplification of the highly unmanageable public authorities' structure and creating of a tangible linkage between the state and the entrepreneurial-activity operators. Besides, the state-owned corporations might become consulting centers, settle the social policy issues and the problems of sanitary-epidemiological and environmental comfort of the population. The long-running (in the research papers) discussion about the organizational-legal format of the Bank of Russia could be solved in favor of the state-owned corporation".

According to the opinion by O.M. Oleynik, there are some types of activity that tend to become centralized and need to be centrally

governed. Specifically, in the electric power sector there will be always a need in performing a kind of centralized dispatcher function, which is also the case with the railways and waterways. In the case under consideration, management is converted into economic activity; it obtains economic value, is sold in the market and is of demand by all the players. It is exactly this group of cases that requires development of a state-owned corporation, which on the one hand would manage that sort of system and on the other hand would deliver payable services of a dispatcher.

From the point of view of the business community, a state-owned corporation (as an economic operator) has got a number of major strengths, which make this organizational-legal form rather attractive for the business activity.

In the first place, there is practically absolute absence of control over the state-owned corporation on the part of the government. With this going on, the main source of forming assets holding of any state corporation (developing the core of its proprietary self-sufficiency) is public financing. The assets holding transferred by Russia to the state-owned corporation becomes property of that corporation. At the same time, a state-owned corporation – unlike an open-type joint-stock company with predominant governmental participation – cannot be declared bankrupt, because the applicable law implies bankruptcy only with regard to non-profit organizations operating in the format of consumer cooperative society, charity or other foundation.

It is our opinion that there is no contradiction between creation of state-owned corporations having explicit vertical systemic organization and announced by the state necessity of developing small and medium-size business. As an example, one may describe the situation in Italy, where establishing of a group of three major state holdings provided a strong impetus to development of not only economy in toto, but also of the small business, because big corporations awarded many contracts to the smaller companies. In our country, the structure of the state corporation referred to as “Russian Nanotechnologies” implied creation of network-style nanotechnological clusters as per key directions of the nanotechnology development. National R&D centers, demand-assigned cen-

ters, competence centers, research centers, federal laboratories, technological parks, technical-introduction zones, technologies transfer centers – all that appeared as basic elements of technological clusters. These clusters are called up to generate efficient commercial projects with the purpose of creating competitive advantages for competitive products.

At the same time, one cannot but show significant weaknesses peculiar to state-owned corporations, manifestation of which in the long run might neutralize their strengths.

State-owned corporation is currently the only one organizational-legal form implying combination of functions of public authorities (participation in development and assistance in execution of the governmental policy, development and coordination of the draft legal acts) and business entities (project financing, entrepreneurial activity). Coincidence of these functions can provoke conflict of interests in activities of a state-owned corporation. The Russian legislation on competition and antimonopoly measures in the commodity markets directly prohibits combining of business activity and the managerial functions, which shows existing contradictions in the legal status of the SOC.

Governmental control of the state-owned corporations is rather limited. State-run public authorities are not entitled to do the following without prior consent of the SOC:

- ◆ request from the managerial bodies of the SOC their administrative records;
- ◆ request and obtain information on the corporation’s financial-and-economic activity from the state statistics agencies, tax authorities and other public inspection and supervision bodies as well as from financial institutions;
- ◆ delegate representatives to participate in events conducted by the state-owned corporations (including press-conferences);
- ◆ perform audits of the corporation’s activity including spending of money and using other resources to determine whether that activity complies with the corporation’s activity objectives;
- ◆ in the event of detection that the state-owned corporation violates the law or undertakes actions contradicting its objectives, to notify the SOC in writing about the committed violation specifying the deadline of its elimination;

◆ determine compliance of the state-owned corporation's expenditures and use of its property with its objectives.

Public funds for the state-owned corporations are free resources, which – in absence of strict control – can be used inefficient. The governmental resources invested into the state-owned corporations' activity are invested into projects selected by the corporations at their discretion. According to the experts' opinion, considerable part of those resources will be inevitably spent in a non-purposeful way – outsized administrative costs due to unjustified staff strength, too high salaries, etc.

Withdrawal of the SOC's equity (but not the budget funds with regard to which the state-owned corporation remains managing agent) from the state ownership means also withdrawal of the equity from the Accounts Chamber supervision.

The state-owned corporations concentrate not only industrial and scientific potential, but also capital, which is mainly of state origin. Hence, this is the process of unnatural capitalization of the corporations at the expense of public funds.

Consequently, the state-owned corporations seem to be “states in the state” holding the respective status enabling them use of different public-power resources; besides, that sort of entities are absolutely non-transparent for the government (in the person of legal government institutions), they do not report to the government and are not accountable to it. According to the opinion of M.G. Delyagin, the following are the key features of a state-owned corporation: “non-repayable privatization” of the public property, non-transparency and uncontrolled operations. One shall also keep in mind a direct contradiction between the specificity of the state-owned corporations' activities and provisions of the RF antimonopoly law.

The state-owned corporations embody the idea of diversified state control of the “command heights”, which in reality turns both into direct governmentalization of the economics and launching of many “development institutions” not controlled by the government.

In practical terms, the state-owned corporations turn to be rather private than public. As a rule, they are under control of a group of persons who often do not hold any official po-

sitions in these corporations. Such persons determine both the corporate strategies and the profits distribution, while the state tools and institutes are used for the sake of satisfying private interests – not the other way round.

Simultaneously with the SOC growth, their lobbying capacity and influence over the lawmakers grows as well. For example, against the background of existing closeness and independence of activity of the state-owned corporations as legal entities, decision was taken as to raising their managers' status. In particular, the matter concerns with amending the article 12 of the Federal Law on Leaving the RF and Entering the RF, according to which public offices of the “A” category shall be held by persons being sole executive bodies of the state-owned corporations. As a result, directors of the state-owned corporations are entitled to obtain diplomatic passports with the purpose of simplifying travels abroad; according to the author of the draft law, “the state-owned corporations, being non-profit organizations in form, in essence perform state tasks”, and the peculiarity of their employees' job “requires regular trips to foreign countries”.

Recently, the media started covering opinion of the RF President related to the necessity of introducing independent directors – “men of business” – into the SOC management. It is unclear though, to what extent those persons will be able of maintaining their independence after entering the corporate structure.

The state-owned corporations reflect to a major extent the process of globalization in economics, which in this case is promoted artificially and is motivated by established links and financial interests targeting reinforcement of their own economic and political influence. In theoretical economic terms, the state-owned corporations develop the driving force of “state monopolistic capitalism”.

By way of summarizing, we may remark that the economic aspects of the state-owned corporations' activity are yet poorly explored and efficiency of their performance in the long run is disputable. Under present-day economic conditions, the state-owned corporations offer practically the only tool of promoting science-intensive, resource-intensive and high-tech industrial branches. They are able of achieving accumulation and purpose-specific investing of

required resources. Efficiency of the state-owned corporations' performance is expected to add value to the economic development of the country, increase competitiveness of the Russian goods in the world markets.

Currently, it is not possible to speak of any scientifically justified approach to the process of the SOC establishing; this is a process that is more likely based on historically shaped (and in many case already disintegrated) economic relations between the respective participants. The SOC structure "absorbs" companies that succeeded in lobbying their interests, while the principles of market interplay, cooperation and ideas coordination do not always enjoy proper consideration. Using of scientifically reasoned techniques of cluster approach will make it possible to achieve systemic organization of the state-owned corporations' structure, establish sustainable relations between its participants facilitating improvement of the SOC performance in general. It is advisable to base the process of launching state-owned corporations on the cluster-inherent integration principles – mutual augmentability and interdependency of the economic operators, their integration into a unified value-adding chain with regard to the end product and common goals under conditions of internal rivalry of the participants and in certain cases under immediate vicinity. Organized in that way, the SOC will perform as real points of growth of the industrial and R&D potential, will promote competitiveness of the national economy.

During the state-owned corporations' life cycle, they will inevitably come across the issue of decrease in performance efficiency, the negative impact of the "scale effect". Inevitable bu-

reaucratization, decrease of the response rate to external environment impacts, absence of struggle for resources and growth of costs may lead to stagnation and further regress in the activity of the state-owned corporations as economic operators. In order to prolong the productive part of their life cycle and ensure the highest return on investments, the state-owned corporations must facilitate development of small and medium businesses, training of skilled staff in their branch and activate the outsourcing processes at large-scale industrial enterprises. As a result, the Russian economy will obtain efficiently performing, highly competitive industrial complexes including those that operate under conditions of cluster partnership, acting as systemic organizations of further economic development of the country. On achieving the above goals, the state-owned corporations must either cease to exist or concentrate only on consulting functions, financing of the most cost-intensive R&D works, on support and development of the innovative fields of science and engineering.

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<sup>5</sup> Federal Law of the RF on Amending Article 12 of the Federal Law on Leaving the Russian Federation and Entering the Russian Federation, of 22.07.2008, No. 127-FZ.