

Copyright © 2020 by Academic Publishing House *Researcher*

Published in the Russian Federation
 European Researcher. Series A
 Has been issued since 2010.
 E-ISSN 2224-0136
 2020, 11(2): 112-118

DOI: 10.13187/er.2020.2.112
www.erjournal.ru



Corporate Finances as the Object of Legal Regulation: Interdisciplinary Aspect

Marietta D. Shapsugova ^{a, *}

^a Institute of State and Law RAS, Business and Corporate Law Department, Russian Federation

Abstract

The object of a legal relationship is its aim. The article observes different approaches to understanding the object of legal relations. The main ones are those that, as an object, recognize goods or behavior. There are also not quite ordinary ones that understand the object of the legal regime. Both approaches are applicable to one degree or another to various objects within the framework of a particular industry. So, as the objects in civil law can be considered right and good and behavior. In our opinion, the objects of financial legal relations and rights are both the benefits and behavior of the subjects.

Object relationship and financial performance should have ability to legal objectivity and recognized as an object of financial rights by the state. The concept of "object of financial rights" is not contained in the legislation. However, individual objects can still be attributed to the objects of financial rights based on the characteristics that these objects should possess.

Keywords: object of legal relationship, object of financial activity, object of financial rights, object of financial law, corporate law, business law, corporate finances, private finances, public finances, legal objectivity.

1. Introduction

We should not forget about the differences in the objects of rights and legal relations. Legal objectivity, that is recognition as an object of rights, is a prerequisite for the appearance of a specific good or behavior as an object of legal relationship. An object of rights is an abstract concept characterizing the totality of benefits and characteristics of behavior. In a legal relationship, it becomes more specific. This process is similar to the process of distinguishing between the subject of law and the subject of legal relations.

Since financial relations are of a monetary distribution nature, the objects of financial legal relations as benefits are subject to distribution. Therefore, the main property of objects of financial rights and legal relations as benefits will be their potential "distributivity". In each group of financial relations, a specific object will be different, but it will be common for this object to be distributed in the future.

2. Materials and methods

The article is based on the analysis of doctrinal approaches using general and special scientific methods. The legal regulation of private finance investigated from the perspective of the legal regime. The legal regime for the distribution of the object of financial rights, its general

* Corresponding author
 E-mail addresses: shapsugova@gmail.com (M.D. Shapsugova)

framework should be, one way or another, determined by the state. The legal distribution regime will differ according to the regulatory method for public and private finances (Pistor, 2012; Pistor, 2013; Allen et al., 2004). In the case of centralized finance, the distribution mechanism is regulated by public education mainly imperatively, in the case of decentralized finance, the method will have the features of both imperative and dispositive. Dispositive rules can only be established by an individual and legal entity after compliance with all peremptory requirements of the law. In some cases, we will talk about the measure of imperativeness and dispositiveness in an object's distribution model. For example, profit is an object of distribution. The legal distribution regime will be determined by:

- directions of distribution: tax, dividends, reinvestment. The income tax will be distributed in an imperative manner. The distribution of profit after tax will be determined by the company dispositively, taking into account legislative restrictions on the distribution of profit (for example, Article 29 of the Federal Law "On LLC" (Federal'nyi zakon, 1998; Grazhdanskii kodeks..., 1994);

- the rules of accounting and tax records.

The directions of distribution will, to one degree or another, determine the methods of distribution.

Focus on the methodology's application to corporate law and corporate governance issues, supplemented with discussion of other relevant empirical work as well. Event studies are emphasized because they have played an important role in the making of corporate law and in applied corporate finance and corporate law scholarship. The reason for this input is twofold. First, there is a match between the methodology and subject matter: the goal of corporate law is to increase shareholder wealth and event studies provide a metric for measurement of the impact upon stock prices of policy decisions. Second, because the participants in corporate law debates share the objective of corporate law, to adopt policies that enhance shareholder wealth, their disagreements are over the means to achieve that end. A further reason for emphasizing event study data is that they avoid the endogeneity concerns that can limit the results of other modes of empirical research in this area (Bhagat, Romano, 2005).

3. Discussion

If the object of financial rights is a blessing, it must necessarily possess at least the following features:

1. distributeability;
2. monetary nature.

When the object of the financial relationship is the behavior, it should be about planning, formation, distribution, and use of funds and financial resources (financial liabilities), as well as financial control.

From the standpoint of the general theory of law, the benefit should be recognized as objects by the state as transferable (able to pass from one person to another), securing the object for the subject, and separating from the other objects.

Objects of financial law as benefits have special features that distinguish them from objects of other branches of law, as mentioned above, they must have the quality of distributability.

The objects of financial rights and, accordingly, legal relations, in our opinion, are:

- financial resources, including those having a fund form (the types of financial resources in public finance and in private will vary);
- monetary funds as tangible carriers of financial resources;
- the behavior of entities regarding the planning, formation, distribution, and use of financial resources, as well as financial control.

The specific objects of financial legal relations will vary depending on the type of financial legal relationship and the sphere of financial activity (in public and private financial relations, the behavior will consist of different specific actions that have a single nature, specific types of financial resources differ for each type of financial relationship).

Various economic classifications of the financial relations of an enterprise are distinguished in the economic literature on the finances of organizations. Conventionally, all the financial matters arising in financial institutions can be divided into three groups:

- 1) external (arise between independent entities) ;

2) internal, in-house (between units of the organization, as well as units of the organization and its parent bodies);

3) financial relations within holdings, financial and industrial groups, associations, and unions. Since, on the one hand, the enterprise is in one form or another their participant, and on the other, these associations are of a supra-company nature and do not replace the legal personality of the organization, they must be singled out in a special group.

Both external and internal relations can be "vertical" and "horizontal". In horizontal relations, the parties are equal. Relations are built primarily by the method of coordination and recommendations. In vertical relations, the will of one or the other parties will be decisive. Such relationships are based primarily on the mandatory prescription method.

Consider external financial legal relations in the finances of organizations.

By vertical external relations are financial relations commercially's organizations first with the budgetary system in the payment of obligatory payments to the budget (taxes, fees, customs duties, and insurance contributions to the extrabudgetary funds). For horizontal external financial relations are financially sound organization and with other organizations, with the banking and insurance companies (the relationship of organizations with banks have a dual nature, and are a combination of horizontal and vertical relations, on the one hand, the relationship bases on the contract, and on the other Bank authorized to exercise banking supervision).

Examples of internal financial relations can cause horizontal (financial relations organization regarding payroll, financial relations among the organization and its founders in the formation of the authorized capital, financial relations of organization and its shareholders and members, financial relations between equal divisions of the legal entity, financial relations arising between the enterprise and its employees regarding payroll) and vertical internal financial relations (financial relations between structural divisions of the organization that are in the subordination relationship).

Each of these groups has its characteristics, scope, implementation methods. However, not all financial relations in these groups are unidirectional. The material basis is the movement of funds, due to their use, cash flows are formed, they accompany the formation of the authorized capital of the organization (enterprise), the circulation of funds begins, and ends, the formation and use of funds for various purposes (Kolchina, 2007).

In the framework of the activity approach, a financial legal relationship is a form of implementation and an object of financial activity as a mutual relationship of entities, expressed in the rights and obligations regarding the objects of legal relations (financial resources and monetary funds) in the process of their formation, distribution and use.

There are highlights of the general signs of private and public financial relations:

- they exist in a sphere financial activity, arises in the process of formation, distribution, and use of financial resources.
- Financial resources and the behavior of entities regarding the formation, distribution, and use of financial resources are an object of financial legal relationship.
- These financial legal relationships are property and management monetary relations.
- Are regulatory relationships.

Financial relations in the finance organization, in our convictions, are not civil. Civil relations are based on the principles of equality and autonomy of will. In financial legal relations in an organization, the principle of autonomy of the will is limited. The formation, distribution, and use of financial resources in the finances of organizations is carried out on a private-public basis. In particular, profit distribution includes the obligation to make mandatory payments to the budget and legislative restrictions on its distribution. It is characterized by direct state intervention in the organization's distribution processes.

Thus, the need to expand the concept of a financial relationship considering that the financial relations in the sphere of financial activity of organizations exist. It is due to the internal logic and systematic nature of the category of finance.

All existing definition of a financial relationship, in fact, reflect the specifics of just relationships, arising in the field of state and municipal finances, and do not take into account the specifics of the financial relations, arising in the field of decentralized finance and financial institutions in particular. Also, a classification of financial legal relations should be made, taking

into account a more precise definition of financial legal relations in the field of state and municipal finances and financial legal relations within the framework of decentralized finances. The criteria for such a distinction require further refinement. It is possible to differentiate according to the prevailing sub-method (method) of regulation, perhaps – according to the sphere of financial activity, and perhaps the criterion should be comprehensive. This question requires further study and the issue of non-financial relations, arising in the financial sphere.

I.V. Ershova formulated a definition of the finances of organizations and financial legal relations. In her opinion, "the essence of the financial rights of business entities is determined by the nature of the legal relations that develop when conducting entrepreneurial activities" (Ershova, 1999). "Financial legal relations can be understood and disclosed as specific relations of subjects in clarifying the structure of legal relations ... The whole variety of these relations is divided into two large groups: absolute and in personam type of relationship" (Ershova, 1999). "The absolute design is not limited to property relations. Outside correspondence with other entities, the organization carries out activities to form the cost of production. The nature of these legal relations lies in the ability of the enterprise to exercise its rights without objection from other entities interested in such lawful behavior (mainly the state represented by tax and other regulatory bodies)" (Ershova, 1999).

However, we cannot agree with this position, because by the economic nature of the relationship on the formation of cost are not financial, they only accompany them.

Analyzing financial legal relations, I.V. Ershova concludes that they are absolute also at the stage of employers using the profit that remains at their disposal after making obligatory payments to the budget and extra-budgetary funds" (Ershova, 1999). "The procedure for the formation, condition, and movement of capital, funds, and reserves of an enterprise is regulated by law and (or) constituent documents. Carrying out activities on the use of profits by his power and interests following the requirements of legislation and constituent documents, the entity does not enter into legal relations with particular obligated persons. An indefinite circle of business entities is obliged only not to impede the entrepreneur in the exercise of their rights; their duty is passive. Thus, this construction of legal communication should be considered as absolute" (Ershova, 1999). Absolute relations arise in connection with the formation of a reserve fund in the process of profit distribution.

Relations «in personam» arise between the pre-defined subjects of financial relations, in particular in the following cases:

- 1) distribution of profits on dividends: participants – a legal entity;
- 2) redemption of bonds: the company – holders of bonds;
- 3) calculation, payment of taxes: society – tax authorities (budget).

Financial relations in an organization are managerial relations, as well as the legal financial relations in organizations. The ratio of power and subordination arises in finance organizations, but this is not always the attitude of the authorities and the public entity subordination of other, non-power entities. It may be the government's attitude and the governing bodies of the legal entity and its subordination to the farm units. As noted in the textbooks on financial law, a financial relationship is an authority relationship, since it serves as a form of implementation of a mandatory financial and legal norm. Mandatory nature of financial and legal norms is manifested in the legal relationship in such a way that it is implemented on the principle of "command-execution", which issued command is, so the state (or a municipality), and fulfill their individual and collective, and other subjects of financial law; one of the parties to a financial legal relationship is always: a) a state, b) a municipality or c) a body authorized by the state (Karaseva, 2015). As for the financial legal relationship of organizations, this requirement is not always met. The subject vested with power can be the authorized body of a legal entity; the subject of subordination is the corresponding unit of the same legal entity. Besides, peremptory norms will also not always come from the state. A legal entity's competent authority can establish mandatory norms in internal financial legal relations.

It is generally accepted that financial relations are the subject of financial law and authority relations, but today's dispositive method is used in financial law. Its affairs reflect the general pattern of mutual entering of public and private branches of law. Nevertheless, it should be noted that in financial law, power relations with the participation of public entities occupy the bulk of the relations of the subject of regulation. As part of the finances of

organizations, the main focus is on relations with counterparts under contracts and internal relations, and the payment of mandatory payments to the budget.

Legal relations in the area of finance organizations are heterogeneous: they are authority relations, and relations, based on equality and the relationship, are based on the subordination of one unit to another within the enterprise.

The stock nature reflects the statistics of the financial legal relationship, financial liability, mediating cash flow, cash flow – dynamics.

Financial legal relations are a kind of synthesis of legal and economic matters, being an economic and legal category (Krokhina, 2016), which is why we do not distinguish between financial relations and financial legal relations. Financial relationships exist in legal form.

Financial relations arising in the organization can be classified into external and internal.

The external financial relations in the organization, including:

The organization's financial relations with state authorities regarding the payment of taxes and other obligatory payments (vertical financial relations);

Financial relations of the organization with counterparties under contracts (horizontal financial relations);

Financial relations of the organization with credit organizations, investment funds, and companies, insurance companies.

The system of internal financial relations of the organization includes:

15. Financial relations of an organization within a holding, union, association, self-regulatory organization (intra-industry financial relations);

16. Financial relations with founders – shareholders, participants (corporate relations);

17. Financial relations of the organization and employees;

18. Financial relations between the governing bodies of the enterprise and its structural divisions (vertical intraeconomic relations);

19. Financial relations between various structural divisions of an enterprise (horizontal intraeconomic relations).

The above are various classifications of relations in the framework of the finances of organizations, but at the same time, the question of what kind of monetary relations are related to finances is "vexata quaestio". The most frequently discussed financial relations that arise in the sale of goods and about the payment for labor. Depending on the type of activity the list of discussion questions can be supplemented with other relations specific to this type of activity, such as financial relations, arising with the reinsurer (the payment of reinsurance premiums, reinsurer's participation in losses for insured events) (Nikulina, 2008) in the field of financial activities of insurance organizations, between commercial banks and the Bank of Russia in the sphere of financial activities of banks. Each of these groups of relations has its characteristics by the method of formation, distribution, and use of financial resources.

4. Conclusion

All private financial relations are bilateral in nature. The cash flow is their material basis, due to their use, cash flows are formed, they accompany the formation of the authorized capital of the organization (enterprise), the circulation of funds begins and ends, the formation and use of cash funds for various purposes, financial reserves and the overall financial resources of the organization (Kolchina, 2007).

On the issue of monetary relations arising under contracts of sale, the opponents of classifying financial relations as arising from the purchase and sale offer the following arguments: "Such monetary operations as buying and selling cannot be classified as finance. This operation, if it takes place on an equivalent basis, is a change of forms of value, both parties involved in it, cost nothing to lose and do not get. As for the exchange with imbalancing of the equivalent, there is a distribution between the buyer and the seller, but this distribution is a function of price, not a function of finance. Thus, all exchange operations (trade) are not included in the concept of finance, which does not at all preclude the use of finance in the sphere of circulation" (Shermenev, 1977). D.S. Molyakov, justifying the opposite point of view, wrote: "The company sells products and receives the corresponding revenue. In this case, there is not only a change in ownership (goods – money), but financial relations also arise. As a result of the sale of products, the supplier enterprise receives a certain amount of gross income – the main source of formation of cash funds and cash

accumulations. The size of this gross income depends on how the economic relations among the supplier and buyer of goods in the process of their sale will develop.

In many cases, the revenue from sales does not coincide with the cost of goods ... For many enterprises, revenue from sales exceeds the cost of products sold, and they pay fixed and rental payments to the budget ... Besides, as a result of cash relations between suppliers and customers, the latter generates specific financial resources in the form of normal carry-on debt to suppliers for goods received from them, the payment term of which has not yet arrived, which is one of the sources for the formation of working capital of the enterprise" (Molyakov, 1986).

Any monetary operations can be considered financial not only in the absence of an equivalent, but also equivalent with a time lag between the receipt of funds and the counter-provision. Also, one should not forget about operations subject to VAT.

On the issue of wages, we agree with the opinion of D.S. Molyakov: "As a rule, the timing of payment of wages at enterprises does not coincide with the time of receipt of revenue from sales of products and with the end of the payment period, so mutual advancement arises in the process of implementing these relations" (Molyakov, 1986).

On the criterion of subject and method of legal regulation, all of the above financial relations arising in the sphere of financial activity of organizations can be classified into:

1) public (vertical), arising imperatively in connection with the implementation of financial activities in the organization and its regulation, financial relations of authority and subordination with authorities (for example, the implementation of mandatory payments to the budget and extra-budgetary funds, relations under state financial control, legal regulation of accounting and reporting, cash and banking operations). Such relationships are purely financial and legal. They are predominantly imperative. Within the framework of these relations, authorities and administrations have competence. In business law, a group of vertical relations is also distinguished. However, they correspond to relations with the participation of persons engaged in entrepreneurial activity, that is, overlap with the finances of organizations partially, and only in the field of financial activity of commercial organizations;

2) private (horizontal) financial relationships that occur between independent entities, in its relations with counterparties, including credit and insurance organizations, banking supervision of the implementation of cash transactions (private-public financial relations). This group of relations is associated with civil relations but does not fully comply with them. To these relations, we can say that civil law relations generate financial relations and accompany them. Horizontal relationships in business law also arise in individuals, engaged in entrepreneurial activity, which partially cover the subject area of finance of organizations;

3) in internal vertical and horizontal financial relations, as well as those involving intra-company financial control.

Intraeconomic relations are not typical of financial law. At the financial level of organizations, there are intraeconomic financial relations that are not studied by financial law. In part, they are examined by specialists in the field of accounting law. At the same time, intraeconomic relations partially overlap with intraeconomic financial relations, which, according to the logic of the subject, constitute the subject of entrepreneurial (economic) law (Budnikova et al., 2019).

The subjects of intraeconomic relations are various structural units of the organization, which interact both among themselves and with the organization as a whole. "Internal relations are heterogeneous. So, in the structure of intraeconomic relations, internal corporate, based on the fact of participation of a person in a business company as a shareholder (participant), are distinguished; membership arising from participation in organizations based on membership (production cooperative), and, therefore, entailing the obligation of personal participation in managing the organization's affairs. Often such relationships are managerial in nature, as they arise in the process of self-organization and self-government in commercial organizations" (Ershova, Otnyukova, 2020).

References

Allen et al., 2004 – Allen, F., Qian, J., Qian, M. (2004). Law, Finance, and Economic Growth. U of Penn, Inst for Law & Econ Research Paper № 03-21.

Bhagat, Romano, 2005 – *Bhagat, S., Romano, R.* (2005). Empirical Studies of Corporate Law. Handbook of law and economics, A. Mitchell Polinsky and Steven Shavell, Forthcoming. Yale ICF Working Paper № 05-16; ECGI – Finance Working Paper Forthcoming; European Corporate Governance Institute (ECGI) – Law Working Paper № 44/2005.

Budnikova et al., 2019 – *Budnikova, Yu.E., Bulgakova, L.I., Gabov, A.V., Zankovsky, S.S., Kleandrov, M.I., Laletina, A.S., Laptev, V. A., Lizikova, M.S., Moturenko, S.M., Netesova, M.S., Sazonova, E.S., Nikitin, V.V., Ovchinnikova, Yu.S., Pushkarev, M.S., Smolina, O.S., Solovyanenko, N.I., Shapsugova, M.D.* (2019). Problemy razvitiya i perspektivy predprinimatel'skogo prava v sovremennykh ekonomicheskikh usloviyakh [Development problems and prospects of business law in modern economic conditions. M.: IGP RAS]. [Electronic resource]. URL: <https://www.elibrary.ru/item.asp?id=41556856> (date of access: 20.04.2020). [in Russian]

Ershova, 1999 – *Ershova, I.V.* (1999). Imushchestvo i finansy organizatsii. Pravovoe regulirovanie [Property and finance of the enterprise. Legal regulation]. M.: Lawyer. [in Russian]

Ershova, Otnyukova, 2020 – *Ershova, I.V., Otnyukova, G.D.* (2020). Predprinimatel'skoe pravo [Business law]. M.: Prospect. P. 9. [in Russian]

Federal'nyi zakon, 1998 – Federal'nyi zakon ot 8 fevralya 1998 g. № 14-FZ «Ob obshchestvakh s ogranichennoi otvetstvennost'yu» [Federal Law of 08.02.1998 N 14-FZ "On Limited Liability Companies"]. [Electronic resource] "Garant" (date of access: 15.03.2020). [in Russian]

Grazhdanskii kodeks..., 1994 – Grazhdanskii kodeks Rossiiskoi Federatsii ot 30.11.1994 № 51-FZ [Elektronnyi resurs] SPS «Garant» [Civil Code of the Russian Federation of November 30, 1994. № 51-FZ] [Electronic resource]. "Garant" (date of access: 24.04.2020). [in Russian]

Karaseva, 2015 – *Karaseva, M.V.* (2015). Finansovoe pravo [Financial law]. M.: Yurait. P. 131. [in Russian]

Kolchina, 2007 – *Kolchina, N.V.* (2007). Finansy organizatsii (predpriyatii) [Finance of organizations (enterprises)] M.: UNITY-DANA. [in Russian]

Krokhina, 2016 – *Krokhina, Yu.A.* (2016). Finansovoe pravo [Financial law]. M: Norma. [in Russian]

Molyakov, 1986 – *Molyakov, D.S.* (1986). Teoriya finansov sotsialisticheskikh predpriyatii i otraslei narodnogo khozyaistva [The theory of finance of socialist enterprises and sectors of the economy]. M.: "Finansy i statistika". [in Russian]

Nikulina, 2008 – *Nikulina, N.N.* (2008). Finansovyi menedzhment strakhovoi organizatsii [Financial management of an insurance organization]. M.: UNITY-DANA. [in Russian]

Pistor, 2012 – *Pistor, K.* (2012). Towards a Legal Theory of Finance. ECGI – Law Working Paper. № 196; Columbia Law and Economics Working Paper № 434.

Pistor, 2013 – *Pistor, K.* (2013). A Legal Theory of Finance. *Journal of Comparative Economics*. Vol. 41, № 2. Columbia Public Law Research Paper No. 13-348.

Shermenev, 1977 – *Shermenev, M.K.* (1977). Finansy SSSR [Finances of the USSR]. M.: Finance. [in Russian]