“The last will foundation (inheritance foundation) under modern Russian civil law”

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INTRODUCTION

i) Importance of inheritance relations.

Throughout the history of humankind, the ownership issues have affected many interests and, therefore, have always been represented in society as one of the most essential and complex relations that require precise and complete legal regulation. Inheritance is a relationship about the ownership, and, in terms of legal protection, also requires absolute certainty. Inheritance affects legal relations between heirs, third parties, sometimes with public authorities of different levels. The legislation guarantees the heirs the protection of the right of private ownership of the inheritance and allows them to fulfill the last will of the deceased[1]. Moreover, it ensures the transfer and preservation of estate belonging to an individual in the ownership of that family or people indicated by testator. The life of ordinary citizens, society, business, and, to some extent, the state itself depends on how these issues are regulated in the legislation[2]. What is important is how the state influences whether these rules and guarantees are actually implemented[3].

The inheritance law of developed legal systems is distinguished on the one hand by stability, on the other hand, by the flexibility of regulating these relations, which is associated with the increasing popularity of the disposal of inheritance, which also depends on the growth of the well-being of the population[4]. It is

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[1] See Bergmann W. Introduction to understanding the German Civil Code/Deutsches Bürgerliches Gesetzbuch mit Einführungsgesetz. Пер.с нем.: Науч.редакторы А.Л.Маковский и др. М.: Волтерс Клувер, 2004. 816p. Pp.X-XI.

[2] That becomes relevant given the annual valuation of inheritance in the EU alone, estimated at billions of Euro. See Dr.Brox H., Dr.Walker W-D. Erbrecht. 28., vollständig neu bearbeitete Auflage. München:Verlag Franz Vahlen. 2018. Pp.495-496; Dr.G.Grimm. Schnittstellen des deutschen Erbrechts mit Bezügen zur EuErbO. / Hanover Law Review. 2019. №3. P.179.

[3] See more, Rauscher A. Das Privateigentum im Dienst der Arbeitenden Menschen. Series:Dresdner Kathedralvortraege, Heft 4. Editor: ORDO SOCIALIS in cooperation with Aktion Katholischer Christen im Bistum Dresden-Meissen. Publishing Company: Bonifatius, Paderborn, first edition, 1990. Quoted from the book: Раушер А. Частная собственность в интересах человека труда. М.:«Дело», 1994. 64p. Pp.52-54.

[4] See Reimann W. Exklusives Editorial: Erbrechtsgestaltung in unsere Zeit.// W.Reimann, M.Bengel, F.Dietz. Testament und Erbvertag. 7.Auflage. Köln: Carl Heymanns Verlag. 2020.. Also see Samailov G.A. Modern legislative and doctrinal problems of conflict regulation of hereditary succession,

impossible to imagine the modern world without a multi-faceted, developed, and stable legal framework that guarantees the unhindered exercise of the inheritance right.

ii) Constitution and Act's regulation of inheritance.

Because of the particular importance of this institution, the declaration of the protection of inheritance rights is set forth both at the level of international acts and the level of the Constitution of states. For example, paragraph 1 of Article 17 of the Charter of Fundamental Rights of the European Union[5] proclaims the right of everyone to bequeath its legal property. For instance, the Basic Law of the Federal Republic of Germany (*Grundgesetz für die Bundesrepublik Deutschland, GG*) on 23 May 1949[6], contains statutory guarantees of inheritance. Article 14, paragraph 1, of the Basic Law, declares that the right to inherit shall be guaranteed[7]. Further, constitutional provisions are usually developed in detail at the level of national legislation[8]. The same rule of the German Constitution states that the content and limits of the right of inheritance are established by law that regulates the necessary legal instruments and methods of transfer of inheritance.

iii) The last amendments of Russian inheritance law and its new institutions.

This fact is quite applicable to Russian Civil Law governing inheritance relations. Part 4 of Article 35 of the Constitution of the Russian Federation[9]

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complicated by a foreign element. Abstract of the dissertation for the degree of candidate of legal sciences. Moscow, 2012. 24p. Pp.2-3. // Самаилов Г.А. Современные законодательные и доктринальные проблемы коллизионного регулирования наследственного правопреемства, осложненного иностранным элементом. Автореферат диссертации на соискание ученой степени кандидата юридических наук. Москва, 2012. 24р. С.2-3.

[5] Official Journal of the European Communities, 18.12.2000. C 364/1.

[6] Bundesgesetzblatt, 23.05.1949, Nr.I.

[7] See Löhnig M. Erbrecht. 3., neu bearbeitete Auflage. München, Verlag Franz Vahlen. 2016. 144p. Unit 3. Pp.1-2.

[8] See more, Handbuch des Staatrechts der Bundesrepublik Deutschland. Herausgegeben von Josef Isensee und Paul Kirchhof. Quoted from the book Государственное право Германии. Сокращенный перевод немецкого семитомного издания. Том 2. Москва, Институт государства и права РАН, 1994. Pp.190, 237.

[9] «Российская газета», 25.12.1993. // "Rossiyskaya gazeta", 25.12.1993.

(Конституция Российской Федерации) establishes that "the right to inherit is guaranteed" by the state. It is worth noting that this article of the Constitution is entirely devoted to the basics of guarantees of the unhindered implementation and protection of private property, which is a vivid example of confirming the direct connection between private ownership and inheritance. Further regulation of inheritance relations is carried out by Part Third of the Civil Code of the Russian Federation 2001[10], adopted a little less than twenty years ago. Of course, the sub-branch of civil law - inheritance law has a long history of traditional regulation. Historical reasons had a significant impact on this circumstance, expressed in the creation of a socialist state with a particular economic organization of trade circulation without private property, the unhindered movement of goods and capital, etc. During the transition to a market model of building an economy, accompanied by the social reorganization of society, there was a need to create another type of civil legislation, corresponding to the changed economic and social conditions. This process of creating and continuously changing laws has been going on for about 30 years, since the early 1990s. In particular, this happened by clarifying legislation under the influence of legal science, judicial practice, and the development of economics. On the other hand, this was done through the reception of some legal institutions from foreign legal orders, which have long been known in European or Anglo-American law.

Currently considerable innovations have taken place in the field of inheritance law in Russia. The recent reform of the Civil Code of the Russian Federation (Гражданский кодекс Российской Федерации) (hereinafter referred to as the Russian Civil Code or RCC) on inheritance is also due to historical circumstances that change the political, economic, and social foundations of Russian society. In this sense, it is a necessary part of the renewal of the entire Russian legal system, designed to meet the tasks and goals of radical reform of the economy, state, and society, as well as to approach international standards of legal regulation, including

[10] «Собрание законодательства РФ», 03.12.2001, № 49, ст.4552.// "Collection of legislation of the Russian Federation", 03.12.2001, No. 49, article 4552.

inheritance relations. It is noteworthy that the Russian civil law is still in its formative period. Therefore the process of overcoming the "blind spots" in the regulation of property issues through the adoption of new legislative acts, including based, as already said, on the best examples of legal structures in foreign legislation[11].

Concerning the prerequisites for extensive changes in inheritance law, it is worth marking the following main points. First of all, until recently there was a clear lack of opportunities for the testator to dispose of his/her legal property through a will in Russia, unlike the developed legal systems of the European Union and the United States of America. This was partially made up for by the adopted amendments to Part 3 of the Russian Civil Code on the introduction of new legal institutions which will be discussed below. The absence of effective regulation of legal protection and ensuring the inviolability of ownership, including proprietary rights, the results of intellectual activity at the time of inheritance by the heirs was also the reason for the change in legislation[12]. The expanded regulation of inheritance relations is directly related to the clarification of the powers of officials who carry out the necessary actions on behalf of the state for the transfer, registration of inheritance. Another task was to clarify the proper technique to ensure uniformity of legal terms and definitions used in various laws and dedicated to one subject of regulation - inheritance relations[13].

As mentioned before, one of the important prerequisites for reforming inheritance legislation was the insufficient efficiency of the legal regime and

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[11] Foreign law, being an example for national legislation, must also be critically examined. The famous German legal scholar E.Rabel wrote about that in his work, Arbeiten zur Rechtsvergleihung und zur Rechtsvereinheitlichung. Tübingen 1967. 1-21p. Quoted from the book: Рабель Э. Задачи и необходимость сравнительного правоведения. Под научной редакцией проф.Б.М.Гонгало. Екатеринбург. Российская школа частного права (Уральское отделение), 2000. 48p. Pp.24-25.

[12] See more, Rakitina L.N., Mozhaeva O.A. Notarial certification of wills. M.: FRPK, 2009. 144p. Pp.6-7. // Ракитина Л.Н., Можаева О.А. Нотариальное удостоверение завещаний. М.: ФРПК, 2009. 144с. С.6-7.

[13] See more, Legislative technique: Scientific and practical guide. M.: Gorodets, 2000. 272p. P.180. // Законодательная техника: Научно-практическое пособие. М.:Городец, 2000. 272с.

guarantees for the protection of inherited estate, the determination of the circle of heirs, and a small number of opportunities for the inheritance disposition. The legal doctrine recognized that the existing Russian inheritance legislation needed to create a solid and, at the same time, a flexible system of rules. It could provide reliable legal protection and preservation of the inheritance mass, including through guarantees of its full and unlimited transfer to the heirs on the grounds provided for by law[14]. In light of these circumstances there were substantial amendments in Russian legislation in a relatively short period of three years, from 2017 to 2019.

The most significant and relevant changes in the law on inheritance are related to the introduction of new ways for testators to dispose of their ownership and other assets after death, such as a joint will of the spouses, an inheritance contract, an inheritance foundation, an increase in the number of people acting as executors, as well as the expansion of the number of its powers[15]. Thus, the reform of the Russian inheritance law made it more modern with a variety of inheritance transfer mechanisms. The legal basis for these innovations is Federal Act "On Amendments to Article 256 of Part 1 and Part 3 of the Civil Code of the Russian Federation" dated 19 July 2018, No. 217-FZ[16] - the introduction of a joint will and inheritance contract (the law entered into force on 1 June 2019); Federal Act "On Amendments to Parts 1, 2, 3 of Civil Code of the Russian Federation" dated 29 July 2017, No. 259-FZ[17] – definition and establishment of the inheritance foundation; amendments to the Civil Code of the Russian Federation concerning the inheritance foundation

[14] See more, Petrov Y.A. Inheritance law of Russia: state and development prospects (comparative legal research). M.: M-Logos, 2017. 152p. P.2 and further. // Петров Ю.А. Наследственное право России: состояние и перспективы развития (сравнительно-правовое исследование). М.: М-Логос, 2017. 152с. С.2 и далее.

[15] See more, Ignatenko A.V., Kuropatskaya E.G. Novels of inheritance and contract law: law enforcement in notarial activities. / Notarial Bulletin. 2018. No.8. Pp.18-22.// Игнатенко А.В., Куропацкая Е.Г. Новеллы наследственного и договорного права: правоприменение в нотариальной деятельности// Нотариальный вестникъ, 2018, №8. С.18-22.

[16] "Collection of legislation of the Russian Federation", 23.07.2018, No.30, article 4552. // «Собрание законодательства РФ», 23.07.2018, №30, ст.4552.

[17] "Collection of legislation of the Russian Federation", 31.07.2017, No.31 (Part 1), article 4808. // «Собрание законодательства РФ», 31.07.2017, №31 (Часть 1), ст.4808.

made by the Federal Act "On Amendments to Parts 1, 2 and Article 1124 of Part 3 of Civil Code of the Russian Federation" dated 18 March 2019 No. 34-FZ[18]. In addition, these laws include the adoption of the Federal Act "On Amendments to the Fundamentals of Legislation of the Russian Federation on Notaries" and Article 16.1 of the Federal Act "On General Principles of Organization of Local Self-Government in the Russian Federation" dated 26 July 2019, No. 226-FZ[19], which changed the organization of notarial actions in the absence of a notary in remote or sparsely populated places. Under the amended Acts, municipal officials are deprived of the right to certify wills of all types, inheritance contracts, except for an inventory of inherited estate. Now these actions are the exclusive competence of notaries. As seen, the new legal institutions have a very recent legal history, which has not yet been completed at the scientific and theoretical level, on the practical experience of application, in judicial decisions, which emphasizes the importance and relevance of the study of all aspects of these institutions of inheritance law.

iv) Inheritance foundation as tool for estate transfer and administration.

Concerning my work, the subject of my research is the inheritance foundation - an entirely new civil law institution that has never existed in Russian legislation before. It will be studied as a particular type of non-profit organization classified by law as a foundation. The study will include a description and analysis of its legal status, the grounds for its establishment, annulment, management, taxation, and other issues of its functioning. This legal institution is at the border of two branches of civil law, one of which deals with legal entities, in particular, non-profit organizations, and the other with inheritance relations. Both of these points shall also be taken into account in the thesis of the legal status of the inheritance foundation.

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[18] "Collection of legislation of the Russian Federation", 25.03.2019, No.12, article 1224. // «Собрание законодательства РФ», 25.03.2019, №12, ст.1224.

[19] "Collection of legislation of the Russian Federation", 29.07.2019, No.30, article 4128. // «Собрание законодательства РФ», 29.07.2019, №30, ст.4128.

As already mentioned, the concept of an inheritance foundation is based on Federal Act No. 259-FZ of 29 July 2017, which formalized changes to the Part 3 of the Russian Civil Code and entered into force on 1 September 2018. According to this Act, an inheritance foundation is a non-commercial legal entity created according to and based on the testator's will (testament). The estate of the testator is transferred to the inheritance foundation for its further management and the receipt of income in favor of the beneficiary indicated by the testator[20]. The law provides only for exceptional conditions that are inherent only in this subspecies of the general concept of foundations, such as the procedure for its establishment, the process for allocating estate, the system of governing bodies, the subject composition, and the legal status of its participants. The highlighting of particular features of the inheritance foundation by the specified law indicates that all other conditions of its activity are subject to the general rules on non-profit organizations in common, and the rules on foundations in particular.

The peculiarities of the inheritance foundation follow from the purpose of its establishment - the administration of the private ownership received by way of inheritance. Consequently, the inheritance foundation is established in a particular way - based on the testator's will, expressed in a testament. This expands the scope of application of that paper in inheritance relations, which was not previously provided for in the legislation. The order on the establishment of the inheritance foundation, on the one hand, is an integral part of the testamentary document. On the other hand, it means that the testator's will is a separate way of disposing of the estate after testator’s death. The testator determines a particular procedure for the distribution of the transferred the estate. The testator’s will to establish a new legal entity may restrict the rights of future heirs on a legal basis, including their right to a share after the inheritance after the testator's death. The heirs participating in the

[20] See more, Gongalo Y.B. Inheritance orders in French law. // Actual issues of inheritance law / Ed. P.V. Krasheninnikov. Moscow:Statut, 2016. 112p. P.86. // Гонгало Ю.Б. Распоряжения наследственного характера во французском праве. // Актуальные вопросы наследственного права/ Под ред. П.В.Крашенинникова. М.: Статут, 2016. 112с. С.86.

activities of the foundation do not have ownership of the testator's estate. Thus, the establishment of a new subject of the inheritance replaces the previously usual relations of unlimited ownership, use, and disposal of the estate with new limited rights to participate in the management of the foundation or receive dividends from the inheritance foundation's activities.

The emergence of a new participant in inheritance relations shall be associated with the growing demands of businesspeople for more excellent protection of their assets by the state by creating a fundamentally new system of their transfer to heirs. In many respects, it is evident that, this legal structure is in demand by wealthy citizens. That is a common point of view in public reviews[21]. One of the creators of this Act, Professor P.V.Krasheninnikov emphasizes that the new order "expands the possibilities for disposing of the citizens' property in case of their death, and introduces a new structure for the inheritance law of Russia"[22]. Also the legislators were guided by the protection of the economic interests of the state, since the inheritance foundation is considered as a proposal for a similar method of inheritance in the country where industrial or financial assets are located and preventing their withdrawal to foreign jurisdictions for same purposes[23]. So far, this is presented as a future option, which should only earn the confidence of representatives of domestic business. However, despite the short period of operation, the new institution has already received some interest from business people. It is claimed that many wealthy Russian citizens have expressed a desire to draw up a will with the establishment of an inheritance foundation. Thus, according to the testimony of K.Korsik, the President of the Federal Notary

[21] See more, The inheritance foundation: why is it needed and how it will work in Russia? // Наследственный фонд: зачем он нужен и как будет работать в России. https://pravo.ru/review/view/143523/. Last access 20.05.2020. See also, What is a hereditary foundation? / Parliamentskaya gazeta. // Что такое наследственный фонд? / Парламентская газета. https://www.pnp.ru/social/chto-takoe-nasledstvennyy-fond.html. Last access 20.05.2020.

[22] See more, Kozlova N.N. Inheritance on demand. // Rossiyskaya gazeta. Federal issue. 31.07.2017. No.168 (7334). // Козлова Н.Н. Наследство до востребования. // Российская газета. Федеральный выпуск. 31.07.2017. №168 (7334).

[23] See Kozlova N.N., Ibid.

Chamber of Russia, the existence of 556 wills providing for the establishment of an inheritance foundation was officially confirmed within six months of the new law[24]. That might mean that legal institution should work soon in full force.

According to the legislator's intentions, the new institution of inheritance should allow avoiding disputes over the distribution of the estate, since the heirs receive permanent dividends from the deceased testator's enterprise in proportion to their share in the right to inheritance instead of the estate determined by the size of the inheritance share. When establishing a foundation, the minimum period between the testator's death and the beginning of the inheritance foundation functioning allows not to interrupt the operational management of the business. At the same time it is possible to divide shares in a company among several heirs in such a way as to prevent inheritance or corporate conflicts between them which, as known, are often lengthy and costly for all parties to such litigations[25]. Therefore the main problem of Russian inheritance law to have been solved in this area was overcoming uncertainty in the stability of existence and maintaining the mechanism of business management after the owner's death.

v) Role of foundations and similar institution in the world.

In developed legal systems, as noted, the practice of creating such foundations or institutions similar in their functional capabilities has existed for a long time[26]. Thus, the possibility of establishing such foundations in one form or another has long been provided for by the civil law of many European countries - Austria,

[24] See Kulikov V. "The chiefs - by will" // Rossiyskaya gazeta. Federal issue. 14.05.2019, No.101 (7859). // Куликов В. «В начальники - по завещанию»// Российская газета. Федеральный выпуск. 14.05.2019. №101 (7859).

[25] See more, Kozlova N.N. Inheritance on demand // Rossiyskaya gazeta. Federal issue. 30.03.2020. No. 68 (8122).// Козлова Н.Н. Наследство до востребования // Российская газета. Федеральный выпуск. 30.03.2020. №68 (8122).

[26] See, Panico P. Private foundation and trusts: just the same but different? // Trusts & Trustee, Vol.22, No.1, February 2016. Pp.312-319.

Germany, Switzerland, and other countries[27], which has its origin in inheritance relations regulated by Roman law and even earlier[28]. Certainly, Anglo-Saxon Law has a unique role in this matter. For example in the UK and other countries of common law, there are "trusts", the first mention of which is attributed to the XI century[29]. In the Middle Ages the transfer of the ownership by the beneficiary through such an institution began to be actively used as an alternative to a will and a remedy against inheritance tax. British lawmakers have perfected a form of the property where the assets are held by a trust but controlled by the former owner of it. That was one of the features of Anglo-Saxon Law as a division of ownership[30].

This method of transferring inheritance has been dramatically developed in foreign jurisdictions and currently has a specific law. Moreover in foreign countries such foundations are created by successful, socially-oriented businessmen and wealthy citizens during their lifetime, where the main goal is not so much to maintain a certain material level of heirs but to be able to benefit society by channeling the funds of the foundation to charity[31]. For instance the most famous foundations were established by great entrepreneurs and philanthropists such as Robert Bosch (Robert Bosch Stiftung GmbH), Henry Ford

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[27] See more, Kozlova N.N. Inheritance on demand. // Rossiyskaya gazeta. Federal issue. 31.07.2017. No.168 (7334). // Козлова Н.Н. Наследство до востребования. // Российская газета. Федеральный выпуск. 31.07.2017. №168 (7334).

[28] See more, Yakovlev V.N. Ancient Roman law and modern Russian inheritance law. Reception of Law: Textbook. M.: Publishing house of the Moscow Psychological and Social Institute; Voronezh: Publishing house NPO MODEK, 2005. 128p. Pp.4-5, 16-18, 85.// Яковлев В.Н. Древнеримское право и современное российское наследственное право. Рецепция права: Учеб.пособие. М.:Издательство Московского психолого-социального института; Воронеж: Издательство НПО «МОДЭК», 2005. 128с. С. 4-5, 16-18, 85. See also, P.V.Krasheninnikov. Basic principles of inheritance law // Actual issues of inheritance law / Ed.P.V.Krasheninnikov. Moscow: Statut, 2016.112p. Pp.6-7. // П.В.Крашенинников. Основные начала наследственного права // Актуальные вопросы наследственного права/ Под ред. П.В.Крашенинникова. М.: Статут, 2016. 112с. С.6-7.

[29] See more, Naryshkina R.L. Trust property in the civil law of England and the United States. Moscow, 1965. 37p. Pp.4-5. // Нарышкина Р.Л. Доверительная собственность в гражданском праве Англии и США. Москва, 1965. 37с. С.4-5.

[30] See, R.David, C.Jauffret-Spinosi. Les grands systems de droit contemporains. 10e edition, 1992. Paris: Dalloz. Цитируется по книге: Давид Р., Жоффре-Спинози К. Основные правовые системы современности: Пер. с фр. В.А.Туманов. М.: Междунар.отношения, 1996. 400р. Pp.236-238.

[31] See for example, Moja A. The use of family foundations for succession planning in Italy//Trusts & Trustee, Vol.25, No.3, April 2019, pp.359-372.

(Ford Fund), modern businessmen such as George Soros (Open Society Foundation), Bill Gates (Bill & Melinda Gates Foundation), Jack Ma (Jack Ma Foundation) and many others.

Thus the Robert Bosch Foundation was established based on the decision of the founder of the largest German company Bosch[32]. The Foundation is a shareholder of the company and operates at the expense of paid dividends. Henry Ford's son founded the Ford Foundation. After his death, all assets of the Ford family were transferred to the Foundation. Now the Foundation is a significant investor in various companies and projects and a large charity organization[33]. The most famous is the Nobel Foundation which was founded by the famous Swedish inventor Alfred Nobel in 1900[34]. The Foundation owns almost the entire state of the scientist, the bulk of the foundation's assets are invested in projects. An independent company runs this Foundation, and annually, through careful selection, chooses outstanding scientists. They deserve to receive the Foundation's award in the field of physics, chemistry, physiology and medicine, literature, world recognition in a certain amount from a part of the Foundation's profits, which today is more than one million US dollars. Other corporate foundations are established by large companies and operate to support socially serious projects, including the IBM Foundation, the Coca Cola Foundation, which support projects in the field of

[32] See more https://www.bosch-stiftung.de/en/robert-bosch-0. Last access 14.05.2020.
[33] See more, https://www.fordfound.org/about/people/henry-ford-iii/. Last access 14.05.2020.
[34] See more, https://www.nobelprize.org/alfred-nobel/alfred-nobels-will/. Last access 14.05.2020.

culture and education. Obviously the establishment of such foundations, testamentary, or lifetime (private, family), is widespread among wealthy families[35].

Of course, knowledge of international experience and consideration of foreign practice can improve the domestic legislative system and bring to a new level its relationship with other countries in resolving inheritance disputes, in which it is necessary to take into account the characteristics of inheritance institutions of different states.

vi) Inheritance foundation as a forced heir and new legal entity in system of non-profit organizations.

Referring to the role of the inheritance foundation as one of the central participants in the "new" inheritance relations, it is necessary to indicate that it is the heir under the will. According to the legal theory this type of heir is called a forced heir.

The forced heir with the estate transferred to it is the full successor and, therefore, cannot refuse the transferred the estate in whole or in any part of it. That is its duty (compulsion) to accept the inheritance specified in the testator's will. Besides, the inheritance foundation is also limited in the use of this estate; that is, it practically cannot lose it. It shall use it only for its intended purpose and for the purposes indicated by the testator. There is a large difference in the status of an ordinary heir, which will be discussed in more detail below.

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[35] See more, Paula D. Johnson, «Global Philanthropy Report. Perspectives on the global foundation sector». https://www.ubs.com/global/en/wealth-management/uhnw/philanthropy/shaping-philanthropy.html. See also, 2017 COUNCIL ON FOUNDATIONS - COMMONFUND STUDY OF INVESTMENT OF ENDOWMENTS FOR PRIVATE AND COMMUNITY FOUNDATIONS (CCSF) REPORT. https://www.cof.org/content/2017-council-foundations-commonfund-study-investment-endowments-private-and-community?utm_campaign=Corporate%20Philanthropy&utm_source=hs_email&utm_medium=email&utm_content=65440190&_hsenc=p2ANqtz-8DBvF3qzk_Twhyg835Ohr3Gjx90YE_S6hWfeauBT98ZjALZ3CdXYh2S07UtUO54JWmc4Kbmzn-1tprLgNrMLk5OnVlxg. Last access 15.05.2020.

The second feature of the inheritance foundation, subject to careful study, is its characteristic as a particular type of non-profit organization, bearing in mind the peculiarities of its establishment, functioning, and its annulment (liquidation). No a confident conclusion can be made about the complete regulation of this type of legal entity in the adopted law. A detailed analysis will be done; further, it should be pointed out the main doubts about the attribution of the inheritance foundation to those organizations, the type of which it is following current legislation.

The foundations received legal regulation at the level of civil legislation in Russia relatively recently, about 25 years ago. The first Acts in this field are the First Part of the Civil Code of the Russian Federation of 1994[36] and Federal Act "On Non-Commercial Organizations" (Федеральный закон «О некоммерческих организациях») No. 7-FZ dated 12 January 1996[37], adopted by the Russian Civil Code. This legislation is quite stable since the number of its changes in this part was minimal. There is also separate legislation to regulate other types of foundations or organizations that contain the word “foundation (or fund)” in their name[38]. These include state extra-budgetary funds (acting as a kind of quasi-state organizations and performing special activities on behalf of the state), investment funds, non-state pension funds, which have their own organizational and legal form, despite the presence of the word "fund (foundation)" in their name, about which will be described in more detail in this work.

vii) Tasks of the thesis.

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[36] “Collection of legislation of the Russian Federation”, 05.12.1994, No.32, article 3301. // «Собрание законодательства РФ», 05.12.1994, №32, ст.3301.

[37] “Collection of legislation of the Russian Federation”, 15.01.1996, No. 3, article 145. // «Собрание законодательства РФ», 15.01.1996, №3, ст.145.

[38] In English the words “fund” and “foundation” could be use with different meanings, in contrast to Russian language that uses one word “фонд”. So, the word “foundation” is used to denote a legal entity, and the word “fund” is used to denote other terms. In translations of Russian names of various legal entities, both English words are nevertheless used to show the difference in their legal status. For marking that I use in these expressions “inheritance foundation” that contains the word “foundation”, and for instance pension fund that contains the word “fund”.

Due to the short term of the Act on the inheritance foundation, there is no comprehensive study of civil law regulation of the inheritance foundation at present in modern Russian legal science. Therefore, the topic of this dissertation research is among the poorly studied, as evidenced by the absence of any monographic research. Analysis of the legislation in the field of regulation of the inheritance foundation will lead to the conclusion that a detailed study of issues related to the civil-law regulation of the inheritance foundation is currently needed.

The above indicates the relevance of the subject of this research, as well as the feasibility of developing and making proposals to improve specific provisions of the Russian Civil Code on the inheritance foundation and other legislation regulating issues related to it.

In the course of the thesis it will highlight the following problems of this institution which seem to be the most controversial and cannot be understood unambiguously to use that. The general topic of the dissertation research is the provisions of Russian inheritance law and other legislation that are related to the legal regulation of the inheritance foundation. The purpose of the dissertation is to comprehensively study the theoretical aspects and possible future practical problems of civil-law regulation of the inheritance foundation, as well as to develop scientific and practical recommendations for improving legislation in this area. In the course of my work, the main issues of legal regulation of the inheritance foundation in the Russian Federation will be analyzed, the theoretical grounds and formulate proposals regarding the legal mechanisms for the implementation of the inheritance foundation will be studied, some recommendations for improving the regulation of the inheritance foundation will be suggested. These goals will be achieved based on the study of Russian and international legislation, judicial practice, and scientific literature.

For the achievement of the results of my work, the following tasks were set:

1. Determine the features of the legal status of the inheritance foundation as a non-profit organization in Russian civil law. Critically reflect on the substantive legal definition of the inheritance foundation, the suitability of its referring to this type of unitary non-profit organization as a foundation, the rights, and liability of the subjects of the inheritance foundation. Compare it with other types of foundation, indicate the specifics of their legal regulation for the allocation of the inheritance foundation in a separate kind of non-profit organization that requires special legislation or a more extensive change in current law.

2. Identify trends in the development of foreign legislation on foundations and similar institutions performing parallel tasks, such as trusts. European law is also going its way of changing the law on foundations. Considering the history of the creation of these institutions, as well as the latest supranational regulation in the form of international acts such as the Convention on the Law Applicable to Trusts and on their Recognition of 1 July 1985, on international inheritance law, relevant EU laws, including an extended discussion of the draft on the European Foundation, foreign legislation, and judicial practice are also in search of an optimal balance of common law and civil law definitions for the harmonization of the application of inheritance institutions. The possibility of comparing the inheritance foundation with similar institutions in foreign law will make it possible to assess the advantages and disadvantages of legislative regulation and ways of their possible improvement.

3. Analyze a particular procedure for the establishment, reorganization, and annulment of the inheritance foundation. Previously this procedure has been unknown to Russian legislation. Therefore there is a risk of a large number of claims on the invalidity of the establishment of the inheritance foundation on various grounds, the invalidity of the transfer of the estate to the foundation, etc.

4. Consider the dynamics of inheritance relations and the role of the inheritance foundation in them as a forced heir. A special place will be occupied by coverage of issues related to the legal capacity of the testator, as well as the expanded nature

of the will (testamentary disposition) as a basis for the establishment of an inheritance foundation, which shall contain information about the its establishment, approval of the Charter and Conditions of managing the inheritance foundation, the procedure, amount, the methods and timing of the formation of the inheritance foundation's estate, as well as the citizens appointed to the bodies of this formation, or the procedure for selecting such individuals.

5. Reveal the procedure, goals of transferring an estate to the inheritance foundation, and its effective management. The presence of such purposes and a select method of obtaining the estate distinguish inheritance foundations from similar legal entities by name. This provision is also applied to the use of the assets of the inheritance foundation to obtain specific advantages for the benefit of the foundation’s beneficiaries.

6. Consider the legal status of the inheritance foundation's participants. There are new participants in inheritance, such as "beneficiaries of the inheritance foundation" and "separate people" along with the traditional subjects of inheritance relations, such as the testator, the executor, the final heir as the state. The beneficiaries of the inheritance foundation are the people defined by the testator when approving the Conditions of managing of the inheritance foundation. The "separate people" shall include subjects from an indefinite scope of people indicated by the testator by name or determined by the foundation's governing bodies following the testator's will.

7. Study the legal status of the governing bodies of the inheritance foundation, which is formed by the testator's will. The novelty of the law lies in the fact that there is a temporary gap between the establishment of the inheritance foundation, determined by the moment of its state registration, and the formation of management bodies, which also have a restriction on the inclusion of some participants in inheritance relations in their composition.

8. Describe the forms of public and private control over the activities of the inheritance foundation. The state shares forms of federal oversight, for example, represented by the Ministry of Justice which exercises general supervision over the activities of foundations as non-profit organizations, the Tax service - over the completeness and correctness of the payment of relevant taxes, and other services in certain fields of activity of the inheritance foundation. Private control over the events of the inheritance foundation is entrusted to third-party audit companies, as well as special internal commissions of the inheritance foundation, which can be created by the decision of the foundation's participants or its governing bodies.

9. Research the procedure for taxing the activities of an inheritance foundation under Russian law, taking into account that the legislation does not provide individual taxation for such organizations. Consider the taxation of the foundation upon receipt of property from the testator as to the primary source of activity of the inheritance foundation during its creation.

10. Examine possible theoretical and practical shortcomings in the legal regulation of inheritance foundations that limit the full use of this institution. Make some suggestions for improving the legislation on inheritance foundations, describe the relationship of the institute of inheritance foundations with other civil law institutions, and identify problematic issues in the field of the legal status of inheritance foundations in the Russian Federation.

viii) Theoretical and judicial basis.

The theoretical basis of the research is represented by scientific concepts, hypotheses reflected in the works of scientists - representatives of the Roman law, legal theory, civil and private international law, such as J.Baron, J.Carbonier, H.Dernburg, L.Enneccerus, V.M.Khostov, I.B.Novitskyi, D.I.Meyer, V.I.Pokrovsky, G.F.Shershenevich, R.Sohm, B.Windscheid, and others. A significant contribution to the development of the theory of inheritance law was made during the Soviet era. Legal thought was developed in the original works of

B.B.Cherepakhin, O.S.Ioffe, P.V.Krasheninnikov, V.I.Serebrovsky, E.A.Sukhanov, Y.K.Tolstoy. Also, domestic legal specialists have considered for a long time the history of the development of similar institutions in foreign law, in particular the problems of legal entities, trusts and others, such as E.A.Vasiliev, L.A.Lunts, E.A.Fleishits, R.L.Naryshkina, N.V.Kozlova, and others.

The methodological basis of the dissertation research is a comprehensive and systematic approach to the study of the subject of research. During the work, general scientific, private, and individual methods were used, including formal-logical, comparative, analysis and synthesis, systematization and generalization, modeling, and others.

The significance of the results obtained in the course of the research lies both in the statement of this problem and in the offered ways of overcoming it. This dissertation is a comprehensive research of the inheritance foundation within the subject of civil jurisprudence. Based on the analysis of scientific literature, normative legal acts, judicial and notary practice, the author has developed and justified conclusions that are characterized by scientific novelty and have theoretical and practical significance.

The legal base of the research is a set of Acts such as the Constitution of the Russian Federation, Acts of the Russian Federation, and individual by-laws. The judicial practice of Russian and foreign courts is used in the thesis.

CHAPTER I

Foundation as a legal entity in civil law and similar institutes in other legislations

The inheritance foundation law was developed, taking into account trends in European legislation and the experience of regulating similar institutions, for example, in common law countries. Therefore, it is advisable first to consider examples of European and Anglo-Saxon law in this area.

1.1. Similar legal institutions in foreign legislations.

1.1.1. General.

As already noted, many countries of the world have a long history of regulating inheritance relations using various legal means that were applied not only to direct heirs. In this sense, we can say that inheritance foundations and institutions of other "legal families" similar to them in terms of legal purposes are a traditional institution for foreign legislation[39]. Currently, the goals of their creation were not only to support the family after the testator's death but also to be able to benefit society by directing the funds of the foundation to charity and support various social institutions[40].

In many European countries there are numerous types of foundations, some of which are used only as a tool of inheritance. The purposes of inheritance themselves are also modified. If the freedom of will characterized earlier the European inheritance law, now the leading role belongs to the principle of protecting the interests of the family, that is, the transfer of rights to the estate of the deceased person shall take place within the testator's family. The main

[39] Some of the foundations have a century-old of their "life" and still exist. See more, Werner, ZStV, 2018, 205 ff. Also see, Anikeeva A.G. Inheritance agreement in Russia and Germany // Notarial Bulletin. 2020. No.6. Pp.43-44. // Аникеева А.Г. Наследственный договор в России и Германии// Нотариальный вестникъ. 2020. №6. С.43-44.

[40] See more, F.v.Seilen-Aspang. Liechtenstein Foundation in the context of family governance// Trusts & Trustee, Vol.18, No. 6, July 2012. Pp.574-578.

principles of inheritance transfer in European legislation are the integrity and static nature of the inherited property, based on the rule of universal succession[41]. The integrity of the inheritance is understood as a legal status that prevents the fragmentation of inherited objects from preserving their value and functioning. The invariability of the inherited estate is expressed in the safety of the objectives of inheritance in the state in which they were before the date of the testator's death[42]. Based on these principles, the testator transfers individual estate to the private (family, inheritance) foundation in this form and also determines the beneficiaries who will use the proceeds from the use of this estate. The inheritance foundation is managed by a special Council (Board of Trustee) elected following the testator's instructions or formed by it. The conditions of the inheritance foundation are listed in its Charter, and a special executor may be appointed by the testator to monitor their implementation. This is a simplified scheme of foundation's activities to ensure inheritance relations.

It is worth briefly considering how some national legislation in Europe regulates the scope of the establishment and operation of such foundations. Also that includes the overview of a similar institution for transferring an inheritance to third parties as a trust which is widely represented in common law countries. The systems of inheritance law in force in civil law countries and regimes of inheritance law inherent in common law countries, mainly Great Britain and the United States, use various tools when performing the same tasks to transfer the estate of the testator to the people indicated by him, based on their experience, traditions of use specific legal means. The main difference between them is that in continental countries, the inheritance passes directly to the heirs. In common law countries, the analog of the foundation is a trust where the estate is managed not by a separate legal entity (as a foundation), but by a personal trustee. Thus the use of a

[41] See, G.Walter: Mobiliarsachenrecht / vom Walter Gerhardt. 5., neubearb. u. erw. Aufl. München: Beck, 2000. Pp.30-31.

[42] See more, J.Carbonnier. Droit civil. Tome 3. Les biens. 19e edition refondue. Paris: PUF, 2000. Pp.8-9.

trust is not just another legal method of transferring inherited estate, but there is a fundamentally different scheme for organizing inheritance relations.

The trust is also unusual in that it penetrated into the civil law. For example separate Hague Convention on the Law Applicable to Trusts and Their Recognition of 1985[43] (hereinafter Hague Convention of 1985 or the Convention 1985) signed and ratified by some European countries that traditionally belong to the continental legal system is dedicated to it. Before the legislative opinions the European courts made several landmark decisions regarding the legal qualification of trusts using the definitions of national legislation which arouses vital interest in its future way. It is necessary to point out only the most noticeable characteristics of such institutions which undoubtedly influenced Russian legislation on inheritance foundations since the purpose of this thesis is not a comparative study of inheritance foundations and institutions similar in their tasks in various legislation. It should be marked that the model of a private inheritance foundation that exists in Russian law is identical to the characteristic features of foundations in the continental legal system. It is perceptible in the form of inheritance in which the testator gives the estate to the inheritance foundation after his/her death, this also includes the confidentiality of the participants, non-public conditions for managing the foundation, the unlimited creation of it, the alleged preferential investment activity of the inheritance foundation[44]. Foreign scientists pay attention to the emergence of possible negative consequences for the rule of civil law when

[43] See more, Sokolova N. V. Trust property (trust) in continental Europe. M.: Infotropic Media, 2012. 160p. Pp.65-78.// Соколова Н. В. Доверительная собственность (траст) в континентальной Европе. М.: Инфотропик Медиа, 2012. 160с. С.65-78.

[44] This circumstance is noted by many scientists. See, for example, Putintseva E.P. Death orders under the laws of the Russian Federation and the Federal Republic of Germany. M.: Statut, 2016. 160p. P.65.//Путинцева Е.П. Распоряжения на случай смерти по законодательству Российской Федерации и Федеративной Республики Германия. М.:Статут,2016.160с. С.65.

See also, Rozgon O.V., Karazina V.N. Certain features of inheritance under the law of property by a child under the laws of the Ukraine and Russian Federation. // Notarial Bulletin, 2015. No.1. P.134. // Розгон О.В., Каразина В.Н. Отдельные особенности наследования по закону имущества ребенком по законодательству Украины и РФ. // Нотариальный вестникъ, 2015. №1. С.134.

creating inheritance foundations. For example German scientists point out that the status of inheritance foundations is not directly regulated by law, but is determined mostly by the will of its creator, which in this case replaces the management bodies of a legal entity[45]. There's no denying the ambiguous attitude of many countries towards the establishment of such private foundations. For example some of them, such as France and, importantly, until recently Russia, were skeptical about their establishment. While others, such as Germany, Liechtenstein, the Netherlands, on the contrary, allow the establishment of private foundations, and there is no fundamental difference between the method of creating such a foundation inheritance produced by will, and other foundations. Concerning the corporate law, the inheritance foundation as a legal entity does not have a membership, in contrast to companies such as limited liability companies (*engl.LLC/germ.GmbH*) and joint-stock companies (*engl.JSC/germ.AG*). The beneficiaries of a private foundation have no legal influence on the management of the foundation, for example, they cannot, by their will, remove the control of the foundation, which neglects the interests of the beneficiaries. Besides some European countries generally adhere to the French model and other countries with the German model[46]. It should also be pointed out that work has been carried out within the European Union to unify national legislation on foundations for the adoption of the European Foundation Statute. However, as is well known, the European Commission stopped its legislative activities in this regard at the end of 2014 for various reasons, including the disagreement of individual countries with the blueprint[47]. It should be

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[45] See more, O.Werner. Die idealistische Familienstiftung (Teil 1)/ZStV, 6/2018. P.207. Also see Sinitsyn S.A., Shelyutto M.L. Is the proposed reform of Russian inheritance law in the interests of business? // Business law. 2017. No. 2. Pp.17-25.// Синицын С.А., Шелютто М.Л. В интересах ли бизнеса предложенная реформа российского наследственного права? // Предпринимательское право. 2017. № 2. С.17-25.

[46] See more, Civil and commercial law of foreign states: Textbook / Edited by V.V.Bezbakh and V.K.Putchinskyi. M.: ICFED, 2004. 896p. Pp.657-661. // Гражданское и торговое право зарубежных государств: Учебное пособие / Под общей редакцией В.В.Безбаха и В.К.Пучинского. М.: МЦФЭР, 2004. 896с. С.657-661.

[47] See https://ec.europa.eu/info/sites/info/files/cwp_2015_annex_ii_en.pdf. Last access 23.05.2020. See also the strong disagreement with the EC position expressed by Gerry Salole, European Foundation

considered these points in more detail and start with a brief historical overview.

1.1.2. Ancient law about the inheritance relations.

The inheritance relations date back to ancient times when their rules were reduced to the formation of customs for the transfer of labor tools, hunting within the clan, tribe[48]. Their initial regulation was associated not only with the ordering of simple forms of inheritance, which were reflected, for example, in the casuistic documents of Ancient Egypt[49]. A more surprising fact is the existence of attempts at legal regulation in various forms of inheritance transfer to indirect (non-family) heirs in ancient times[50]. That took place against the background of the establishment of mechanisms for the removal of the rights and obligations of one citizen to another in civil relations and commercial turnover which began to be applied in the field of inheritance[51]. Thus the ancient Greek philosopher Aristotle described the prototype of a trust relationship in his works[52]. More developed trade relations which are a source of accumulation of personal wealth had to comply with specific rules for the transfer of inheritance.

Centre (EFC) Chief Executive, https://www.alliancemagazine.org/blog/european-commission-halts-negotiations-on-european-foundation-statute/. Last access 23.05.2020.

[48] See more, Tolstoy Y.K. Inheritance law. M.:"Prospect", 1999. 224p. P.4. // Толстой Ю.К. Наследственное право. М.: «Проспект», 1999. 224с. С.4.

[49] See for example, Amenhau's will on the division of property in Lurie I.M. Legal documents on the socio-economic history of Egypt in the period of the new kingdom. Bulletin of ancient history. Moscow, publishing house of the USSR Academy of Sciences, 1952. No. 1. Pp.270-271. // И.М.Лурье, Юридические документы по социально-экономической истории Египта в период нового царства Вестник древней истории. Москва, издательство Академии наук СССР, 1952. №1. С.270-271.

[50] That was established by the laws of Ancient Greece. See Plutarch, "Solon", section XXI. Quote from the book: Anthology of world legal thought. In 5 volumes. Vol.1. Antique World and Eastern Civilizations / National Societies-Scientific Fund; Head of the scientific project G.Yu. Semigin. M .: Mysl, 1999. 750p. P.114. // Антология мировой правовой мысли. В 5 т. Т.1. Античный мир и Восточные цивилизации/Нац.обществ.-науч.фонд; Руководитель науч.проекта Г.Ю.Семигин. М.: Мысль, 1999. 750с. С.114.

[51] See for example, Bogolepov N.P. A textbook on the history of Roman law (3rd edition, 1907) Edited and with a foreword by V.A. Tomsinov. M.: Zertsalo, 2004. 568p. P.228. // Боголепов Н.П. Учебник истории римского права (3-е издание, 1907г.)/ Под редакцией и с предисловием В.А.Томсинова. М.: Зерцало, 2004. 568с. С.228.

[52] Aristotle, Nicomachean Ethics (350 BC), Book V, pt 10. https://www.google.com.ua/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=2ahUKEwjqhpLXht7mAhUEUlAKHZuVA7IQFjAAegQIAxAB&url=https%3A%2F%2Fwww.constitution.org%2Fari%2Fethic_00.htm&usg=AOvVaw2mCV-McYHDUjwA8_piMuSb. Last access 30.06.2020.

i) Roman law.

More detailed legal terms and definitions which are directly related to modernity came to modern law from Roman law. The first written source of the Ancient Roman law - the Law of the Twelve Tables already distinguished two types of inheritance: by will and by law (Table V, 4-5)[53]. A prototype of the mechanism of inheritance transfer by an indirect heir, also resembling a trust relationship, can be found in Roman inheritance law. That is the institution of Fideicommissum, which received its development in the classical era (lat. *Fideicommissum*, from lat. *fides* - "trust" and lat. *committere* - "to entrust"). Fideicommissum presented the "informal form" of a will where the testator instructed his heir to implement the agreed actions in favor of third parties[54]. That meant an act of a person based on trust. Fideicommissum acted concerning third parties who were no heirs. For example the testator could oblige his debtor to return the debt to a specific person, not necessarily the heir[55]. Also the following definitions came from Roman law into current law, and which still exist in some form: universal and singular succession, active and passive testamentary ability, form of will, attestation of will, testament in favor of public entities - municipia, collegia, and not only natural individuals, legates, reassignment of heirs, will to an unborn heir, the compulsory portion of heirs, as well as taxation of inheritance transfer[56]. Therefore modern jurisprudence

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[53] See Monuments of Roman law: Laws of the XII tables. Guy's Institutions. Digests of Justinian. M: Mirror, 1997. 608p. P.7. // Памятники римского права: Законы XII таблиц. Институции Гая. Дигесты Юстиниана. М:Зерцало, 1997. 608с. С.7.

[54] See for example, G.Franciosi. Corso Istituzionale di Diritto Romano. Terza edizione. Torino: G.Giappichelli Editore. 2000. 421p. Quoted from Франчози Дж. Институционный курс римского права/Перевод с итальянского; Отв.ред.Л.Л.Кофанов. М.:Статут, 2004. 428р. Р.254; Chernilovsky Z.M. Roman private law. Moscow: Publishing House "New Lawyer", 1997. 224p. P.215. // Черниловский З.М. Римское частное право. Москва: Издательство «Новый юрист», 1997. 224с. С.215.

[55] See Novitskyi I.B. Basics of Roman Civil Law. Textbook for universities. Lectures. Moscow: ZERTSALO Publishing House, 2000. 400p. Pp.242-243.//Новицкий И.Б. Основы римского гражданского права. Учебник для вузов. Лекции. М.: Издательство ЗЕРЦАЛО, 2000. 400с. С.242-243.

[56] See for example, Pokrovskyi I.A. History of Roman law (according to the edition of 1913). Minsk: Harvest, 2002. 528p. Pp.457-506. // Покровский И.А. История Римского права (по изданию 1913г.). Минск: Харвест, 2002. 528с. С.457-506. Also see Khvostov V.M. The system of Roman law (according to the 4th edition of 1908). Textbook. M.: Publishing house "Spark", 1996. 552p. Pp.421-514. // Хвостов

owes the main modern legal structures of inheritance law, and not only in it, to Roman law[57]. Some legal concepts were fixed not only in continental law but also passed to the countries of the Anglo-Saxon legal family[58]. Thus the idea of "fiduciary" was refined by English lawyers, and this institution became known as a trust, which will be described later.

1.1.3. Private foundations in European legislations.

i) Types of foundations in Europe.

The legislation of most countries of the European Union, which originates from Roman law, contains rules governing the procedure for the establishment of private, mostly family, foundations[59]. There are a large number of types of foundation in European law. They are divided depending on: purposes, founders, the order of establishment, etc. There are the charitable, private, public, corporate, church, university foundations, with or without a legal personality, and others, but for my work, it will be focused on foundations established by individuals. Different types of foundations, depending on the nature of the founder, are regulated by separate legislation: private foundations – by civil law, public foundations with the participation of the state, regional authorities (for example, prefectures in France, federal lands (states) in Germany), municipalities are subject to the relevant public law. For instance in Germany there are more than 23,000 foundations created based

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В.М. Система римского права (по 4-му изданию 1908г.). Учебник. М.:Издательство «Спарк», 1996. 552с. С.421-514.

[57] The Swedish scholar E.Anners writes that it - Roman law retains its high level to the present day. See more, Anners E. Den europeiska raettens historia 1, (Norstedts Foerlag, Stockholm, 1974). Quoted from the book: Аннерс Э. История европейского права./Институт Европы. М.: Наука, 1994. 397р. P.73.

[58] See more, Romanov A.K. The Legal System of England: A Study Guide. M.: Delo, 2000. 344p. Pp.70, 190-191.// Романов А.К. Правовая система Англии: Учебное пособие. М.:Дело, 2000. 344с. С.70, 190-191. The author points out that one of the manifestations of the limited reception of Roman law occurred precisely in the field of inheritance law, in particular when using wills.

[59] It should be said that in this row France stands out with its legislation on foundations, not allowing the creation of private (family) foundations, probably prioritizing the public interest rather than private benefit.

on civil law, 95% of them are charitable[60]. The vast majority of foundations in Europe are private (as opposed to Russia, where most of the foundations are corporate). The main features of the foundation laws in European countries, at least the European Union Member States, have a generally similar foundation regulation, with minor elements. Without making a complete comparison of these laws in different countries, we will identify standard features of foundation regulation that will be relevant for comparison with Russian legislation on foundations.

ii) Legal definition of foundation in European civil law.

In European law private foundations can be created during the founder's life (*inter vivos*) by the testator's approval of the Foundation's Charter (lifetime foundations), or after its death (*mortis causa*) by an order in the will (posthumous foundations) to establish the foundation. For example such conditions are contained in Articles 81, 83 Bürgerliches Gesetzbuch (hereinafter BGB), paragraph 1 of Article 81 A, paragraph 1 of Article 493 Zivilgesetzbuch (hereinafter ZGB), Article 14 of the Italian Civil Code, Articles 7.8 Privatstiftungsgesetz (hereinafter PSG)[61], Articles 14.15 Liechtenstein Individuals and Companies Act 1926 (Personen-und Gesellschaftsrecht, hereinafter PRG) (except for the will, there is an inheritance contract) [62], Article 2: 286 of the Netherlands Civil Code (hereinafter Dutch Civil Code, DCC)[63], Article 8 of the Spanish Fund Law 50/2002 (Ley 50/2002, de 26 de Diciembre, de Fundaciones) (hereinafter LF 50/2002)[64]. These Acts regulate the procedure for their creation, registration, liquidation, preparation and transfer of reports to the state, the specifics of foundation management, the competence of the founder, beneficiaries of the foundation, as well as the powers

[60] See more, https://www.stiftungen.org/stiftungen/basiswissen-stiftungen/was-ist-eine-stiftung.html, and https://dafne-online.eu/data-and-research/. Last access 01.06.2020.

[61] See more, Bundesgesetzblatt für die Republik Österreich, Jahrgang 1993, 14.10.1999. 255. Stück.

[62] This law was amended by the Liechtenstein law gazette (LGBl.) 2008 no. 220 and entered into force on April 1, 2009 and is part of the Companies Act 1926 г. See more, https://www.gesetze.li/konso/1926.004. Last access 02.06.2020.

[63] See more, http://www.dutchcivillaw.com/civilcodebook022.htm (that web-site contents unofficial English translation). Last access 02.06.2020.

[64] See more, https://www.boe.es/buscar/act.php?id=BOE-A-2002-25180. Last access 02.06.2020.

of notaries, courts or state or municipal authorities in regulating the activities of foundations, especially when changing the goals, the Charter of the foundation, as well as tax issues. The legal status of lifetime foundations is ensured mainly by the broad powers of the founders, which can reflect in the Charter most of the topics related to the activities of the foundation, including after the founder's death.

National legislation does not always define a foundation (this and the absence in the law of a prohibition on the use of the word "foundation" in the name of a legal entity enables the founders to assign the name of the foundation to other types of legal entities). That is easily seen as the approach of the old legislations influenced by the prevailing scientific opinions of that time[65]. For example BGB does not have a legal definition of a foundation ("Stiftung")[66]. ZGB also does not define a foundation. Article 80 ZGB only prescribes that assets should be allocated for a specific purpose. The Italian Civil Code (hereinafter Codice Civile Italiano, CCI) also does not have a legal definition of a foundation. The new legislation tries to fully articulate the foundation as a non-profit legal entity with specific statutory purposes. French law defines foundations as a lawful act by which one or more individuals or legal entities decide to allocate property, rights, and resources for conducting non-commercial activities in the public interest[67]. Also French law grants the exclusive right to certain types of foundations, such as utility foundations, corporate foundations, to have the word "foundation" in their name. The Dutch Civil Code which is one of the new civil law acts[68] provides the

[65] Famous German Professor Bernhard Windscheid pointed out that Stiftungen is only the personification of property for specific purposes. See more, Windscheid B. Lehrbuch des Pandektenrecht. Dritte Auflage. Düsseldorf, 1870. Quoted from: Б.Виндшейд. Учебник пандектного права. Том I. Общая часть// Перевод с немецкого, под редакцией С.В.Пахмана. С.-Петербург, 1874. Pp.130-131.

[66] For this reason the founders can name the foundation of the company as a GmbH or an institution as the Stiftungsverein. So, in the type of GmbH, the Robert Bosch Foundation acts. See more, https://www.bosch-stiftung.de/en/bosch-constitution. Last access 02.06.2020. Some scholars state that German law does not determine foundation as specific legal and organizational form. See O.Werner. Die idealistische Familienstiftung (Teil 1)/ZStV, 6/2018. P.207.

[67] See https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006069014. Last access 02.06.2020.

[68] Some scientists note that this Code no longer belongs to the Romano-Germanic legal system. See W.Pinters. Wechselnwirkungen zwischen dem Familienrecht des BGB und dem der BENELUX-

complete definition of a foundation. According to part 1 of Article 2:285 of the State Property Committee, the Foundation ("Stichting") is a legal entity formed by a legal act, does not have a membership and intends to realize the goal specified in its constituent documents, using the property transferred to it to achieve this goal. The target may not include the distribution of foundations to its founders or people participating in its bodies or to other people, following Part 2 of this Article. The Acts of Austria (Articles 1, 2 PSG) and Liechtenstein (par.1, 2 Article 552 PRG) on legal entities in terms on private foundations) follow the same path, giving a detailed definition of these non-profit organizations.

iii) Common order of European establishment.

Civil law of these countries establishes formal requirements for the founder's will which shall be expressed regarding the name of the foundation, the place, and purpose of its foundation (the use of the foundation cannot contradict the public interest), the property of the foundation, the formation of the foundation's Board. This information shall be reflected in the Foundation's Charter following part 1 of Article 81 BGB, Article 11 LF 50/2002, Article 16 CCI, Article 9 PSG, paragraph 16 of Article 552 PRG, and Part 4 of Article 2:286 DCC. Such conditions are provided for the inheritance foundation under Russian law.

All legislations provide that the transaction for the establishment of the foundation must be made in writing. The establishment procedure differs according to the Act of the each state. According to Article 81 of the BGB the successor of the founder does not have the right to refuse the transaction if the founder has already submitted an application for its recognition to the competent authority or, upon notarization of the deal for the establishment of the foundation, simultaneously with this notarial act or upon its completion, instructed the notary to submit a corresponding application. If the expressed will of the founder of the foundation does not contain the conditions as mentioned earlier. At the same time

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Staaten//J.v.Staudingers Kommentar zum Bürgerlichen Gesetzbuch mit Einführungsgesetz und Nebengesetzen/ Red. M.Martinek, P.Sellier. 13.Bearb. Berlin, 1999. P.138.

the founder died without having time to eliminate the deficiencies, then the provisions on the foundation created in case of death following the Article 84 BGB shall apply[69]. It is a unique advantage of German law which is very minimalist and very virtuoso (unlike the Russian laws) prevent the heirs from numerous disputes between themselves and the state authorities on the establishment of the foundation and endowing it with the estate. Similar provisions are found in the laws on foundations based on the German model[70]. A particular procedure for the establishment of certain types of foundations is contained in the legislation of France according to which four state authorities approved the documents of some public foundations for its registration, and the period for registering foundations reached up to 18 months, now reduced to 6 months. Corporate foundations are formally established if *Prefet* does not object four months from the date of applying for registration. *Fonds fiduciaire* are created after submission of an application to *Prefet* and its publication in the *Official Gazette*. Italian foundations have a similar registration pattern[71].

iv) Founders.

The founders of the foundation can be individuals and legal entities. The procedure for registering a foundation as a legal entity with full capacity is provided for by all laws. There are minor differences only in the preliminary approval by the supervisory authority of any type of foundations or simple registration in the State (public, commercial) Register. So, in Germany, the state supervisory authority approves the foundation so that it is established following the law requirements. The foundation becomes a legal entity after its registration, the

[69] See more, Enneccerus L., Kipp T., Wolff M. Lehrbuch des Bürgerlichen Rechts. Elwert'sche Verlagsbuchhandlung, Marburg, 1923. Quoted from: Эннекцерус Л., Кипп Т., Вольф М. Курс германского гражданского права. Том I, полутом 1. Москва: Издательство иностранной литературы, 1949. Pp.414-415.

[70] See more for instance about Austrian foundation, Petritz M. & Kampitsch A. The Austrian Private Foundation//Trusts & Trustee, Vol.20, No. 6, July 2014. Pp.541-549.

[71] This procedure is provided for in the Decreto del Presidento della Repubblica 10 febbraio 2000, n.361. See more, https://www.gazzettaufficiale.it/eli/id/2000/12/07/000G0410/sg. Last access 02.06.2020.

procedure for which is determined by the law of the federal land (state). In Switzerland, foundations acquire the status of a legal entity with full legal personality if they are registered in the Commercial Register under Article 52 A, Paragraph 1, Article 81 A, Paragraph 2 of the ZGB[72]. The same rules apply in Spain, in Article 4 LF 50/2002.

v) Foundation's capital.

European Acts regulate foundation's capital requirements in different ways. So, the amount of those is set at 30,000 Euro in Spain and Liechtenstein and 70,000 Euro in Austria[73]. In other countries, the legislation does not provide for special requirements, but local authorities establish specific amounts of the foundation's capital. It is 25,000 - 100,000 Euro in Germany, and 50,000 CHF (nearly 40,000 Euro) in Switzerland. Italy also requires a foundation capital of 100,000 Euro. For example in France given the different legislation on non-profit organizations, the authorities require 1,000,000-1,500,000 Euro as capital for public utility foundations.

vi) The foundation’s governing bodies.

The structure of the board, the procedure for its formation, the requirements for the officials of the foundation are carried out by the will of the founder and the Charter of the foundation, as established, for example, in Article 85 BGB, Article 83 B ZGB. In Germany the Acts of some federal lands (like Saxony, Thuringia, and others) provide for the procedures for appointment, dismissal, decision-making by the board of the foundation, the term of office, etc. Also laws may provide for a particular structure of governing bodies, such as in Italy and Austria, where a supervisory board may be formed in addition to the executive body.

vii) Beneficiaries’ rights.

[72] Since 2016, this rule applies to family and church foundations that were previously able to do so on a voluntary basis in accordance with paragraph 2 of article 52 of the ZGB. For an overview of these legal changes, see, Jacob D., Studen G. Swiss family foundations and the new registration requirement – paper tiger or paradigm shift?// Trusts & Trustee, Vol.22, No. 6, July 2016. Pp.707-711.

[73] For example see more, Schwank F. The Austrian private foundation as a holding structure for global family wealth. //Trusts & Trustee, Vol.20, No. 1&2, February/March 2014. Pp.171-177.

As a rule after the establishment of the foundation, the founder loses the rights to it, but in cases provided by law or the Charter of the foundation, he/she can become a member of the governing body. Beneficiaries usually do not have any exclusive rights. Specific regulations grant them the right to receive full information about the foundation's activities, established in paragraph 9 of Article 552 PRG. In case of violation of their interests they can initiate a complaint to the appropriate supervisory authority or court.

viii) Foundation's activity.

The foundation may engage in business activities if this does not only contradict the purposes of its creation but also allows them to be fulfilled. Restrictions may be economic related to taxation; for example if the foundation reaches a certain level of revenue it may lose certain tax benefits or pay higher tax rates.

Taking into account the conduct of entrepreneurial and statutory activities, the fund is obliged to maintain accounting records, draw up and send annual reports to the relevant state bodies: on its activities, on the use of ownership, receiving grants, financial and tax statements. To check the reporting and events the foundation may conduct audits which is not mandatory by law for private foundations or depends on the number of their assets. However the foundations do such checks annually by licensed audit companies to strengthen their reputation.

ix) Foundation's taxation.

The tax regimes of the foundations are broadly similar. As a rule the activities of a foundation aimed at achieving statutory public benefit goals (which can also be established by law, for instance in Article 65 of the German Fiscal Code (Abgabenordung)[74]) are not subject to taxation, or the level of taxes of such a foundation is significantly lower than that of companies. For example in Germany the ordinary economic activities of a foundation ("wirtschaftlicher

[74] See more, https://www.gesetze-im-internet.de/englisch_ao/englisch_ao.html#p0148. Last access 02.06.2020.

Geschäftsbetrieb") are taxed under the regular procedure if the foundation's income exceeds 35,000 Euro. In France auxiliary economic activities of the foundations that are directly related to the socially useful purpose of the foundations are exempt from corporate tax up to a limit of 60,000 Euro without VAT. In Liechtenstein foundations pay a minimum tax rate of 12.5% on their profits, with a minimum charge of 1,200 CHF. Foundations often have the right to apply tax deductions at different rates depending on the country. Grants and donations made to the foundation, as well as inheritance transferred to the foundation, are tax-exempt. Investment income as a rule is not taxed if the foundation uses such income for its statutory purposes or the foundation is charitable for public benefit purposes (environmental protection, protection of cultural heritage, etc.). If these conditions are not met, then the transfer by gift and inheritance tax will be charged. In France, it is 35% to 24,069 Euro, 45% over this amount. The same approach is demonstrated by the legislators to the income from auxiliary activities of the foundation.

x) Supervision over foundation.

In European countries foundations also have appropriate supervisory authorities at the state or regional level, monitoring the observance of laws in the foundation's activities and the founder's will. So, in Germany these are the authorities of the federal lands. In Switzerland such services exist in the cantons, and there are also inter-cantonal and federal authorities. In France supervision is carried out by the Ministry of the Interior, in Liechtenstein - by the Office of Justice (Amt für Justiz). The supervisory authorities may dissolve the foundation if its purpose is not achieved, activities that are contrary to the public interest (illegal or immoral) or the will of the founder, or in connection with the expiration of the foundation's activities, if such has been established. The foundation's management body can make a similar decision in the specified case or case of loss of the foundation's assets. This decision must be approved by the supervisory authority if required by law. An interested person can also file a claim in court if there are appropriate

grounds for liquidating the foundation. When a foundation is liquidated as a legal entity, a corresponding entry is made in the state or commercial register.

1.1.4. Trust in Anglo-Saxon law.

i) Principals of trust.

In modern society characterized by a wide variety of economic relations and the emergence of multi-level international relations, it is easy to imagine a situation in which the institutions provided by one legal system do not coincide with those adopted in another, but at the same time are used by its subjects. This is the case for the Anglo-American trust which is trying to win its place in the countries of the continental legal system. It is because the concept of trust provides for the splitting of proprietary rights into "legal ownership" and beneficial - "equitable ownership" which may belong to different legal entities and individuals[75].

The legal ownership of the estate transferred to the trust is held by trustees, who dispose of it only in the interests of the beneficial owner of the same estate, who has the right to enforce these obligations based on the Principles of Equity[76]. It is thanks to the splitting of ownership that trusts make it possible to effectively protect assets since the legal title to things is transferred to the trustee. Also it has a legal duty to manage the estate solely for the benefit of the trust's beneficiaries[77]. The establishment of a trust has always been a popular way of transferring assets for charity purposes, heirs, and ensuring the life of incapacitated individuals[78]. It

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[75] See more, Hudson A. Understanding Equity & Trusts. 3rd ed. New York, by Routledge-Cavendish, 2008. 224p. Pp.15-16.

[76] See David R., Jauffret-Spinosi C. Les grands systems de droit contemporains. 10e edition, 1992. Quoted from the book: Давид Р., Жоффре-Спинози К. Основные правовые системы современности. М.: Международные отношения, 1996. 400р. Р.237.

[77] See more, Commercial law of foreign countries: Textbook / Ed. V.F. Popondopulo. SPb.: Peter, 2004. 288p. Pp.219-222. // Коммерческое право зарубежных стран: Учебное пособие/ Под общ.ред. В.Ф.Попондопуло. СПб.: Питер, 2004. 288с. С.219-222.

[78] See more, Lloyd D. The Idea of Law. A repressive evil or social necessity? First published. London. Pelican Books. 1964. Quoted from the book: Ллойд Д. Идея права. Научный редактор Ю.М.Юмашев. М.: «ЮГОНА», 2002. 416р. Р.333, and see also, Reshetnikov F.M. Legal systems of the world. Directory. Moscow: Legal Literature, 1993. 256p. P.28.// Решетников Ф.М. Правовые системы стран мира. Справочник. М.: Юридическая литература, 1993. 256р. С.28.

should be emphasized that in common law countries, inheritance is implemented in a different scheme than in the civil law system. In the United States, Great Britain, Australia, and other countries, inheritance is the liquidation of an estate left by the deceased, i.e., the ownership of the founder of the foundation is not immediately transferred to the beneficiaries but is first moved to the trustee of the founder for settlements with creditors. However, from a practical point of view, more important is the fact that when the ownership is transferred to a trust, the founder *de jure* loses it. Thus creditors cannot recover the property transferred to the trust, since it is the property of the trustee who controls the settlement procedure. It is one of the substantial advantages of a trust. It is not a legal entity and, by its legal nature - an agreement. As already mentioned, its peculiarity lies in the "split" (fiduciary) right of the owner - the settlor between the various subjects of these relations: the trustee which receives the legal title of the property, and the beneficiary to which the equitable title is transferred[79].

ii) Historical review of trust.

The first trusts appeared in England during the Middle Ages during the Crusades, between the 11th and 12th centuries[80]. The courts began to consider property as a single unified whole, as it was in Roman law and civil law. During the Crusades, landowners who went on a crusade transferred their ownership of the land to a person they trusted. But when they returned from the campaign, they found that the people to whom they had entrusted the title to their property refused to give it back[81]. At that time the common law did not give protection of the rights of the old

[79] See in more detail, Civil and commercial law of foreign states: Textbook. Editor-in-chief E.A. Vasiliev, A.S. Komarov. 4th edition, revised and enlarged. In 2 vol. Vol.1. M.: International relations, 2004. 560p. Pp.391-394. // Гражданское и торговое право зарубежных государств: Учебник. Отв.ред.Е.А.Васильев, А.С.Комаров. 4-е издание, переработанное и дополненное. В 2-х т. Т.1. М.: Международные отношения, 2004. 560с. С.391-394.
See also, Black's Law Dictionary. Seventh Edition. Bryan A. Gartner, Editor in Chief. West Group. St.Paul, Minn. 1999. Pp.1513-1514.

[80] See more, J.E.Martin, Hanbury & Martin: Modern Equity, 19th edn. Sweet & Maxwell, 2012. Pp.1,5–18.

[81] See more, Dr.K.Zweigert, Dr.H.Kötz. Einfuehrung in die Rechtsvergleichung auf dem Gebiete des Privatrechts. Band I: Grundlagen. Quoted from: Введение в сравнительное правоведение в сфере

owner to return the previously transferred property, since for the Court the only owner was the legal owner of the title. On behalf of the King the Lord Chancellor created the *Court of Equity*[82] the jurisprudence of which was formed in favor of such owners. In this case the courts said that the basis of ownership of the property of the legal owner was the trust of the person who transferred the title to this property. Since that time there was a division between the legal and real owner which was the beginning of the development of English trust law[83].

Further, in the XV-XVI centuries, "*use*" also began to be used by legal owners, who transferred property in trust to family members to avoid inheritance tax. By the beginning of the 18th century the institution of use passed into the institution of a trust, where there was the rule that ownership can be held by one person (trustee) in favor of the beneficiary[84]. Such regulations have come down to the present day practically unchanged. The current legislation of common law countries on trusts is very extensive, detailed, and regulates a large number of different types of trust[85]. In the UK there are several laws on various forms of trust; the most famous is the Trustee Act of 1925 and 2000, Trustee Investments Act 1961, Financial Services and Markets Act 2000, and others. In the United States laws are governing the creation and administration of trusts, both at the Federal level, such as the Uniform Probate Code 2019, developed by the National Conference of Commissioners on

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частного права. Том I. Основы: Перевод с немецкого. М.: Международные отношения, 1998. 480р. Pp.284-286.

[82] See Black's Law Dictionary. Seventh Edition. Bryan A. Gartner, Editor in Chief. West Group. St.Paul, Minn. 1999. P.560.

[83] Of course, this was not a quick process on which the historical reasons for the reformation of the legal and judicial system of England were superimposed. See more, Harold J.Berman. Law and Revolution. The Formation of the Western Legal Tradition. Harvard University Press. Quoted from: Берман Г.Дж. Западная традиция права: эпоха реформирования /2-е издание. М.:Изд-во МГУ: Издательская группа ИНФРА*М-НОРМА, 1998. 624р. Pp.423-430. See also, Appermont N. De Trust. Een juridisch kader voor de (internationaal) privaatrechtelijke inpassing en fiscale gevolgen. Wolters Kluwer Belgium NV, 2017. Pp.51-64.

[84] See Naryshkina R.L. Trust property in the civil law of England and the United States. Moscow, 1965. 37p. Pp.4-5. // Нарышкина Р.Л. Доверительная собственность в гражданском праве Англии и США. М., 1965. 37с. С.4-5. See also, Dr.J.Martin, Hanbury & Martin: Modern Equity, 19th edition. London. Sweet & Maxwell, 2012. Pp.10-12.

[85] There are about 100 types of trusts in the Black's Law Dictionary. See it, pp.1514-1519.

Uniform State Laws, and at the state level, which usually regulates certain types of trusts. Restatements of the Law of Trusts created by the American Law Institute are of particular significance[86]. In addition to these traditional "trust" countries, trusts can also be established in states that have so-called offshore legislation, such as the British Virgin Islands, Belize, Seychelles, Cyprus, Liechtenstein, Malta, which also have their bills. The geography of the use of trusts is quite vast. Still it is concentrated mainly in common law countries, which is logical, and in countries that offer low taxation which is also one of the features of the attractiveness of trusts as will be seen further.

iii) Trust's goals.

The main task of trust is the transfer of estate within one family, or people indicated by the testator. Consequently the trust shall preserve the estate from the creditors' claims, release or optimize tax payments, and ensure the confidentiality of the establishment of the trust and the beneficiaries as much as possible. Also the trust allows reducing or depriving the share of the inheritance of relatives at will, or to remove them from the management of the inherited estate.

iv) Trust's participants.

Putting aside the ethical side of the distribution of inheritance between the heirs, it should be noted that the trust copes with its tasks excellently as far as they correspond to the goals of the testator - the founder of the trust. However they are established by law and cannot be influenced in any way by the trustee. A special issue arises when choosing a trustee figure which is entirely influenced only by the trustee's founder. The trustee shall be a professional, conscientious manager with a solid track record along with business, financial, and legal expertise[87]. Since the

[86] For more details on the significance of this organization and its papers, see Dr.K.Zweigert, Dr.H.Kötz. Einführung in die Rechtsvergleichung auf dem Gebiete des Privatrechts. Band I: Grundlagen. Quoted from: Введение в сравнительное правоведение в сфере частного права. Том I. Основы: Перевод с немецкого. М.: Международные отношения, 1998. 480p. Pp.375-377.

[87] See more, Hudson A. Understanding Equity & Trusts. 3rd ed. New York, by Routledge-Cavendish, 2008. 224p. P.70.

institution of trust has existed for a long time, a market for professional trustees has formed around it. They are mainly reputable law firms, specialized management companies, banks, and other financial companies that have a long history and obtain corresponding skills and experience. This is helped by the individual licensing of trustees, which entails their inclusion in the sphere of control by the particular bodies of the state and the provision of appropriate reporting to them. Sometimes the founders of trusts provide for another trustee, the trust protector who must oversee the actions of the trustee and prevent harm to the interests of the beneficiaries[88]. For this the protector is entitled to block decisions or actions of the trustee that have a negative effect on the trust in the opinion of the protector.

v) Types of trust.

As mentioned earlier, the types of trusts are extraordinarily numerous and varied. They can be classified on a variety of grounds: international and local, private and public, and many others[89]. The most common types are as follows. Revocable trust is one from which the founder can recover the transferred assets. The irrevocable trust does not have such an opportunity for the founder. In a fixed trust the founder determines the beneficiaries, and the distribution of income and assets is carried out based on the instructions of the founder. In a discretionary trust the beneficiaries are not identified by name, and the trustee has the right to independently determine specific beneficiaries and distribute income and assets between them. A beneficial trust is a trust that specifies the beneficiary, so we can say that it is a regular trust. Here, the beneficiary has the right to control the actions

[88] See more, Civil and commercial law of foreign states: Textbook. Editor-in-chief E.A.Vasiliev, A.S.Komarov. 4th edition, revised and enlarged. 2 vol. Vol.1. M.: International relations, 2004. 560p. Pp.395-397.// Гражданское и торговое право зарубежных государств: Учебник. Отв. Ред. Е.А.Васильев, А.С.Комаров. 4-е изд., перераб. и доп. В 2-х т. Т.1. М.: Междунар.отношения, 2004. 560с. С.395-397.

[89] See an overview of some types of trusts at the book Commercial (trade) law of foreign countries: textbook and workshop for universities/ V.F.Popondopulo and others; editor-in-chief V.F. Popondopulo, O.A.Makarova. 3 edition, revised and erlarged. Moscow: Publishing House Urait, 2021. 589p. Pp.419-421. // Коммерческое (торговое) право зарубежных стран: учебник и практикум для вузов/ В.Ф.Попондопуло и др.; ответственный редактор В.Ф.Попондопуло, О.А.Макарова. 3-е изд., перераб. и доп. Москва: Издательство Юрайт, 2021. 589с. С.419-421.

of the trustee and to appeal against them in case of violation of their rights. A purpose trust is created for a specific purpose and there are no beneficiaries in it[90].

vi) Testamentary trust.

Taking into account the purpose of this work, it should be further considered one of the trust types - testamentary trust, since it is with them that certain parallels can be drawn when studying the inheritance foundation under Russian law. Because of the detailed legislation and the enormous popularity of these trusts in the United States, it would be helpful to take as an example the regulation of testamentary trusts in the United States, mainly since English trusts differ slightly from American ones.

A testamentary trust is an act of the founder based on his/her will. The founding testator of a trust shall also generally establish the objectives of the trust and identify the beneficiaries, indicate the property, the amount and distribution of proceeds from it (this may depend on the type of trust), and designate the trustee. All of these elements can be specified either in the will, which shall clearly state the intention to establish the trust or from the facts mentioned in the will, which will indicate the intention to organize the trust after the founder's death[91]. In American practice to establish a testamentary trust it is necessary to meet three clearly expressed requirements[92]: 1) on the creation of a trust, 2) on the transfer of specific property, 3) on the beneficiaries.

In the United States the wording of the document that creates the trust is essential. However sometimes a trust can be created by founder without using the

[90] See more, Shumilov V.M., Akchurin T.F. The legal system of the USA: textbook for universities / V.M. Shumilov, T.F. Akchurin. 4th ed., Rev. M.: International Relations, 2019. 624p. Pp.288-289. // Шумилов В.М., Акчурин Т.Ф. Правовая система США: учеб.пособие для вузов/ В.М.Шумилов, Т.Ф.Акчурин. 4-е изд.,перераб. М.:Международные отношения, 2019. 624с. С.288-289. See also, Appermont N. De Trust. Een juridisch kader voor de (internationaal) privaatrechtelijke inpassing en fiscale gevolgen. Wolters Kluwer Belgium NV, 2017. Pp.151-171.

[91] See Restatement of Trusts. Third. Vol.1, §§1 to 26. St.Paul, MN. American Law Institute publishers, 2003. P.250.

[92] See more, G.Moffat, Dr.G.Bean, Prof.J.Dewar. Trusts Law. Text and Materials. Fourth edition. Cambridge University Press, 2005. Pp.116-117.

term "trust" in the will. Thus court decided that since the owner had signed a document stating that the bonds would pass to a third party in the event of her death, this was the establishment of a trust[93].

Founder of a trust

The initiator of the establishment of a testamentary trust is the founder (settlor or trustor) [94] who is also sometimes called the testator. Under US law they can be a legally capable person who has reached the age of 18 (in some states this age has been reduced to 14 years). The founder shall meet the requirements put forward by the mental abilities and mental state at the time of drawing up the will.

A testamentary trust is established at the testator's last will who names the trust as its successor. It is created during the lifetime of a person who wants to place their ownership in this trust. Still, it comes into legal force only after the completion of the testamentary process. The inherited estate does not pass immediately to the heirs, but first to the trustee who is appointed by the founder of the trust, and from it to the beneficiaries (heirs). If the trustee was not appointed by the deceased, it would be appointed by the Court from among the heirs: the spouse, next of kin, and other interested individuals may be selected, such as the creditor, but as practice shows, the person acting as the trustee is usually appointed from the list of beneficiaries[95]. The person appointed by the Court is called the administrator and has all the rights and duties as a trustee.

Testament

Another essential advantage of a testamentary trust in the United States is the will that creates the trust does not need to be submitted to government authorities. Thus all the constituent documents of the testamentary trust remain confidential. A

[93] See https://www.law.justia.com/cases/vermont/supreme-court/1966/354-0.html. Last access 30.06.2020.

[94] See more, Restatement of Trusts. Third. Vol.1, §§1 to 26. St.Paul, MN. American Law Institute publishers. 2003. P.36.

[95] Order of priority for granting letters of administration: New York Surrogate's Court Procedure Act § 1001. http://codes.findlaw.com/ny/surrogates-court-procedure-act/scp-sect-1001.html. Last access: 20.05.2020.

testamentary trust does not require any mandatory registration. As already indicated, it is sufficient to draw up a will in the prescribed manner for its creation. A testament is a legal expression of the will of the testator executed in the form established by law intended to transfer the estate to the disposal of the trustee and beneficiary after the death of the testator (founder). The Act of the State of New York on Inheritance Rights and Trusts states that a will is understood as a paper in which only the power of appointment over an asset is implemented[96]. The will must be drawn up in a single written paper and signed in the presence of witnesses. Some state laws allow holographic wills which do not require the presence of witnesses, but shall be handwritten by the testator. A will can be expanded to include a section on rights and obligations for trustees and beneficiaries, a section on taxation of an inherited estate, a part restricting the power of an individual or group of people to inherit the estate. In a will that provides for the creation of a trust, the founder specifies the trustee, but the absence of this indicator does not entail the cancellation of the trust, since the Court can appoint the trustee. Also the will does not lose its force if the person appointed to the role of the trustee is unable or unwilling to perform these duties, except in cases where the founder does not want to establish the trust at all without its appointed trustees.

A testamentary trust in the United States as an instrument of inheritance for incapacitated people is no less convenient than guardianship or trusteeship for the following reasons. Thus guardianship or trusteeship will terminate at the moment the guardian reaches the age of majority (18 years), while trusts can last for any length of time. On a second ground the trustee may distribute the estate not in equal shares but according to their needs.

Trust papers

The main paper for establishing a trust is a trust agreement and/or a certificate of intent or a declaration of trust. By these papers the founder of the trust who has

[96] See more, https://www.nysenate.gov/legislation/laws/EPT. Last access 02.08.2020.

legal title to the estate confirms and declares that it has the right to transfer its ownership for use by another person or certain purposes specifying all the necessary conditions.

Trust taxation

It is worth to separately concern the taxation of trusts which, as already indicated, are an ideal tool for tax planning, since in some jurisdictions, such as Jersey, Cyprus, British Virgin Islands, trusts are exempt from most taxes. In contrast, in the United States, inheritance taxation is one of the largest in the world. Tax rates range from 18% to 40%. Taxation is carried out both at the level of the federal state-federal estate tax, and at the state level - state inheritance tax, which is levied on each heir. Federal taxes levy the estate of trusts, state taxes collect payments to beneficiaries, depending on the amount of income, degree of relationship, etc.[97] Various incentives allow starting inheritance tax only at a certain level. For example the State of New York provides such a stimulus which is revised annually, from the amount of 5,430,000 US dollars (in 2015)[98]. Since 2018 federal taxation has been changed, and now a citizen has the right to transfer a little more than 11 million US dollars to its children or non-charitable organizations without paying federal tax or other contributions. In general, the distribution of income from trusts is taxed at the beneficiary level. It should be noted that the income tax rates applied for taxation at the level of trusts in the United States (i.e., for the reinvested income of non-founder beneficiaries) are usually higher than the tax rates at the income recipient level: although the above rate (in the United States there is a progressive scale of income tax rates) for trusts and individuals is the same - 39.6%, the boundaries of the tax base, implying the use of higher tax rates, for trusts are lower – 250,000 US dollars per year for an individual and 7,500 US

[97] See more, https://taxfoundation.org/estate-and-inheritance-taxes-around-world/. Last access 02.08.2020.

[98] See more, http://www.inheritancetax.us/inheritance-tax-new-york/. Last access 02.08.2020.

dollars for a trust under §1 US Internal Revenue Code[99]. However, reinvested income that is taxed at the trust level is no longer taxed when it is distributed to beneficiaries under article 671 of the US Internal Revenue Code. In this case, the tax is 3,011.50 US dollars plus 37% of the amount exceeding 12,500 US dollars.

1.1.5. Trust in European Law and Practice.

i) Common review.

The question of how the European legislation and jurisprudence cope with the "penetration" of the trust into the continental legal system is of individual interest. That is important for European jurisprudence from two points of view. The first point concerns the application of foreign law, mainly common law, in cases of the establishment of a trust by European citizens following the terms of the common law. The second point refers to the application by the signatory countries of the Hague Convention 1985, the ratification of which legalized the institution of trust in the national legal systems of the countries participating in the Convention[100]. Since the development and discussion of the draft Hague Convention 1985 European scientists in the framework of the creation of the Civil Code of the European Union have developed Principles, Definitions, and Model Rules of European Private Law (hereinafter - " the Principles")[101]. Thus Book X of the Principles dealt with trust relationships. It defined a trust “as a legal relationship in which a trustee is obliged to administer or dispose of one or more assets (the trust

[99] See more, https://www.irs.gov/privacy-disclosure/tax-code-regulations-and-official-guidance. Last access 02.08.2020.

[100] See more, Civil and commercial law of foreign states: Textbook. Editor-in-chief E.A. Vasiliev, A.S. Komarov 4th edition, revised and enlarged. In 2 vol.Vol.1. M.: International relations, 2004. 560p. Pp.406-407. // Гражданское и торговое право зарубежных государств: Учебник. Отв.ред. Е.А.Васильев, А.С.Комаров, 4-е изд., перераб. и доп. В 2-х т. Т.1. М.: Междунар.отношения, 2004. 560с. С.406-407.

[101] See more about that paper, Civil law: textbook: in 3v. T.2. / Editor-in-chief V.P. Mozolin. 2nd ed., Revised and add. Moscow: Prospect, 2016. 968p. Pp.920-925. // Гражданское право: учебник: в 3т. Т.2./ отв.ред.В.П.Мозолин. 2-е изд., перераб. и доп. Москва: Проспект, 2016. 968с. С.920-925.

fund) following the terms governing the relationship (trust terms) to benefit a beneficiary or advance public benefit purposes"[102].

The practical significance of this issue lies in the fact that trusts are extremely popular all over the world, and a massive number of assets are transferred to trusts. The approaches of various legislations to trusts lead to inheritance disputes with the application of national and international private law. It follows that the relationship of inheritance and trust may be subject to different regulations. It is necessary to focus on the experience of recognition of inheritance trusts in the countries of the continental legal system. The evolution of approaches to determining the legal regime of inheritance trusts in the civil-law countries has gone own long way.

ii) France.

From about the 19th century French courts began to consider claims relating to trust relations. Initially the courts recognized the validity of trusts but did not give them legal qualifications. The courts recognized the existence of the trust under foreign law and qualified it by national law. This view was supported in scientific doctrine[103]. Thus the French courts considering the trust as an institution of inheritance law recognized its contractual nature which is not surprising, since the real nature of the trust could not be allowed due to a fundamentally different definition of proprietary rights and other real estate rights in CC[104]. French courts began to widely apply the principle of party autonomy in cases involving the creation of trusts. That made it possible to qualify the trust as a contract (like donation). Then the trust could receive judicial protection if its implementation did

[102] See more, Principles, Definitions and Model Rules of European Private Law. Draft Common Frame of Reference (DCFR). Edit by Ch.v.Bar, E.Clive and H.Schulte-Nölke and others. Outline Edition. Sellier. European law publishers GmbH, Munich. 2009. P.501.

[103] See more, F.-X.Lucas. Les transferts temporaries de valeurs mobilieres. Pour Une fiducie de de valeurs mobilieres. Paris. L.G.D.J., 1997. 370p. P.289.

[104] See more, A.-M.Patault. Introduction historique au droit des biens. Paris: PUF, 1989. P.249. Also see, F.-X.Lucas. Ibid., Pp.300-301.

not harm other provisions of French law. For example it should not reduce the compulsory portion of heirs[105]. So the French jurisprudence found a way out in recognition of a trust as a legal institution provided for by national law.

iii) Switzerland.

The development of the Swiss judicial practice concerning trusts followed approximately the same path. As well as the French Court the Swiss Federal Tribunal qualified a trust as a legal relationship similar to a contract of agency or as a combination of elements of various contracts: orders, trust management, donations and contracts in favor of a third party in the form in which these institutions are known to Swiss law[106]. The Swiss Court sought to preserve the validity of the trust without considering its essence, since it does not meet the definition of proprietary rights and approaches of its transferring according to the ZGB. The general rule is that the testator has the right to dispose of only the estate that is in his free disposal, except for the restrictions of the law to the compulsory portion. That is close like French law does.

Also Swiss law did not allow the appointment of a third party to determine the beneficiaries and their shares in the event of the testator's death. Such cases, as indicated above, may be qualified in accordance with similar institutions of Swiss law. Besides compulsory heirs have the right to file a claim for the reduction of the amount of estate disposed of by the testator and for the return of part of the property to the estate following ZGB. So the testator has the right to dispose of only that estate that is a share of the property owed to the heirs as a compulsory portion. The situation with the recognition of trusts, but not with the priorities of national law, changed after Switzerland joined the Hague Trust Convention 1985.

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[105] See this case, https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechJuriJudi&idTexte=JURITEXT000007035382&fastReqId=990234593&fastPos=1. Last access 02.08.2020.

[106] See more, Sokolova N.V. Trust property (trust) in continental Europe. M .: Infotropic Media, 2012.160p. Pp.57-64. // Соколова Н.В. Доверительная собственность (траст) в континентальной Европе. М.: Инфотропик Медиа, 2012. 160с. С.57-64.

As can be seen, the use of trusts in the continental legal system is possible, even though national legislation does not directly allow this institution to be regulated, except for international acts which will be discussed later. Some national legislations or their judicial practice classify trust relationships. That based on the principle of freedom of contract and the analogy of law, to similar national legal institutions. The priority in such cases is the basic principles of domestic law, as in the example of French and Swiss legislation, the protection of the rights of heirs with a compulsory portion of the inheritance. Some countries rest in the strict position to not recognize the trust like Germany. The latter also does not consider the trust is capable of being the owner of the property ("sachenrechtsfähig"). On the other hand, German jurisprudence "comprehends" only Maltese and Liechtenstein types of trust[107].

iv) Hague Convention on the Law Applicable to Trusts and Their Recognition of 1985.

However the trust still received legal regulation in some civil-law countries based on international acts (that was done to eliminate differences in the legislation of different countries)[108]. It is the Hague Convention 1985 which has been signed and ratified by several countries: Australia, Canada, China (in a select administrative region of China - Hong Kong), Italy, Malta, the Netherlands and the United Kingdom of Great Britain. The Convention has also been signed by Cyprus, France, Luxembourg, and the United States[109].

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[107] See Leonova O.A., Budylgin S.L. Residency of an individual under the Tax laws of Germany and Russia. // Taxes and Taxation. 2013. No.6. P.410. // Леонова О.А., Будылгин С.Л. Резидентность физического лица по налоговому законодательству Германии и России.//Налоги и налогообложение. 2013. № 6. С.410.
See also, Pisani Ch. Der Trust im Maltesischen Recht// ZEV, 11/2012. Pp.579-582; Schütz R. The taxation of foreign trusts and their beneficiaries in Germany.// Trust & Trustees, Volume 14, Issue 8, October 2008, pp.559-566.

[108] See M. de Juglart, B.Ippolito. Cours de droit commercial. 1er volume: Actes de commerce. Commercants. Fond de commerce. Effets de commerce. Paris. Montchrestien, 1995. 840p. P.45.

[109] See Medvedev I.G. Commentary on Conventions in the field of spousal property relations and inheritance. M.:Wolters Kluwer, 2007. 231p. P.164. // Медведев И.Г. Комментарий к конвенциям в области имущественных отношений супругов и наследования. М.: Wolters Kluwer, 2007. 231с. С.164.

Italy

Before ratification the Hague Convention 1985 Italy legal system did not recognize the trust because Italy is a civil-law country. With the adoption of the Hague Convention 1985 the institution of trust was introduced into Italian Private International Law. It was recognized by jurisprudence and doctrine provided that such trusts comply with the requirements of the Convention. The exception was when the trust and its consequences were contrary to national law, or it does not comply with the requirements of the Hague Convention 1985, or the purpose of the trust is to protect assets from creditors[110]. Thus the institution of trust in Italy has been successfully developed and is no longer a different structure in the Italian legal system[111].

France

France signed the Hague Convention 1985 but has not yet ratified it. That circumstance leads to the fact that trusts are considered based on national law. The reason for this is the French legal system belongs to the continental legal family which adheres to the concept of "monolithic" proprietary rights[112]. Then French law introduced the institution of *fiducie*. The latter is in many ways similar to a trust[113], but they have a large difference. The estate transferred to the fiduciary administrator is not separated from the ownership of the founder of the *fiducie*. That allows interested parties to challenge the transfer of ownership to a fiduciary

[110] See more in detail, Lupoi M. Trusts in Italy: A Living Comparative Laboratory. // Trusts & Trustees, Volume 18, Issue 5, June 2012. Pp.383-389. See also his article, Country Report: Italy// Columbia Journal of European Law Online. Vol.18, 2. Winter 2012. Pp.4-11.

[111] See Ubertazzi B. The Trust in Spanish and Italian Private International Law: Part I // Trusts & Trustees. 2006. Vol. 12, №10. Pp.14–19.

[112] See more, J.Carbonnier. Droit civil. Tome 3. Les biens. 19e edition refondue. PUF, 2000. Pp.4-7,128-130 and further.

[113] See more, F.-X.Lucas. Les transferts temporaries de valeurs mobilieres. Pour Une fiducie de de valeurs mobilieres. Paris. L.G.D.J., 1997. Pp.274-282; Douglas J. Trusts and their equivalents in civil law systems: why did French introduce the fiducie into the Civil Code in 2007? What might its effects be?// QUT Law Review Volume 13, Number 1, 2013. Pp.19-29.

if it violates their rights. In that sense this institution is similar to the regulation of fiduciary administration in the RCC.

Before France signed the Hague Convention 1985 the French courts qualified the trust in their rulings as a donation contract. After that the courts began to consider a different approach. It was supported by one of the famous judgments of the French Cassation Court[114]. In this case the Court recognized the trustee as the legal title of the bonds' owner and, consequently, the right to claim payment for them. The recognition of the trust by the French judicial system is based on the intention to apply the provisions of the Hague Convention 1985 before its ratification[115].

Switzerland

After ratification of the Hague Convention 1985 by Switzerland, the amendments to the Swiss Federal Act on Private International Law of 18 December 1987 about trusts were adopted[116]. They are recognized in the judicial system as a specific legal institution if the requirements were established by the Hague Convention 1985 were met. The rules of the Convention are directed to regulate the recognition of foreign trusts, but if Swiss law which does not know a trust turns out to apply to inheritance relations, then the validity of the established trust and the disposal of the property in this trust will be carried out following national law. In this case the Convention will contradict national law and cannot be the applicable law. For example the trust can be challenged in court cases of divorce and division of property[117].

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[114] See more, https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechJuriJudi&idTexte=JURITEXT000024567597&fastReqId=586697872&fastPos=2. Last access 02.08.2020.

[115] See more, https://droit-des-affaires.efe.fr/2011/09/07/vers-la-reconnaissance-du-trust-et-de-la-dette-parallele-en-droit-francaise/. Last access 02.08.2020.

[116] See, https://www.admin.ch/opc/de/classified-compilation/19870312/index.html. Last access 31.08.2020.

[117] See Wintsch A. Recent Swiss Case Law on Trust-related Issues. // Trusts & Trustees, Vol. 24, No.2, March 2018. Pp.168-176. Also see, Kanashevsky V.A. The concept of beneficial ownership in Russian judicial practice (private law aspects). // Journal of Russian law. 2016. No. 9. P.33. // Канашевский В.А.

Other civil law countries such as the Netherlands, Liechtenstein, and others have ratified the Convention 1985. In these countries there is also a formal duty to recognize a trust created in accordance with the requirements of the Hague Convention 1985[118].

The spread of the trust in the continental system, even where they are treated very loyally, occurs through its equating to the legal institutions existing in national laws, and the application of the relevant legal provisions by the analogy of law. In these cases there is no other way because then the legislator would have to revise the entire theory, ideology, and policy of the positive law of a particular country. Perhaps this explains the difficult "implantation" and use of foreign law institutions, even though the adoption of international acts such as the Hague Convention 1985, since the number of its member countries remains minimal.

1.2. The inheritance foundations in the Russian system of non-profit legal entities.

i) General.

As well known, there are many types of non-profit organizations in various legal systems. Every kind of non-profit organization differs in the order of creation, goals, and functions, the order of management of its activities, accountability to the participants of the organization and supervision of management bodies, etc. Accordingly the inheritance foundation as a particular type of non-profit organization is no exception to this rule, since it is a part of the system of non-profit organizations. Because of this, it is advisable to cite some characteristics of non-profit organizations as subjects of social and economic activity which are reflected in the legislation.

Концепция бенефициарной собственности в российской судебной практике (частноправовые аспекты).// Журнал российского права. 2016. №9. С.33.

[118] See more, Wilson D.W., Nagai C.L. Country Report: Switzerland// Columbia Journal of European Law Online. Vol.18, 2. Winter 2012. Pp.26-35.

In Economics the main features inherent in the “third sector” in the face of non-governmental, non-profit structures were highlighted. These include the following:

- Legal entity status following the law.

- Judicial and economic independence from the state and business.

- Particular purposes of statutory activity.

- Approved official organizational structure.

- The attraction of voluntary donations for the implementation of activities.

- Prohibition on the distribution of profits among the founders, participants, and management, or the extraction of any financial benefit by controlling people[119].

ii) Legal signs of non-profit organizations.

As it is easy to note, they are also consonant with the features that the current legislation established in Articles 48, 49, 50 of the RCC, including for non-profit organizations. The specified articles of the RCC determine that a legal entity is an entity registered in the state register, possessing ownership, and is liable for its obligations. This rule is directly related to a non-profit organization as a legal

[119] See more details, Grishchenko A.V. On the role of non-profit organizations in the context of reforming the tax system in Russia. // Vedomosti of the Moscow City Duma. Special issue. 2014. Pp.39-40. // Грищенко А.В. О роли некоммерческих организаций в условиях реформирования налоговой системы России. // Ведомости Московской городской Думы. Специальный выпуск. 2014. С.39-40. See also, L.Salamon, H.Anheier. "The International Classification of Nonprofit Organizations: ICNPO-Revision 1, 1996." Working Papers of the Johns Hopkins Comparative Nonprofit Sector Project, no.19. Baltimore: The Johns Hopkins Institute for Policy Studies, 1996. Pp.2-3. See also review of the legal entity’s theories, Krasavchikov O.A. The essence of a legal entity // Soviet state and law. 1976. No.1. Pp.52-55. // Красавчиков О.А. Сущность юридического лица// Советское государство и право. 1976. №1. С.52-55.; Kozlova N.V. The essence of a legal entity and the modern legal order. // Problems of the development of private law: Collection of articles for the anniversary of Vladimir Saurseevich Em / Ed.-in-chef E.A.Sukhanov, N.V.Kozlova. M.:Statut, 2011. 559p. Pp.199-222. // Козлова Н.В. Сущность юридического лица и современный правопорядок.//Проблемы развития частного права: Сборник статей к юбилею Владимира Саурсеевича Ема / Отв.ред. Е.А.Суханов, Н.В.Козлова. М.:Статут, 2011. 559с. С.199-222.

entity which has the right to perform legally important actions only as a subject of economic relations recognized by the state[120].

The type of legal entity determines its legal capacity. It arises only from the moment of its state registration based on paragraph 3 of Article 49 of the RCC. The RCC or special Act determines the specifics of each type of legal entity. Thus, economics and legislation converge on the necessary provisions of a legal entity. Regarding the regulation of its select type as a non-profit organization, to understand the peculiarities of its construction and the place assigned to inheritance foundations in it, it should be turned now to the general provisions of civil law on the system of non-profit organizations.

iii) Development of Russian legislation on non-profit organizations.

The appearance of the inheritance foundation and specific aspects of its regulation in the legislation is difficult to explain without a historical review of the development of law on non-profit organizations in the post-Soviet period of Russian history.

As known, developed legal systems have extensive legislation on non-profit organizations that have a long, and sometimes even centuries-old, history. Russia had comprehensive legislation on philanthropy before the Soviet period of its history[121]. During the Soviet period of history non-profit organizations were practically quasi-state, and the legal documents about these organizations were not laws. The civil legislation was transformed at the end of the Soviet era. It became primarily focused on the creation of market mechanisms in the country together with the laying of the ground of civil society. Thus the Fundamentals of Civil

[120] See more, Civil law of Russia. Part One: Textbook / Ed. Z.I.Tsybulenko. M.:Jurist, 1998. 464p. P.73. // Гражданское право России. Часть первая: Учебник/ Под ред. З.И.Цыбуленко. М.: Юристъ, 1998. 464с. С.73.

[121] See more about the periodization of the legislation on NPOs in the article by Grishchenko Y.I. Stages of formation of non-profit organizations in Russia. // Non-profit organizations in Russia. No.5. 2012. Pp.41-46.// Грищенко Ю.И. Этапы становления некоммерческих организаций в России. // Некоммерческие организации в России. №5, 2012. С.41-46.

Legislation of the USSR and the Republics (Основы гражданского законодательства Союза ССР и республик)[122] of 31 May 1991, the most progressive legal act of that time for the basic ideas and mechanisms of private law regulation, were adopted. It was the first Act establishing the division of legal entities into commercial organizations (companies) with profit as the primary goal, and non-profit organizations that do not have benefit as the primary goal. The Fundamentals of Civil Legislation of the USSR and the Republics gave rise to the establishment of commercial and non-profit organizations, bringing these processes closer to world standards. Subsequently, when the USSR ceased to exist, the effect of this law was extended on the territory of Russia by individual acts of Parliament - resolutions of the Supreme Council of the Russian Federation "On the Regulation of Civil Relations During the Economic Reform" (О регулировании гражданских правоотношений в период проведения экономической реформы)[123] dated 14 July 1992, No. 3301-1 and "On Some Issues of the Application of the USSR Legislation on the territory of the Russian Federation" (О некоторых вопросах применения законодательства Союза ССР на территории Российской Федерации)[124] dated 3 March 1993, No. 4604-1, up to the adoption of the new Russian Civil Code.

The basis for the creation of the “third sector” in Russia was laid by the Constitution of Russian Federation (Конституция Российской Федерации), adopted 1993. Article 30 of it established the right of citizens to unite, including the right to form trade unions to protect their interests. The next law which began to regulate these issues in more detail is Part First of the Russian Civil Code 1994[125], as well as special legislation dedicated to non-profit organizations and their types.

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[122] "Vedomosti SND and VS USSR", 26.06.1991, No.26, article 733. // «Ведомости СНД и ВС СССР», 26.06.1991, №26, ст.733.

[123] "Vedomosti SND and VS USSR", 30.07.1992, No. 30, article 1800. // «Ведомости СНД и ВС СССР», 30.07.1992, №30, ст.1800.

[124] “Vedomosti SND and VS USSR”, 18.03.1993, No. 11, Article 393. // «Ведомости СНД и ВС СССР», 18.03.1993, №11, ст.393.

[125] “Collection of legislation of the Russian Federation”, 05.12.1994, No. 32, article 3301.// «Собрание законодательства РФ», 05.12.1994, №32, ст.3301.

In subsequent years, from the mid-1990s to the mid-2000s, Russia witnessed a rapid development of legislation on non-profit organizations which gave grounds to speak of the formation of a full-fledged legal basis for the "third sector"[126]. By the adopted legislation numerous non-profit organizations began to be created in various spheres of civil society, mainly concentrating in the socio-cultural field, such as charitable support of environmental, scientific, and educational, regional, patriotic movements.

By now the new Russian legislation which regulates the system of non-profit organizations is a little over 25 years old. As mentioned earlier, during this period in addition to the RCC and the Federal Act "On Non-Profit Organizations"[127] dated 12 January 1996, No.7-FZ (hereinafter - the Act on Non-Profit Organizations) adopted following it, about 20 legislative acts dedicated to non-profit organizations were adopted. These acts can be considered as fundamental defining the basic concepts for various areas of the non-profit sector. The most important among them were the following laws: Federal Act "On Public Associations" (Федеральный закон «Об общественных объединениях»)[128] dated 05.19.1995 No. 82-FZ (hereinafter - the Act on Public Associations), the Federal Act "On Charitable Activities and Volunteering" (Федеральный закон «О благотворительной деятельности и добровольчестве (волонтерстве)»)[129] (formerly - "On Charitable Activities and Charitable Organizations") dated 11

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[126] See more, Civil legislation of Russia: Civil Code of the Russian Federation, Fundamentals of Civil Legislation of the USSR and the Republics, Civil Code of the RSFSR. Introductory Commentary, Alphabetical Subject Index / Comp. O.Y.Shilokhvost. M., International Center for Financial and Economic Development, 1996, 624p. Pp.28-29. // Гражданское законодательство России: Гражданский кодекс Российской Федерации, Основы гражданского законодательства Союза ССР и республик, Гражданский кодекс РСФСР. Вводный комментарий, алфавитно-предметный указатель/ Состав. О.Ю.Шилохвост. М., Международный центр финансово-экономического развития, 1996, 624с. С.28-29.

[127] "Collection of legislation of the Russian Federation", 15.01.1996, No.3, article 145. // «Собрание законодательства РФ», 15.01.1996, №3, ст.145.

[128] "Collection of legislation of the Russian Federation", 22.05.1995, No.21, article 1930. // «Собрание законодательства РФ», 22.05.1995, №21, ст.1930.

[129] "Collection of legislation of the Russian Federation", 14.08.1995, No.33, article 3340. // «Собрание законодательства РФ», 14.08.1995, №33, ст.3340.

August 1995, No. 135-FZ (hereinafter - the Act on Charitable Activities), and many others.

The result of the laws and the initiative of citizens to create non-profit organizations (NPO) was a real "boom" of their appearance. According to the State Statistics Committee of Russia, 236,795 non-profit organizations were registered in Russia at the end of 1998, and as of 1 January 2000, their number had already reached 484,949[130]. So the number of NPOs has doubled in a year. At the end of this period as well as due to unfavorable trends in the country's economy a decrease in state support for the non-profit sector began. That resulted in a reduction in tax breaks for both non-profit organizations and companies that were the main donors and sponsors of non-profit organizations. That did not take long to change the number of non-profit organizations, and as of 2019, more than 216,000 were registered[131]. The actual decrease in the third sector was more than 50% of the peak of the existing organizations.

iv) System of non-profit organizations as legal entities by the RCC.

The current civil law provides for a large number of types of non-profit organizations, including the inheritance foundation. The basic acts for their regulation are the RCC and the Act on Non-Profit Organizations. They give basic definitions to these legal entities, establish the goals of the activity, legal capacity, the procedure for its establishment and liquidation, etc. According to paragraph 1 of Article 50 of the RCC all legal entities are divided into companies and non-profit organizations. The first ones exist with the primary purpose of their activities - to make a profit. The second ones simultaneously have two features: the absence

[130] See Bazarov R.T. Improving processes by non-profit organizations. ORP Omega, Kazan. 2013. 153p. P.48. // Базаров Р.Т. Совершенствование процессов некоммерческими организациями. ОРП Омега, Казань. 2013. 153с. С.48.

[131] On the results of the Ministry of Justice of Russia in the field of activities of non-profit organizations in 2018 see more, https://minjust.ru/ru/novosti/o-rezultatah-raboty-minyusta-rossii-v-sfere-deyatelnosti-nekommercheskih-organizaciy-za-2018. Last access 12.06.2020.

of the goal of making a profit as the primary goal of the activity and the prohibition on the distribution of the received profit among the participants (if any ones exist). The similar rule is reproduced in paragraph 1 of Article 2 of the Act on Non-Profit Organizations.

v) Legal status of non-profit organizations.

A non-profit organization is established by the founders and is considered as a legal entity from the moment of its state registration. It is designed without limiting the term of activity unless otherwise established by the constituent papers. Non-profit legal entities have several other features that distinguish them from companies. For example, according to paragraph 4 of Article 50 of the RCC non-profit organizations have the right to engage in entrepreneurial activity. They can only make a profit serving to achieve the goals for which they were established, and if it corresponds to such purposes. For such legal entities this activity can only be of secondary importance. When carrying out entrepreneurial activities, a non-profit organization must have property worth at least the minimum amount of the authorized capital provided for limited liability companies under paragraph 5 of Article 50 RCC (now it equals 10,000 roubles (about 120 Euro)). Also there is an opportunity for a non-profit organization to isolate business activities and establish a separate legal entity like a company for conducting entrepreneurial activities and act in it as a participant (shareholder) if such a right is provided for by its Charter.

In contrast to companies, the legal capacity of non-profit organizations is exceptional (or limited)[132]. This means that the scope of such legal capacity is determined by the law and/or the objectives of a particular organization, specified

[132] In general, the legal capacity of legal entities has been debatable for a long time, according to Professor М.Я.Пергамент, European law, and science (in particular German, represented by authoritative scholars of that time as O.Gierke, F.Regelsberger, H.Dernburg, French law represented by F.Laurent), and Russian pre-revolutionary law in the late 19th and early 20th centuries (then Soviet law) thought about the limited legal capacity of legal entities used per the purposes of their creation. See theory's review in his book, Pergament M.Y. On the issue of legal capacity of a legal entity. St.Petersburg, 1909. Pp.5-35. // Пергамент М.Я. К вопросу о правоспособности юридического лица. С.-Петербург, 1909. 35с. С.5-35.

in its bylaws[133]. Therefore non-profit legal entities have the right to carry out only those activities that are directly provided for by their bylaws and / or law[134].

Besides that there are some features of non-profit organizations. A non-profit organization can be founded by one person, except for some cases of the establishment of particular non-profit organizations where the founding of more than one person is required, for example, in a public organization - the number of founders must be at least three citizens, etc. In the case of annulment of a non-profit organization, the ownership and other assets remaining after settlements with creditors is directed to the purposes for which the organization was created. Also only non-profit organizations, along with citizens, as opposed to companies, can be recipients of donations and charitable assistance from third parties. This is their difference from companies since the gift of property between them is prohibited under subparagraph 4 of paragraph 1 of article 575 of the RCC.

vi) Types of non-profit organization under RCC.

The RCC divides non-profit organizations into two types - non-profit corporate and unitary non-profit ones. According to clause 1 of Article 123.1 of the RCC, non-profit corporate organizations are legal entities that do not pursue profit-making as the primary goal of their activities and do not distribute the profits between the participants whose founders (participants) acquire the right to participate in them (membership) and form their supreme bodies. Such organizations can be established in the form of consumer cooperatives, public

[133] See more, Kozlova N.V. Legal entity category in the new Russian Civil Code. / Civil law of Russia in the transition to the market: Collection of scientific papers. articles by teachers of the Department of Civil Law of the Faculty of Law of Moscow State University, dedicated to the memory of prof. V.P.Gribanov / Ed. E.A.Sukhanov. M.:DE-JURE, 1995. 246p. P.50. // Козлова Н.В. Категория юридического лица в новом Российском Гражданском кодексе. / Гражданское право России при переходе к рынку: Сб.науч. статей преподавателей кафедры гражданского права юр.фак-та МГУ, посвященный памяти проф. В.П.Грибанова / Отв.ред. Е.А.Суханов. М.: ДЕ-ЮРЕ, 1995. 246с. С.50.

[134] In legal literature the attention is drawn to how vague this concept is. It is essentially declarative, rather than imperative, to restrict the business activity of a non-profit organization. For more information see, Non-profit foundations and organizations. Legal aspects. M.:Information and Publishing House "Filin", 1997. 336p. P.23. // Некоммерческие фонды и организации. Правовые аспекты. М.:Информационно-издательский дом «Филинъ», 1997. 336с. С.23.

organizations, associations (unions), notary chambers, real estate owners' associations, Cossack societies included in the state register of Cossack societies, as well as communities of indigenous minorities of the Russian Federation. The law does not define the second type of non-profit organization separately. In this case the RCC uses the generic definition "unitary organizations" which includes companies and non-profit organizations. This term covers legal entities whose founders do not become their participants and do not acquire membership rights in them. These include the following types of non-profit organizations such as foundations, institutions, autonomous non-profit organizations, religious organizations, state corporations, public companies under article 65.1 of the RCC.

Among unitary non-profit organizations the subject of our interest is the inheritance foundation which it should be designated as a subspecies of the (general) foundation. However it is also subject to the rules governing the generic institution as a foundation. It is also subject to the general regulations governing foundations, except for particular provisions of law. Therefore it has to consider the legal status of a foundation as a generic type of non-profit organization for a whole legal "family" of foundations - public, charitable, and others, which also have their legal regulation, sometimes different from the general one.

vii) The legal status of the general foundation.

Following Article 123.17 of the RCC and Article 7 of the Act on Non-Profit Organizations, the (general) foundation is a unitary non-profit organization established by its founders, who may be citizens and/or legal entities, for charitable, cultural, educational, and other socially useful purposes established in the Charter of foundation, by combining voluntary property contributions. As a legal entity the foundation owns a separate ownership and is responsible for its obligations with this property. Also the foundation on its behalf can acquire and exercise proprietary and personal rights, bear obligations, be a plaintiff and a defendant in court.

Like other non-profit legal entities the foundation has extraordinary (limited) legal capacity since its activities are conditioned by the non-profit nature and are formulated, taking into account the achievement of socially useful goals. Making a profit is not the purpose of the foundation. The founders cannot receive income from their activities. Moreover the founders do not have rights to the estate transferred to the foundation, which is the ownership of the foundation. The foundation has the right to engage in entrepreneurial activities that correspond to these goals and are necessary to achieve socially useful (public-benefit) goals for which the foundation was created. Foundations have the right to establish companies or be a participant in them to carry out entrepreneurial activities[135]. From this, it follows that the foundations have particular (or limited) legal capacity, i.e., carry out only those activities that are permitted by law and consistent with the goals of the foundation. The general foundation has the right to carry out entrepreneurial activities that do not contradict its goals, including creating companies or taking part in them. Such powers of the foundations are stipulated by Article 123.19 of the RCC and Paragraph 2 of Article 7 of the Act on Non-Profit Organizations. According to paragraphs 3 and 4 of Article 12 of the Act on Charitable Activities the foundation has the right to engage in entrepreneurial activities necessary to achieve the goals of the foundation. It has the right to create only business companies or participate in them only individually without co-founding with third parties. At the same time, a public foundation has the right to establish not only companies but also business partnerships in accordance with Part 3 of Article 37 of the Act on Public Associations. This fact was confirmed in some judgments. So the Conclusion of the Presidium of the Supreme Arbitration Court of the Russian Federation of 24 September 2002, No.6609/02 (file No.A11-2775/2001-K1-15/153)[136] established that the foundation as a non-profit organization

[135] See more, Non-governmental organizations: the order of creation and registration. Moscow: International Institute for the Development of Legal Economics, 1995. 144p. P.13.// Негосударственные некоммерческие организации: порядок создания и регистрации. М.: Международный институт развития правовой экономики, 1995. 144с. С.13.

[136] Published in the «Вестник ВАС РФ», 2003, № 1.

pursuing social, charitable, cultural, educational, or other public-benefit purposes cannot carry out entrepreneurial activities that contradict its statutory goals. In other words, the court stressed that the foundation has limited legal capacity under the law. Therefore its activities should be subordinated to the purposes set out in its Charter.

These are the main features of the foundation as a non-profit legal entity that is established acts. These signs are the same for all types of non-profit organizations, except the relationship of the founders to a specific legal entity, on which the division into corporate and unitary non-profit organizations is based, as described above.

viii) Types of foundations following civil legislation.

Foundations can be classified on various grounds, for example, depending on the status of the founders - state funds (foundations); corporate, public, private foundations, in areas of activity - charitable, educational, cultural, sports, pension, investment funds, etc. Historically philanthropic foundations have been widely used in Russian practice. They were created to support cultural institutions: theatres, museums, education institutions: universities, schools. The basis for the activities of charitable foundations is mainly the sponsorship of large firms, banks and wealthy individuals. For this paper it is proposed to divide foundations based on the laws that regulate them to emphasize the differences in their legal status. As previously mentioned, the general legal regulation of foundations is based on the RCC and the Act on Non-Profit Organizations. Prior, the regulation of foundations was carried out based on the Fundamentals of Civil Legislation of the USSR and the republics which already included the concepts of charitable and other foundations as well as the Act on Public Associations. Thus it should be distinguished: 1) general foundations created following the RCC and the Act on Non-Profit Organizations, 2) public foundations, which are subject to the Act on Public Associations, 3) charitable foundations, which are regulated by the Act on Charitable Activities. Besides there is separate legislation dedicated to the

regulation of state budgetary and extra-budgetary funds, acting as a kind of quasi-state organization and performing special activities on behalf of the state. It is also worth mentioning the existence of special legislation on investment funds, non-state pension funds, which are also not particular types of funds but have their own organizational and legal form, determined by law (about these types below).

Founders

The founders of the general foundation can be individuals, legal entities, while the founder of the foundation can be one person under paragraph 1 of Article 123.17 of the RCC. The Act on Charitable Activities follows a similar rule. At the same time the founders of charitable foundations cannot be state and municipal authorities, as well as state and municipal unitary enterprises and institutions under Article 8 of the Act on Charitable Activities. The difference of a public foundation is that it can be established by at least three individuals and (or) legal entities - public associations under Article 18 of the Act on Public Associations.

Governing bodies of general foundations

The system of governing bodies in the foundation is two-tier or three-tier under Article 123.20 of the RCC, paragraph 3 of Article 7 of the Act on Non-Profit Organizations. There is a Supreme collegial body whose competence includes the most critical issues of the foundation's activities - changing the Charter, terminating the organization's activities, and others. Its jurisdiction may consist of the formation of executive bodies which are provided for by the Charter: collegial (board, council, etc.) and individual (president, chairman, etc.) executive (expressing their will) bodies. Sometimes the right of formation of executive bodies can be attributed to the jurisdiction of the Council of Foundation or Board of Trustee. There are some features of the formation and competence of governing bodies provided for by various legislation on particular types of foundations (funds). So the supreme governing body of a public foundation is a congress (conference) or a general meeting of participants. Its Charter establishes the

exclusive competence of the supreme governing body. In the case of a public foundation, its governing body is formed by the founders and (or) participants following Article 18 of the Act on Public Associations. Also, under Article 10 of the Act on Charity, the supreme governing body of a charitable foundation must necessarily be collegial. At the same time members of the supreme governing body of that one fulfill their duties as volunteers. The supreme governing body of a charitable foundation may include no more than one employee of its executive bodies (with or without the right to vote).

Moreover members of the supreme governing body of a charitable foundation and its officials are not entitled to hold full-time positions in the administration of companies and non-profit organizations, the founder (participant) of which is this charitable legal entity. The supreme governing body of that foundation may have control functions concerning the executive governing bodies. For example, according to article 27 of the Act on Non-Profit Organizations, if the manager or other official of the foundation is interested in concluding a transaction on behalf of the foundation, such a transaction is subject to prior approval by the Board of Trustees under penalty of its invalidation.

It is not difficult to discern; the management structures of different types of foundations are not fundamentally changed. Besides they are similar to the structures of the governing bodies of companies, especially joint-stock companies. It should be mentioned that German, Austrian and Swiss law directly equates the regulation of some issues, including those related to the management bodies of foundations, with similar structures in other types of legal entities. The application of the analogy of law in these cases is due to the similarity of regulation of such institutions, which is based on uniform principles of (corporate) management. Undoubtedly the “economy” of regulation here emphasizes the significant legal reserve of these Civil Codes.

The property and assets of foundation

The foundation is the owner of its property and other assets and is fully responsible for its obligations under Article 123.18 of the RCC. The foundation is a unitary non-profit organization and is not based on the membership of the founders. Thence the founders of the foundation do not retain proprietary rights about the ownership transferred to the foundation and do not acquire any contractual rights to the foundation unlike corporate organizations by part 2 of paragraph 1 of Article 65.1 of the RCC. That eliminates mutual liability for the debts of the foundation and its founders. The foundation cannot distribute the received property among its founders or employees under paragraph 1 of Article 123.18 of the RCC. Also the law does not provide for the possibility of transferring wealth to the foundation on any other proprietary right, except for the real right.

The sources of the foundation's assets are primarily voluntary contributions from its founders, donations from other individuals, and the results of their entrepreneurial activities. The list of sources for the formation of the ownership of charitable foundations is established by Article 15 of the Act on Charitable Activities. It differs from the origins of the creation of ownership of other types of foundations established by the Acts on Non-Profit Organizations and Public Associations. Also Article 16 of the said Act sets restrictions on the disposal of the estate. In particular a charitable foundation is not entitled to spend its funds and use its capital to support political parties, movements, groups, and campaigns.

Foundation’s Charter

The general rule for foundations is that the only its constituent paper is a Charter approved by its founders. In addition to the necessary information specified in Part 3 of Paragraph 3 of Article 14 of the Act on Non-Profit Organizations, such as name, nature of the activity, location, etc., the Charter of the foundation shall contain data on the purposes of its operations, on the governing bodies of the foundation, including the Board of Trustees, the procedure for the appointment of officials and their release, the ways of the foundation's property in case of its annulment (liquidation). The Act restricts the possibility of making changes to the

Charter of the foundation by its executive bodies which makes it difficult to change the status of the foundation against its founders' will. Unlike other non-profit organizations the Charter of the foundation can be altered by the bodies of the foundation only if the Charter itself provides for the possibility of changing it in this manner following paragraph 1 of Article 123.20 of the RCC, paragraph 4 of Article 14 of the Act on Non-Profit Organizations. If such a possibility is not specified, it is possible to change the Charter only at the request of the foundation's governing bodies or a body authorized to supervise its activities to a court of general jurisdiction. Unlike other types of foundations, amending the Charter of a public foundation falls within the competence of the supreme management body of a public foundation following Article 20 of the Act on Public Associations.

Foundation's annulment (liquidation)

The annulment (liquidation) of legal entities under civil law is of two types, depending on the grounds: voluntary (by a decision of the participants) and compulsory (by a judgment)[137]. Unlike the liquidation of other legal entities concerning foundations settlement can only be mandatory, except for a public foundation[138]. Thus the decision to liquidate the foundation can only be made by a court upon the application of interested parties following paragraph 2 of Article 123.20 of the RCC, subparagraph 1 of paragraph 2 of Article 18 of the Act on Non-Profit Organizations. In addition the Act on Non-Profit Organizations contains special provisions on additional reasons for the liquidation of foundations. According to Clause 2 of Paragraph 2 of Article 18 of the Act on Non-Profit Organizations, these can be:

[137] See in more detail, Commercial Law: Textbook / Ed. V.F.Popondopulo, V.F.Yakovleva. SPb., Publishing house of St.Petersburg University, 1997. 518p. P.71. // Коммерческое право: Учебник/ Под ред. В.Ф.Попондопуло, В.Ф.Яковлевой. СПб., Издательство С.-Петербургского университета, 1997. 518с. С.71.

[138] In accordance with Article 26 of the Act on Public Associations, a public foundation can be liquidated on a voluntary basis by decision of the relevant body of the public foundation following its Charter.

1) the estate of the foundation will not be sufficient to fulfill its goals, and the probability of obtaining the necessary property is unrealistic;

2) the purpose of the foundation cannot be reached, and appropriate changes of foundation's objectives may not be produced[139];

3) if the foundation deviates from the goals stipulated by its Charter in its activities[140];

4) in other cases, provided for by federal law.

The annulment procedure of a non-profit organization provided for in Articles 18, 19 of the Act on Non-Profit Organizations applies to foundations. It is generally identical to the common procedure for liquidating a legal entity provided for in Articles 61-64, 64.1.-64.2. of the RCC. It happens in the following way. The authorized body that decided to settle a non-profit legal entity is obliged to immediately inform in writing the authority that carries out state registration of legal entities which enters information into the Unified State Register of legal entities that this legal entity is in the process of annulment. The body/authority that decided to liquidate a legal entity shall appoint, in agreement with the body that carries out state registration of legal entities, a liquidation commission (liquidator), and establish the procedure and terms for liquidation per the RCC. The powers to manage the affairs of the non-profit organization are transferred to the liquidation commission from the moment it is appointed. The liquidation commission (liquidator) publishes an announcement about its liquidation and about the procedure and deadline for filing claims by its creditors in the media, in which data on the state registration of a legal entity are published. This period cannot be less

[139] The first two grounds have been known since ancient times and are practically literally reproduced by law from the book Baron J. Die Gesammtrechtsverhältnisse im Römischen Recht. Marburg und Leipzig, 1864. Quoted from: Ю.Барон. Система рисского гражданского права. Выпуск первый. Книга Общая часть. Второе издание, исправленное по 9 изданию. Москва, 1898. P.83.

[140] Such grounds for liquidation of foundations are common to many laws. Thus, the new Hungarian Civil Code contains similar provisions. For more details, Menyhel A. The use of the Hungarian Foundation for asset protection and private purposes//Trusts & Trustee, Vol.23, No.6, July 2017. Pp.673-677.

than two months from the date of publication of the liquidation. The liquidation commission takes measures to identify creditors and receive receivables as well as notifies creditors in writing about the annulment of a non-profit organization. After the expiration of the term for the presentation of claims by creditors the liquidation commission draws up an interim liquidation balance sheet which contains information about the composition of the assets of the legal entity being liquidated, the list of claims made by creditors as well as the results of their consideration. The interim liquidation balance sheet is approved by the body that decided to liquidate the non-profit organization, in agreement with the authority that carries out state registration of legal entities. If the foundations available to the settled legal entity are insufficient to satisfy the claims of creditors, the liquidation commission sells the assets of the legal entity at a public auction following the procedure established for the execution of court decisions. The payments to the creditors of the legal entity in liquidation is made by the liquidation commission in the sequence specified by law by the interim liquidation balance sheet. Upon completion of settlements with creditors, the liquidation commission draws up the liquidation balance sheet, which is approved by the body that decided to liquidate the legal entity, in agreement with the authority that performs state registration of legal entities. The ownership of the non-profit organization remaining after the satisfaction of the creditors' claims is directed to the purposes provided for by the bylaws and (or) to charitable purposes. If it is impossible to use the ownership of a non-profit organization in such a way, it turns into state revenue based on part 1 of Article 20 of the Act on Non-Profit Organizations. Liquidation of a non-profit organization is considered complete, and the non-profit organization - ceased to exist after making an entry about it in the Unified State Register of legal entities under Article 21 of the Act on Non-Profit Organizations.

Foundation’s taxation

The taxation of all types of foundation as non-profit organizations is carried out in the same way. Indeed, the foundation has differences in tax regimes from other

taxpayers - companies, holdings as groups of dependent companies, banks, etc. For non-profit organizations, there is a list of non-taxable incomes specified in Article 251 of Part Two of the Tax Code of the Russian Federation (Налоговый кодекс Российской Федерации)[141] (hereinafter - the RTC, Tax Code). Separate accounting is a mandatory condition for income tax incentives for targeted financing and target deviations. The RTC requires to organize independent accounting of income (expenses) received (made) within the framework of targeted funding, as well as separate accounting of income (expenses) received (molded) within the context of targeted income under Paragraph 2 of Article 251 of the RTC. The taxation of foundations will be detailed using the example of an inheritance foundation in the Chapter 2 of this dissertation.

Foundation's reporting

As non-profit organizations foundations are required to submit annual information on their activities to the Ministry of Justice of the Russian Federation and its territorial divisions. Clause 3 of Article 32 of the Act on Non-Profit Organizations establishes the obligation of non-profit foundations to submit to the specified state body documents containing a report on their activities, on the personnel of governing bodies as well as records on the expenditure of funds and the use of another estate, including those received from foreign sources. Besides foundations that comply with the specified provision of the law are obliged to post on the Internet on an annual basis or provide the media for publication with a report on their activities in the amount of the information supplied to the state body, including reports on the use of their ownership following subparagraph 2 of paragraph 2 of Article 123.18 of the RCC and paragraph 2 of clause 2 of Article 7 of the Act on Non-Profit Organizations. Following paragraph 2 of Article 19 of the Act on Charitable Activities the charitable foundation shall submit to publish a report on its activities, containing information about its activities, the use of the

[141] "Collection of legislation of the Russian Federation", 07.08.2000, No.32, article 3340. // «Собрание законодательства РФ», 07.08.2000, №32, ст.3340.

property and the expenditure of funds; the personnel of the supreme management body; composition and content of charitable programs; violations of the requirements of the federal law, revealed as a result of inspections carried out by tax authorities, and the measures are taken to eliminate them.

These are the main provisions of the legal regulation of general and special kinds of foundation provided for by the current Russian civil law. Some rules contain provisions of various branches of law (civil, financial, administrative) and provide for the regulation of other types of organizations called foundations. For example, we describe the state and budget funds that belong to public law. Let us also compare investment funds, private pension funds, which are regulated by civil law, but are not foundations in a sense defined by the RCC.

ix) Types of foundations following public legislation.

First of all, it should be pointed out that economic science and public law, such as administrative, financial law, dedicated to the regulation of public finance and organizations working in this area, as well as civil law, have different meanings in the determination of "fund". The Russian legislator uses the definitions as “fund” and “foundation” to name different notions; it should not be misleading. Some scientists suggest considering the determination of "fund" in economic and legal terms. In their opinion, the economic category of a fund is a collection of funds especially accumulated by their owner or manager, for example, state organizations, for use for specific purposes established by law[142]. From public law

[142] See more for example, Pavlov P.V. Financial law: textbook. 4th ed., Rev. M .: Publishing house "Omega-L", 2009. 299p. Pp.92-94. // Павлов П.В. Финансовое право: учеб.пособие. 4-е изд., испр. М.: Издательство «Омега-Л», 2009. 299с. С.92-94.; Financial mechanism and law: monograph / editor-in-chief P.V.Zapolsky. M.: KONTRAKT, 2014. 248p. Pp.121-130. // Финансовый механизм и право: моногр./отв.ред.Р.В.Запольский. М.:КОНТРАКТ, 2014. 248с. С.121-130.; State and municipal finance: textbook, 2nd ed., add. and rev. / ed. I.D.Matskulyaka. Moscow: RAGS Publishing House, 2007. 640p. Pp.321-333. // Государственные и муниципальные финансы: учеб., 2-е изд., доп. и перераб./под общ.ред. И.Д.Мацкуляка. М.: Изд-во РАГС, 2007. 640с. С.321-333.; Ryabova E.V. Public Finance: A Conceptual View of the Content. // Bulletin of the O.E.Kutafin University (MSLA). Moscow: MSLA Publishing House, 2017. No.8. Pp.39-40.// Рябова Е.В. Публичные финансы: Концептуальный взгляд на содержание.// Вестник Университета им.О.Е.Кутафина (МГЮА). Москва: Издательство МГЮА, 2017. №8. С.39-40.

the generalized definition of "funds" refers to specially created independent legal entities for the management of public finances, which have a specific purpose. There are some organizations designed to carry out activities in select areas defined by the state, such as a pension, social, health, and public insurance[143]. According to some particular laws, organizations with the name "fund" have been created to carry out these activities. It will be considered using the example of the Pension Fund of the Russian Federation[144] (for quasi-state legal entities established under public law in this thesis the word “fund” will be used). This organization was created to carry out activities to ensure the collection, accumulation of insurance contributions necessary to finance the payment of state pensions, the appointment, and payment of state pensions. Article 5 of the Federal Act "On Compulsory Pension Insurance in the Russian Federation" (Федеральный закон «Об обязательном пенсионном страховании в Российской Федерации»)[145] dated 15 December 2001, No. 167-FZ determined the organizational and legal form of the Pension Fund of the Russian Federation as a legal entity - a "state institution" that is an insurer for compulsory pension insurance of citizens of the country. According to Article 9.1. of the Act on Non-Profit Organizations a state institution is a particular form of a non-profit organization created by the Russian Federation, i.e., by the state, represented by authorized authorities, to fulfill the state tasks established by it as the founder. Despite the name of this organization as a fund, it is a different type of non-profit legal entity[146].

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[143] See more, Nogina O.A. State off-budget funds as part of the budgetary system of Russia: problems of legal regulation: Monograph. M.:Statut, 2012. 462p. Pp.21-67. // Ногина О.А. Государственные внебюджетные фонды в составе бюджетной системы России: проблемы правового регулирования: Монография. М.:Статут, 2012. 462с. С.21-67.

[144] See the official web-site of the Pension Fund of the Russian Federation http://www.pfrf.ru/.

[145] “Collection of legislation of the Russian Federation”, 17.12.2001, No.51, article 4832. // «Собрание законодательства РФ», 17.12.2001, №51, ст.4832.

[146] See also, Shafigullin E.N. Financial and legal bases of compulsory pension insurance. // Russian justice. 2010. No.5. Pp.12-13. // Шафигуллин Э.Н. Финансово-правовые основы обязательного пенсионного страхования. // Российская юстиция. 2010. №5. С.12-13.

There are also organizations called "funds", but according to the law they have a unique organizational and legal form. Following paragraph 1 of Article 3 of the Federal Act "On the Fund for Assistance to the Reform of the Housing and Utilities Sector"[147] dated 21 July 2007, No. 185-FZ the Fund for Assistance to the Reform of the Housing and Utilities Sector is a state corporation, despite the use of the word "fund" in the name of the organization.

So the presence of the word “fund” in the names of these organizations is nothing more than a tradition, with emphasis on some economic sense of the accumulation of public finances by these public organizations to perform tasks determined by the state. Funds to support scientific and (or) scientific and technical activities created based on Article 15.1 of the Federal Act "On Science and State Scientific and Technical Policy"[148] No.127-FZ dated 23 August 1996, are an absolute surprise here. These non-profit organizations can be established in the form of (general) foundations by any founders: the state, regional authorities, companies, and individuals of the Russian Federation.

Thus funds created with the participation of the state use the word “fund” in their names to emphasize the economic meaning of the activities carried out by such an organization, rather than following strictly established legal ideas of civil law.

x) Non-state (private) pension funds and investment funds.

However in the field of civil law there are also similar cases where the use of the word “fund (foundation)” in the name of a legal entity is not the same as a determination of a foundation and a non-profit organization at all. In particular,

[147] "Collection of legislation of the Russian Federation", 23.07.2007, No.30, article 3799. // «Собрание законодательства РФ», 23.07.2007, №30, ст.3799.

[148] "Collection of legislation of the Russian Federation", 26.08.1996, No.35, article 4137. // «Собрание законодательства РФ», 26.08.1996, №35, ст.4137.

that applies to joint-stock companies such as non-state pension funds and investment funds[149].

Under the earlier legislation in force, non-state pension funds were recognized as "a special organizational and legal form of a non-profit organization for social security"[150]. They carried out unusual activities: on non-state pension provision for fund participants, as an insurer for compulsory pension insurance, as an insurer for professional pension insurance. The Federal Act "On Amendments to the Federal Act "On Non-State Pension Funds" and Separate Legislative Acts of the Russian Federation" (Федеральный закон «О внесении изменений в Федеральный закон «О негосударственных пенсионных фондах» и отдельные законодательные акты Российской Федерации»)[151] dated 28 December, 2013, No. 410-FZ introduced a change in the organizational and legal form for such funds, providing for their mandatory transformation into joint-stock companies (joint-stock pension funds). Newly formed non-state pension funds should also be established only as joint-stock companies.

Another type of organization that includes the word “fund” in its name is investment funds. These organizations are regulated by the Federal Act "On Investment Funds" (Федеральный закон «Об инвестиционных фондах»)[152] dated 29 November 2001 No. 156-FZ. Clause 1 of Article 2 of the said law stipulates that a joint-stock investment fund is "an open joint-stock company, the exclusive subject of activity of which is the investment of property in securities

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[149] See in more detail, Commercial (entrepreneurial) law: Textbook: in 2 vol./ed. V.F.Popondopulo. 5th, rev. and add. Moscow: Prospect, 2017. Vol.2. 640p. Pp.113-115. // Коммерческое (предпринимательское) право: учебник: в 2 т. / под ред. В.Ф.Попондопуло, 5-е изд.,перераб. и доп. Москва: Проспект, 2017. Т.2. 640с. С.113-115.

[150] Such a definition of a non-state pension fund was contained in Article 2 in the previous edition of the Federal Act "On Non-State Pension Funds" dated 07.05.1998 No.75-FZ.

[151] "Collection of legislation of the Russian Federation", 30.12.2013, No.52 (Part I), article 6975. // «Собрание законодательства РФ», 30.12.2013, №52 (часть I), ст.6975.

[152] "Collection of legislation of the Russian Federation", 03.12.2001, No.49, article 4562.// «Собрание законодательства РФ», 03.12.2001, №49, ст.4562.

and other objects provided by law, and the corporate name of which contains the words "joint-stock investment fund" or "investment fund".

As can be seen from these examples, the law uses the word "fund" in the names of various types of legal entities for multiple reasons. However this is not an indication of the corresponding organizational and legal form of a legal entity, among which there are even commercial organizations. In my opinion, the law emphasizes more the economic content of the word "fund" than indicates a type of non-profit legal entity, especially in some cases with the name "fund" there may be another type of legal entity[153].

1.3. Features of inheritance foundation like a special type of non-commercial legal entities.

i) Legal basis of the inheritance foundation.

Turning to the consideration of the legal status of the inheritance foundation in the system of non-profit organizations and its corresponding characteristics, it is possible to note that the latest legislation on the inheritance foundation within the framework of three articles on that cannot yet give full answers to all the questions that arise on the application of this institution[154]. As already mentioned, this is a very complex and multifaceted institution of private law which has a long-time history in developed legal orders, in Russian civil law it is just beginning its path. In my opinion, the fact that the legislator attempted to settle relations in this part, which were previously *terra incognita* in Russian law, is already significant. Of

[153] As indicated earlier, German law allows the establishment of GmbH with the name of the foundation and the conduct of the related activities. See in more detail, Commercial law of foreign countries: Textbook / Ed.V.F.Popondopulo. SPb.: Peter, 2004. 288p. Pp.42-43. // Коммерческое право зарубежных стран: Учебное пособие/ Под общ.ред. В.Ф.Попондопуло. СПб.: Питер, 2004. 288с. С.42-43.

[154] This opinion is shared by some scientists. See for example, Ayusheeva I.Z. Features of the civil status of the inheritance fund. // Actual problems of Russian law. 2018. No. 8 (93). Pp.100-101. // Аюшеева И.З. Особенности гражданско-правового положения наследственного фонда.//Актуальные проблемы российского права. 2018. №8(93). С.100-101.; Ananieva K.Y., Ananiev A.G. Limitations of the "hereditary foundation" construction. // Issues of Russian and international law. 2019. Vol. 9. No.10A. Pp.120-131. // Ананьева К.Я., Ананьев А.Г. Ограничения конструкции «наследственный фонд».// Вопросы российского и международного права. 2019. Том 9. №10А. С.120-131.

course, the practice of their application and court decisions in cases with this object and the relevant scientific research on this topic will assist in improving the norms about this institution.

Like any legal entity the inheritance foundation is a product of a high-level judicial order[155]. Its peculiarity (among other ones) is that the inheritance foundation independently acts outside of belonging and regardless of the will of a specific individual. It means that the testator's will is aimed only at creating conditions for its establishment, and this is limited, without extending further. Considering this and other features, as already mentioned, the inheritance foundation stands on the border of two branches of civil law: corporate law which regulates the system of legal entities, and inheritance law which governs inheritance relations. Thus, on the one hand, it is a particular type of non-profit organization as a legal entity; on the other hand, it is a subject of inheritance relationship[156]. Often such an ambiguous position of the inheritance foundation escapes the attention of scientists when trying to give a scientific definition to the foundation. So, for example, one of the authors of the Act on inheritance foundation Professor P.V.Krashenninikov wrote that “an inheritance foundation is a way of managing the inherited mass, that is, money, business and other assets that remain after the death of the owner”[157]. However such a characteristic speaks

[155] See in more detail, Khokhlov E.B., Borodin V.V. The concept of a legal entity: history and modern interpretation. // State and law. 1995, No.12. Pp.152-159. // Хохлов Е.Б., Бородин В.В. Понятие юридического лица: история и современная трактовка.// Государство и право. 1995, № 12. С.152-159.

[156] See, Tarasov Y.A., Ignatenko G.P., Gulyaev N.A., Tertichnikov D.V. The hereditary fund is a new category in the civil legislation of the Russian Federation. // News of the Southwest State University. 2017. No. 21 (6). Pp.195-200. // Тарасов Ю.А., Игнатенко Г.Р., Гуляев Н.А., Тертичников Д.В. Наследственный фонд - новая категория в гражданском законодательстве Российской Федерации. // Известия Юго-Западного государственного университета. 2017. №21(6). С.195-200.

[157] See Kozlova N.N. Inheritance on demand. // Rossiyskaya gazeta. Federal issue. 31.07.2017. No.168 (7334).// Козлова Н.Н. Наследство до востребования.// Российская газета. Федеральный Выпуск. 31.07.2017. №168 (7334).

more about the goals of the inheritance foundation than about its legal essence which is undoubtedly not enough to determine its legal nature[158].

ii) Inheritance foundation is a unitary non-profit organization.

Russian Civil Code gives the following definition of an inheritance foundation. That bases on the changes introduced by the Federal Act "On Amendments to Parts First, Second and Third of the Civil Code of the Russian Federation"[159] dated 29 July 2017 No. 259-FZ which entered into force on 1 September 2018. According to Article 123.20-1 of the RCC an inheritance foundation is “a foundation established by the procedure provided for by civil law, in pursuance of a citizen's will and based on his ownership which carries out activities for the management of the inherited estate of this person indefinitely or a specified period by the Conditions of managing of the inheritance foundation". From this definition, the critical points for understanding the legal status of the inheritance foundation as a particular type of non-profit organization are as follows.

The civil law defines the inheritance foundation as a foundation, and no other organizational and legal forms of legal entities, as state or investment funds, are not stipulated in that case. In this regard the common rules of the RCC dedicated to the general foundation as a generic institution may apply to the inheritance foundation with a few exceptions under paragraph 5 of Article 123.17 of the RCC. It should be said in advance that it is these exceptions that give grounds, at least, to assert about the controversial legal nature of the inheritance foundation.

Following Part 2 of Paragraph 1 of Article 65.1 of the RCC, a foundation is a unitary (non-member) non-profit organization established by citizens and (or) legal entities based on voluntary property contributions and pursuing social, charitable,

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[158] Similar opinions are expressed in modern literature. See for example, Kharitonova Y.P. The inheritance fund as a tool for effective business planning practice. // Economy and law. 2018. No.1. Pp.96-105. // Харитонова Ю.Р. Наследственный фонд как инструмент эффективной практики бизнес-планирования//Хозяйство и право. 2018. №1. С.96-105.

[159] "Collection of legislation of the Russian Federation", 31.07.2017, No.31 (Part I), article 4808. // «Собрание законодательства РФ», 31.07.2017, №31 (Часть I), ст.4808.

cultural, educational, or other socially useful goals. In the Russian legal literature it is also noted that the foundation as a non-profit organization without membership is an association of property of citizens and (or) legal entities to perform these tasks[160]. A similar doctrinal opinion, as shown earlier, is held about foundations and the jurisprudence of the Supreme courts. For further review of the legal characteristics of the foundation as a non-profit legal entity, it has to single out such types as the non-profit entity of the foundation (1) which may be due to its main activity that has public-benefit purposes (2). These two features are positively related to each other, since the non-profit nature of a legal entity, in addition to the corporate ownership - the absence of membership can be revealed through its activities. An integral feature of a non-profit legal entity is also the implementation of entrepreneurial activities, that is aimed at making a profit, only as a secondary one[161]. A non-profit organization can implement it only to the extent that it is related to the achievement of the main objectives of this legal entity and complies with these objectives under Paragraphs 1 and 4 of Article 50 of the RCC. A similar but broader rule is contained in paragraph 2 of Article 24 of the Act on Non-Profit Organizations provides for a non-profit organization may carry out entrepreneurial, and other income-generating activities only insofar as this serves to achieve the goals for which it was created. Such actions are recognized as the profitable production of goods and services that meet the goals of creating a non-profit organization as well as the purchase and sale of securities, property and non-property rights, participation in companies, and participation in limited partnerships as a contributor. These circumstances mean that the inheritance foundation has another linking feature of a non-profit legal entity - limited legal capacity (3).

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[160] For more information, Non-profit foundations and organizations. Legal aspects. M.: Information and Publishing House "Filin", 1997. 336p. Pp.161-162. // Некоммерческие фонды и организации. Правовые аспекты. М.: Информационно-издательский дом «Филинъ», 1997. 336с. С.161-162.

[161] See more, Greshnikov I.P. Subjects of civil law: a legal entity in law and legislation. SPb.: Publishing house "Legal Center Press", 2002. 331p. Pp.170-171. // Грешников И.П. Субъекты гражданского права: юридическое лицо в праве и законодательстве. СПб.: Издательство «Юридический центр Пресс», 2002. 331с. С.170-171.

It should be examined the presence of these signs in the inheritance foundation, which will allow us to assess its legal status in the current law.

The legal regime of the inheritance foundation must be covered by the RCC rules governing the activities of general foundations. This condition follows from the systematic interpretation of the relevant provisions of the RCC[162]. So, the rules on the general and inheritance foundations are located in subparagraph 1 "Foundations" of paragraph 7 "Non-Profit Unitary Organizations" of Chapter 4 "Legal Entities" of Part First of the RCC. Articles 123.17.-123.20. of the RCC are dedicated to the general foundation, the requirements of the Articles 123.20-1.-123.20-3. of the RCC regulates the status of the inheritance foundation. The arrangement of these rules in one subparagraph 1 of the general paragraph 7 of the Chapter "Legal Entities" of the RCC dedicated to non-profit legal entities, according to the rules of proper technique allows to conclude that these institutions are fundamentally homogeneous or similar. The linguistic interpretation suggests that the legislator still distinguishes between these foundations since the title of this subparagraph is called “Foundations”[163]. The plural indication might show that there are different types of foundation.

Moreover paragraph 5 of Article 123.17 of the RCC directly states that the legal status of the inheritance foundation is determined under the articles on the general foundation, taking into account the specifics provided for by the particular items on the inheritance foundation. Thus, in my opinion, the legislator distinguishes between two types of foundations, and probably the inheritance foundation cannot be considered as a subspecies or a separate class of the general foundation[164]. So,

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[162] See more, Theory of state and law: textbook / N.I.Matuzov, A.V.Malko. 5th ed. Moscow: Delo Publishing House, RANESS, 2017. 528p. Pp.346-347. // Теория государства и права: учебник/Н.И.Матузов, А.В.Малько. 5-е изд. М.: Издательский дом «Дело» РАНХиГС, 2017. 528с. С.346-347.

[163] See more, Legislative technique: Scientific and practical guide. M.: Gorodets, 2000.272p. Pp.105-108. // Законодательная техника: Научно-практическое пособие. М.:Городец, 2000. 272с. С.105-108.

[164] Some researchers share that opinion. See, for example, Korchemkina V.K. Hereditary fund as a novelty of Russian legislation. // Questions of student science. Issue No.12-2(40), 2019. P.167 // Корчемкина В.К. Наследственный фонд как новелла российского законодательства.// Вопросы студенческой науки.

there are different types of foundation regulated by various articles of the RCC. A kind of "economy" by the legislator of the legislative requirements in the RCC, for example, referring to the rules on the general foundation, providing for the grounds for the annulment of foundations, should not be misleading. This circumstance will become especially evident when it turns to the consideration of other signs of the inheritance foundation. In this sense it seems incorrect to designate the provisions on the inheritance foundation, given in Articles 123.20-1-123.20-3 of the RCC as distinctive with the general rules on foundations in Articles 123.17-123.20 of the RCC. Otherwise it is necessary to admit that taking into account further considerations, the particular rules governing the operation of the inheritance foundation differ significantly from the nature of general foundations.

The legislator does not name the inheritance foundation as a unitary non-profit organization in Article 65.1. of the RCC and limits only by indicating the general determination "foundations" when listing other types of non-profit organizations in the specified article of the RCC. The rules on foundations (Articles 123.17-123.20-3) are indicated in general paragraph 7 “Non-profit Unitary Organizations” of Part First of the RCC. Therefore the inheritance foundation is a unitary non-profit organization. There is a formal sign of qualification of the inheritance foundation as a non-profit organization owing to a direct indication of the RCC. The emergence of the inheritance foundation has expanded the list of organizational and legal forms of non-commercial legal entities. In this regard, it should speak not only about the reform of inheritance legislation but also about the change of corporate law especially in terms of increasing the *numerus clausus* of legal entities which again emphasizes the dual nature of the inheritance foundation.

iii) Legal nature of the activity of the inheritance foundations.

Выпуск №12-2(40), 2019. С.167.; Dzhanbidaeva Z.S. Hereditary fund in the system of legal entities of Russian civil law. // Law and right. 2019. No.12. P.59. // Джанбидаева З.Ш. Наследственный фонд в системе юридических лиц российского гражданского права.//Закон и право. 2019. №12. С.59.

As a non-profit organization the inheritance foundation having a specific corporate structure (not having a membership), as a general rule it is not entitled to profit from the implementation of its activities. This circumstance indicates that the inheritance foundation shall have limited legal capacity like any non-profit organization[165]. Consequently such a foundation can conduct activities directly established by law and/or its Charter. Such activities may be entrepreneurial, that is, aimed at generating profit, but only in so far as they serve the purposes for which the foundation was established, and if such activities are consistent with these purposes under Article 50, paragraph 4, of the RCC[166]. The law does not make exceptions in this case for the inheritance foundation, and here the general rules on non-commercial legal entities shall be applied to it. The activities of the inheritance foundation are not explicitly designated by law as entrepreneurial, but only as "activities for the management of inherited estate".

So the inheritance foundation shall manage the transferred estate following the instructions of its founder, i.e., comply with the targeted nature of their activities. This activity is not characterized by law, but it can be argued that this activity can only be entrepreneurial due to the following[167]. The primary purpose of the inheritance foundation shall be aimed at preserving the estate of the testator transferred to the foundation, for managing it, and, accordingly at increasing this

[165] Some scholars argue that the law does not contain prohibitions and liability for doing business for any legal entity. See more, Kozlova N.V. Memorandum of Association for the establishment of companies and partnerships. M.: Publishing house BEK, 1994. 174p. P.45. // Козлова Н.В. Учредительный договор о создании коммерческих обществ и товариществ. М.: Издательство БЕК, 1994. 174с. С.45.

[166] The Hungarian Civil Code also prohibits the activity of a private foundation as exclusively economic. For more details, Menyhel A. The use of the Hungarian Foundation for asset protection and private purposes//Trusts & Trustee, Vol.23, No.6, July 2017. Pp.676.

[167] In this sense, the activity of the inheritance foundation can also be called the usual economic or business, which is carried out by any legal entity. Some scholars have noted the imprecise nature of such activities in the RCC. See in more detail, Shchennikova L.V. Entrepreneurial activity as a civil legal category // Civilian notes: Interuniversity collection of scientific works. Issue 4. M.: Statut; Yekaterinburg; Institute of Private Law, 2005. 606p. Pp.75-86. // Л.В.Щенникова. Предпринимательская деятельность как гражданско-правовая категория // Цивилистические записки: Межвузовский сборник научных работ. Выпуск 4. М.:Статут; Екатеринбург; Институт частного права, 2005. 606с. С.75-86.

estate that generating income[168]. It follows that "negative" estate, i.e., the estate with debts equal to or exceeding the value of the transferred estate, cannot be transferred to the inheritance foundation. Otherwise the inheritance foundation as the owner of such ownership may be subject to creditors' claims for the return of the received estate, for foreclosure on this estate, for recovery of the value of the transferred estate, for recovery of losses, lost profits, etc. Actions to transfer the estate encumbered with debts will contradict not only the goals of establishing an inheritance foundation established by law but may also be qualified as the disposal of the estate to hide it from creditors. Such transactions may be invalidated based on Articles 168-170 of the RCC. That may subsequently lead to the annulment of the inheritance foundation due to the insufficiency of its property for carrying out its activities following subparagraph 1 of Paragraph 2 of Article 123.20. of the RCC. Turning to the characteristic of the inheritance foundation's operation, it has to define it as entrepreneurial since it is related or should be related to making a profit. The restriction of such activities for a non-profit organization to establish an inheritance foundation cannot be recognized as legitimate since the law does not set goals for the inheritance foundation. Considering the above, it can be stated that based on the nature of its activities the inheritance foundation is difficult to characterize as a non-profit organization within the framework established by the Russian legislation and science opinions.

iv) Legal capacity of the inheritance foundation.

The entrepreneurial nature of the inheritance foundation raises the question of kind of legal capacity that the inheritance foundation should have. According to the Russian legal doctrine, and earlier the Soviet one, non-profit organizations have limited legal capacity. This circumstance is not regulated by the law, except for limiting the conduct of entrepreneurial activity to achieve the goals of a non-profit

[168] See also about that, Petrov E.Y. Reform of Russian inheritance law: commentary on the main changes. // Bulletin of Civil Law, 2016. No. 5. Vol. 16. P.140. // Петров Е.Ю. Реформа российского наследственного права: комментарий основных изменений.// Вестник гражданского права, 2016. №5. Т.16. С.140.

organization, and, in my opinion, is based only on the specific justification of this issue[169]. Without being able to discuss this or the opposite concepts extensively in this work[170] it should point out the historical reasons for the difference between the two types of legal capacity. During the Soviet period the full legal capacity of legal entities was not recognized[171]. State legal entities: factories, plants, agricultural enterprises, public-state legal entities such as state or local authorities, party structures, public organizations, etc. as subjects of civil law could only conduct activities permitted by the Charter of the organization and/or a particular act of the authority on the establishment (or regulation of actions) of this organization[172]. Thus the division of types of legal capacity, or rather the use of only one - limited, was based not on legal criteria, but on political and economic reasons that existed in the corresponding historical period. Full legal capacity was recognized only for

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[169] See in more detail, Soviet civil law. Volume I. Edited by Prof. D.M.Genkin. Moscow: State Publishing House of Legal Literature, 1950. 495p. Pp.155-157. // Советское гражданское право. Том I. Под редакцией проф.Д.М.Генкина. Москва: Государственное издательство юридической литературы, 1950. 495с. С.155-157; Sukhanov E.A. Problems of reforming the Civil Code of Russia: Selected Works 2008-2012. M.: Statut, 2013. 494p. P.82. // Суханов Е.А. Проблемы реформирования Гражданского кодекса России: Избранные труды 2008-2012гг. М.: Статут, 2013. 494с. С.82; Belyaev K.P. On the division of legal entities into commercial and non-commercial in civil law. Actual problems of civil law / Ed. S.S. Alekseev; Private Law Research Center. Ural branch. Russian School of Private Law. Ural branch. M.: "Statut", 2000. 318p. Pp.35-48. // Беляев К.П. О делении юридических лиц на коммерческие и некоммерческие в гражданском законодательстве. Актуальные проблемы гражданского права/Под ред. С.С.Алексеева; Исследовательский центр частного права. Уральский филиал. Российская школа частного права. Уральское отделение. М.: «Статут», 2000. 318с. С.35-48.

[170] The majority of Russian legal scholars are inclined to the validity of this division, but a number of scientists question the practical value of this approach. See for example, Commentary on the Civil Code of the Russian Federation, part one (itemized) / Head of the group of authors and executive editor, Doctor of Legal Science, Professor O.N.Sadikov. M.:Law firm KONTRAKT; INFRA-M, 1998. XXII, 778p. P.122. // Комментарий к Гражданскому кодексу Российской Федерации, части первой (постатейный)/ Руководитель авторского коллектива и ответственный редактор доктор юридических наук профессор О.Н.Садиков. М.: Юридическая фирма КОНТРАКТ; ИНФРА-М, 1998. XXII, 778с. С.122.

[171] See for example, Gribanov V.P. Legal entities. Moscow University Press, 1961.115p. Pp.25-26.// Грибанов В.П. Юридические лица. Издательство Московского университета, 1961. 115с. С.25-26.

[172] See more, Asknazyi R.I. On the foundations of legal relations between state socialist organizations. // Scientific notes of the Leningrad Law Institute. Issue IV. Moscow, 1947. P.45. // Аскназий Р.И. Об основаниях правовых отношений между государственными социалистическими организациями.// Ученые записки Ленинградского Юридического Института. Выпуск IV. Москва, 1947. С.45.; Ioffe O.P. Soviet civil law. M: Yurid.lit, 1967. 494p. P.136. // Иоффе О.Р. Советское гражданское право. М: Юрид.лит, 1967. 494с. С.136; Soviet civil law: Textbook. T.I. M:Jurid.lit., 1979. 552p. P.144. // Советское гражданское право: Учебник. Т.I. М: Юрид.лит, 1979. 552с. С.144.

citizens. Currently the concept of two types of legal capacity concerning legal entities is reproduced in current civil law, supported by science and judicial practice[173]. In that connection it should be noted that in European law for private foundations as well as for other legal entities, there is no prohibition for the implementation of any activity[174], except for those for which a special permit (license) is required or which can only be carried out by specialized organizations, for example in health, education, security, defense field, etc. Such restrictions are a common rule applicable to any legal entity. Thereby the absence of fundamental differences in the legal qualifications of transactions of the same type between companies and non-profit organizations or with the participation of other subjects of civil-law relations. Given the above, the inheritance foundation's limited legal capacity exists only in the law's restriction to manage the inherited estate under paragraph 1 of Article 123.20-1 of the RCC.

The setting of such a goal of activity does not speak of socially useful or private purposes but rather indicates a means for achieving the goals determined by the testator, or the primary goal of the activity of the inheritance foundation which will be described in more detail below. The testator shall establish the final formulation of the goals of the inheritance foundation in the papers on the establishment of the inheritance foundation since there are no other ways to establish or detect it by law. The location of the rules on the inheritance foundation in the subparagraph "Foundations" of paragraph 7 "Non-Profit Unitary Organizations" of Chapter 4 "Legal Entities" of Part 1 of the RCC and paragraph 4 of Article 123.17 of the RCC indicate that the rules on the purposes of the foundation can be applied subsidiary to the inheritance foundation, if it does not

[173] See paragraph 18 of the joint Resolution of the Plenum of the Supreme Court of the Russian Federation №6 and the Plenum of the Supreme Arbitration Court of the Russian Federation №8 dated 01.07.1996 (as amended on 25.12.2018).//«Российская газета». №152. 13.08.1996.

[174] According to V.A.Saveliev, BGB immediately recognized a broad legal capacity for all legal entities, in contrast to French Civil Code. See his book, Saveliev V.A. German Civil Code (history, system, institutions): Textbook. 2nd ed., rev. and add. M.: Jurist, 1994. 96p. Pp.27-28. // Савельев В.А. Гражданский кодекс Германии (история, система, институты): Учеб.пособие. 2-е изд., перераб. и доп. М.: Юрист, 1994. 96с. С.27-28.

contradict the essence of the inheritance foundation. Following paragraph 1 Article 123.17. of the RCC the goals of the general foundation are cultural, educational, charitable, or other socially useful goals. A similar provision is contained in Article 2 of the Act on Non-Profit Organizations. Still the scope of goals is further expanded by specifying an approximate list of activities that such organizations shall have a right to carry out. The summarizing basis of this article was the legal definition that these types of activities shall be carried out "for purposes serving the achievement of public goods". For the inheritance foundation the RCC does not make such an indication. Does this mean that the inheritance foundation should have only the listed goals or the testator has the right to establish other goals? The purpose of establishing an inheritance foundation is to manage the inherited estate, that is, money, business, real estate, and other assets remaining after the death of their owner, in the private interests of people determined by the testator. While securing the possibility of public benefit goals for foundations, the law has not yet clearly defined the achievement of private interest as a result of the activities of the inheritance foundation. In this case the interpretation of the law leads to the fact that in the absence of another indication of the law the goals of the inheritance foundation shall be related to charity and public-benefit activities for society. Such an approach would contradict the legislator's ideas about the introduction of this institution subordinating the management of the private property to public goals. Still the formal and logical method of interpretation of the law does not provide any other choice. However the law also establishes the rule for carrying out the activities of the inheritance foundation under the Conditions of managing of the inheritance foundation approved by the testator. The non-profit nature of the inheritance foundation may again be questioned under these circumstances. Some scholars argue that the provisions of the RCC do not contain any restrictions for the testator in setting the goals of the activity and the features of managing the

inheritance foundation[175]. Moreover based on Paragraphs 4 and 5 of Article 49 of the RCC special rules on certain types of legal entities have an advantage over general rules. Thus paragraph 5 of Article 123.17 of the RCC excludes the purposes of the inheritance foundation from the purposes of the foundation as a generic institution providing that the inheritance foundation is governed by the rules dedicated exclusively to this institution. An increase the estate transferred by the testator for maintenance, financial incentives for heirs or other beneficiaries can be considered one of the purposes of the inheritance foundation. At the same time the methods of increasing the foundation's estate are indicated as a result of active (full participation in business, for example, in running a company) or passive (receiving income from securities, bank deposits) activities of the foundation. In addition to this, donations to the inheritance foundation from third parties are prohibited under paragraph 3 of Article 123.20-1 of the RCC. Thus the goals of the inheritance foundation are strongly related to the receipt of income which is the basis for qualifying the main activity of the inheritance foundation as entrepreneurial. Certainly according to the current law and theoretical ideas, making a profit is the main dividing line between companies and non-profit organizations[176]. Still in this case, income generation cannot be called the ultimate goal of the inheritance foundation. In this capacity only the property support of the beneficiaries and separate categories of people indicated by the testator can be used. Thus there is a certain decomposition of the purposes of the inheritance foundation: making a profit (1) for distribution to the people indicated by the testator (2). To avoid such a contradiction, paragraph 1 of article 123.17 of the RCC shall be supplemented with a provision that inheritance foundations may pursue other goals, taking into

[175] See for instance, Shchennikova L.V. Inheritance foundation as a Novel of Russian Civil Law // Inheritance Law. 2017. No.4. Pp.3-7. // Щенникова Л.В. Наследственный фонд как новелла российского гражданского права // Наследственное право. 2017. № 4. С.3-7.

[176] See more, Scientific and practical commentary to the first part of the Civil Code of the Russian Federation for entrepreneurs. 2nd edition, add. and revised M .: Publishing house "Spark", Editorial office of the journal "Economy and Law", 1999. 736p. P.124. // Научно-практический комментарий к части первой Гражданского кодекса Российской Федерации для предпринимателей. 2-е издание, доп. и перераб. М.: Издательство «Спарк», Редакция журнала «Хозяйство и право», 1999. 736с. С.124.

account the possibility of satisfying the private interests of heirs and other people specified by the testator. There is also a practical sense in such an amendment of the Act. So there may be some difficulties with documenting the testator's will to establish an inheritance foundation with the specified purposes for the maintenance of the people indicted by the testator, which at present, according to the current law, is difficult to qualify as a socially useful goal. Therefore following Articles 16 and 48 of the Fundamentals of the Notary Legislation of the Russian Federation (Основы законодательства Российской Федерации о нотариате)[177] dated 11 February 1993 No. 4462-1, a notary may refuse to perform notarial actions if the performance of such an action is contrary to the law and the inheritance foundation will not be created.

v) Determination of the inheritance foundation.

Summarizing the above, it should be noted that the inheritance foundation can be attributed to a unitary non-profit organization, given that it does not have a membership and, therefore, does not distribute profits between the participants. These formal signs of the inheritance foundation correspond to the provisions of the law on this type of non-profit organization.

The activity of the inheritance foundation is considered to be entrepreneurial given the individual purposes of the inheritance foundation for the increment of the received estate. In the current version of the law, the purposes of the inheritance foundation have little to do with the public benefit goals prescribed for general foundations. Hence it is necessary to clarify the law in this part, as indicated above. Although this feature is mediocre, the legal capacity of the inheritance foundation also seems to be shared, similar to that which companies have since the nature of the activity of the inheritance foundation described above does not generally differ from the actions that companies carry out.

[177] "Vedomosti SND and VS RF", 11.03.1993, No. 10, article 357. // «Ведомости СНД и ВС РФ», 11.03.1993, №10, ст.357.

Currently the law contains irreparable doubts about the conformity of the inheritance foundation to the general concepts of a non-profit organization in general and a foundation in particular. That can be attributed to the controversial idea of dividing legal entities into companies and non-profit organizations which is an "invention" of national law[178], the insufficient volume of relevant articles of the law devoted to the inheritance foundation, and generally poor legislative technique about this institution of civil law. Wholeheartedly agreeing with the opinion of Professor Jan Schapp, who asserts that "dogmatics is not an unshakable monolith"[179], it is possible to propose the following definition of the legal status of the inheritance foundation as a select independent type of unitary non-profit organization that has the right to carry out the entrepreneurial activity as the main activity to achieve individual purposes - property support of the people indicted by the testator, as well as for the achievement of socially useful goals, if the testator establishes such in the Conditions of managing of the inheritance foundation.

[178] Similar points of view have long been expressed in the literature. See, for example, Civil law of Russia. Lecture course. Part one. Edited by O.N.Sadikov. M.: Jurid.lit., 1996. 304p. Pp.61-62. // Гражданское право России. Курс лекций. Часть первая. Под ред.О.Н.Садикова. М.: Юрид.лит., 1996. 304с. С.61-62.

[179] See Jan Schapp, Grundlagen des bürgerlichen Rechts. Vahlen-Studienreihe Jura, Vahlen, 1991, 254p. Quoted from his book, Я.Шапп, Основы гражданского права Германии. Учебник. М.: Издательство БЕК, 1996. 304p. P.18.

Chapter 2

Inheritance foundation and its participants in inheritance relations.

2.1. Inheritance foundation as an heir.

2.1.1. General.

Inheritance relations are of great importance for any legal order of every era, since they have always been one of the derivative methods of acquiring ownership of private property[180]. They are given serious attention in modern law. There are international documents, for example, the Convention on the Conflicts of Laws Relating to the Form of Testamentary Dispositions dated October 05, 1961[181], Convention on the Law Applicable to Succession to the Estates of Deceased Persons dated August 01, 1989[182], and others, acts of the supranational level, for example, adopted by the European Union, devoted to specific issues of inheritance regulation such as Regulation (EU) No. 650/2012 of the European Parliament and of the Council of July 04, 2012[183]. As already mentioned, in some countries, such as Germany and Russia, inheritance relations are constitutionally secured, emphasizing the high legal status of one of the essential branches of civil law and

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[180] See more, Inheritance law: article-by-article commentary to articles 1110-1185, 1224 of the Civil Code of the Russian Federation / Ed.E.Y.Petrov. M.:Statut, 2018. 510p. P.33.// Наследственное право: постатейный комментарий к статьям 1110-1185, 1224 Гражданского кодекса Российской Федерации/Отв.ред. Е.Ю.Петров. М.:Статут, 2018. 510с. С.33.
Also see Lunts L.A. Private international law course: In 3v. T.2. The special part. M.: Spark, 2002.1007p. P.688. // Лунц Л.А. Курс международного частного права: В 3т. Т.2. Особенная часть. М.: Спарк, 2002. 1007с. С.688.

[181] See https://www.hcch.net/en/instruments/conventions/full-text/?cid=40. Last access 19.08.2020.

[182] See https://www.hcch.net/en/instruments/conventions/full-text/?cid=62. Last access 19.08.2020.

[183] See https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:201:0107:0134:EN:PDF. Last access 19.08.2020. Also see Law of the European Union: Textbook for Universities / Edited by S.Y.Kashkin. M.: Jurist, 2002.925p. P.406. // Право Европейского Союза: Учебник для вузов/ Под ред.С.Ю.Кашкина. М.: Юристъ, 2002. 925с. С.406.; Law of the European Union: textbook and workshop for undergraduate and graduate programs / ed. A.K.Abashidze, A.O. Inshakova. Moscow: Yurayt Publishing House, 2016. 482p. Pp.356-358. // Право Европейского Союза: учебник и практикум для бакалавриата и магистратуры/ под ред. А.Х.Абашидзе, А.О.Иншаковой. М.: Издательство Юрайт, 2016. 482с. С.356-358.

the right of private property, with which the former is most strongly linked[184]. Further legal regulation of inheritance relations is obtained based on special legislation in the form of different laws (which is typical for the common law system) or by including the relevant provisions in the Civil Code (which distinguishes the civil law system)[185]. Also there are different classifications of inheritance law systems in civil law, for example, depending on the type of succession – automatic succession, acceptance of inheritance, liquidation of the estate[186].

In this Chapter it will be described the role of the inheritance foundation in the inheritance relationship with the participation of other entities as the testator, heir, beneficiaries, notary, and other officials involved in the establishment of the inheritance foundation, the process of establishing the foundation and transferring inherited property to it, as well as consider the general provisions on its taxation, and types of control over its activities.

Firstly it should be considered the general provisions of Russian inheritance law and theory to better understand the "mechanics" of the inheritance process and the correct use of some terminology concepts.

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[184] See Gerhardt Walter: Mobiliarsachenrecht / vom Walter Gerhardt. 5., neubearb. u. erw. Aufl. München: Beck, 2000. Pp.43-47.
Also see Commentary on the Constitution of the Russian Federation./Chief- ed.Y.V.Kudryavtsev. Moscow: Legal Culture Foundation, 1996. 552p. Pp.151-152. // Комментарий к Конституции Российской Федерации./ Общ.ред. Ю.В.Кудрявцева. М.: Фонд «Правовая культура», 1996. 552с. С.151-152.

[185] See more in detail, Skaridov A.S. Private international law: Textbook. SPb: Publishing house of Mikhailov V.A., Publishing house "Polius", 1998. 768p. Pp.526-558. // Скаридов А.С. Международное частное право: Учеб.пособие. СПб: Изд-во Михайлова В.А., Изд-во «Полиус», 1998. 768с. С.526-558.; Barshchevsky M.Y. Inheritance Law: Textbook. M.: White alves, 1996, 192p. Pp.146-159. // Барщевский М.Ю. Наследственное право: Учебное пособие. М.: Белые альвы, 1996, 192с. С.146-159.; Saveliev V.A. German Civil Code (history, system, institutions): Textbook. 2nd ed., Rev. and add. M.: Jurist, 1994. 96p. P.58. // Савельев В.А. Гражданский кодекс Германии (история, система, институты): Учеб.пособие. 2-е изд. перераб. и доп. М.:Юрист, 1994. 96с. С.58.

[186] See more, Civil and commercial law of capitalist states: Textbook. 3rd ed., Revised and add. M.: International relations, 1993. 560p. Pp.532-534. // Гражданское и торговое право капиталистических государств: Учебник. 3-е изд., перераб. и доп. М.: Междунар.отношения, 1993. 560с. С. 532-534. Also see Petrov E.Y., Ibid., pp.35-36.

2.1.2. The basics of inheritance theory.

The legal doctrine distinguishes between objective and subjective inheritance law[187]. Objective inheritance law is the provisions of civil law that regulate the transfer of ownership and certain personal non-proprietary rights and obligations of a deceased citizen to other people. Subjective inheritance law is the right of a person to act as an heir with power to accept or refuse the inheritance[188]. In the scientific literature there are various opinions regarding the types of inheritance legal relations, the moment of their occurrence, development, etc.[189]. It is important for subject of this research given the determination of the duration of the specified relationship with the participation of the inheritance foundation, since it does not yet exist at the time of opening the inheritance[190].

According to part 1 of Article 1110 of the RCC, inheritance of the deceased person's ownership (inherited estate) is the transfer of it to other people in the order of universal succession (germ. *Gesamtrechtsachfolge*). It means the transfer to the heir of the full scope of the rights and duties of the testator concerning the inherited estate, without exceptions, since otherwise, it will be a singular succession (i.e.,

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[187] See Dr.Brox H., Dr.Walker W.-D. Erbrecht. 28., vollständig neu bearbeitete Auflage. München:Verlag Franz Vahlen. 2018. Pp.1-2.

[188] Some authors believe that subjective inheritance right also includes the rights of the heir arising after the acceptance of the inheritance. In my opinion, this point of view is controversial, since it stands outside the boundaries of inheritance law, if it does not mean, for example, testamentary refusal. See in more detail, Civil law: textbook: in 4 vol./ Editor-in-chief E.A. Sukhanov. 2nd ed., rev. and add. Moscow: Statut, 2019. Vol.IV: Inheritance law. Intellectual property law. Personal non-property law. 464p. P.174. / Гражданское право: учебник: в 4т./ отв.ред. Е.А.Суханов. 2-е изд., перераб. и доп. Москва: Статут, 2019. 464с. С.174.

[189] See more, for example, Cheremnykh G.G. Inheritance law of Russia: a textbook for masters / G.G. Cheremnykh. 2nd ed. Moscow: Yurayt Publishing House, 2013.516p. Pp.34-39. // Черемных Г.Г. Наследственное право России: учебник для магистров/Г.Г.Черемных. 2-е изд. М.: Издательство Юрайт, 2013. 516с. С.34-39.

[190] The existence of the so-called "vacant succession" is connected with this moment, when the rights to inheritance are actually and legally acquired by no one, which is especially important in the case of an inheritance foundation. See more, Civil law. Textbook. Part III / Ed. A.P.Sergeev, Y.K. Tolstoy. M.: Prospect, 1998. 592p. P.507. // Гражданское право. Учебник. Часть III/ Под ред. А.П.Сергеева, Ю.К.Толстого. М.: Проспект, 1998. 592с. С.507.
Also see Civil law: a textbook for bachelors. V.2. / ed. V.L.Slesarev. Moscow: Prospect, 2016. 768p. Pp.616-617. // Гражданское право: учебник для бакалавров. Т.2./отв.ред. В.Л.Слесарев. Москва: Проспект, 2016. 768с. С.616-617.

partial, which may also take place in inheritance relations[191]). Thus the universal succession presupposes the complete replacement of the subject in any civil legal relationship: obligations, inheritance, and others. The singular succession increases the number of subjects with a smaller volume of powers arising from the fundamental right of the main subject[192]. In this regard the heir does not have the possibility of partial acceptance of the rights and obligations of the deceased. Still there is certainly the possibility of the same complete refusal to accept the inheritance. It should also be noted that the heir's responsibility is limited to the value of the heritage received when taking an estate. However this rule will experience difficulties when inheriting an existing business[193].

Inheritance relations arise at the time of the testator's death, i.e., due to the same legal fact with which the RCC connects the termination of the civil legal capacity of an individual in accordance with paragraph 2 of Article 17 of the RCC. Also this event is the basis for opening an inheritance based on Article 1113 of the RCC. Consequently the specified legal fact that terminates the standard capacity is also a legal fact indicating the emergence of inheritance relations[194]. After the opening of inheritance these relations receive multi-episode development[195]. That may include

[191] See Civil law: textbook: in 4 vol./ Editor-in-chief E.A. Sukhanov. 2nd ed., rev. and add. Moscow: Statut, 2019. Vol.II: Real law. Inheritance law. Intellectual property law. Personal non-property law. 464p. Pp.175-176. / Гражданское право: учебник: в 4т./ отв.ред. Е.А.Суханов. 2-е изд., перераб. и доп. Москва: Статут, 2019. Т.II: Вещное право. Наследственное право. Интеллектуальные права. Личные неимущественные права. 464с. С.175-176.

[192] See for more details, Cherepakhin B.B. Succession under Soviet civil law // Cherepakhin B.B. Works on civil law. M .: "Statut", 2001. 479p. Pp.398-408. // Черепахин Б.Б. Правопреемство по советскому гражданскому праву// Черепахин Б.Б. Труды по гражданскому праву. М.: «Статут», 2001. 479с. С.398-408.

[193] In my opinion, it'd be better to refer to the foreign legal experience, in particular to German law. See for example, Brox H. Handelsrecht und Wertpapierrecht. 14., neubearbeitete Aufl. München: Beck, 1999. Pp.73-74.

[194] See Civil law: a textbook for bachelors. V.2. / Ed. V.L.Slesarev. Moscow: Prospect, 2016. 768p. Pp.611-612. // Гражданское право: учебник для бакалавров. Т.2 / отв.ред. В.Л.Слесарев. Москва: Проспект, 2016. 768с. С.611-612.

[195] Some scientists consider that the inheritance relation has two stages. The first stage begins from the moment the inheritance is opened, the second - from the moment the inheritance is accepted. For more details see Civil law. Textbook. Part III / Ed. A.P.Sergeev, Y.K.Tolstoy. M.: Prospect, 1998. 592p. Pp.513-

legal links arising at the time of opening an inheritance, legal links related to the acceptance or rejection of inherited estate, legal relations arising in connection with the execution of a will, legal relations related to the protection and management of a inherited estate, and others, and not only private law. All of the above relations can be considered inherited since they arise over the ownership of a deceased person.

Surely the legislative consolidation of the inheritance right does not yet give rise to subjective right for an individual to a specific inheritance. That requires a legal structure defined by law: a sequence of particular facts and actions that the law gives a particular meaning due to which inheritance relations arise[196]. Earlier mentioned such legal circumstances as the testator's death, the presence of heirs (or other people if indicated by the testator), and the specific inherited property. In addition to legal facts, appropriate legal grounds (conditions) relevant for the occurrence of inevitable legal consequences are also required. Concerning inheritance rights they arise on three grounds: a will, an inheritance contract (an institution that appeared according to the latest amendments to the RCC) and law following part 1 of Article 1111 of the RCC, and then in connection with the actions of heirs or other people to accept or reject inheritance. Summing up, it should point out that inheritance relations arise after the testator's death regarding the full succession (transfer of rights and obligations) to the inheritance, understood as ownership, including the rights established by people per the grounds determined by law. Undoubtedly other people who assess their condition and dynamics, such as notaries, officials who have the right to perform specific notarial actions, executors, fiduciary administrators, and others, participate in inheritance relations.

514. // Гражданское право. Учебник. Часть III/ Под ред. А.П.Сергеева, Ю.К.Толстого. М.: Проспект, 1998. 592с. С.513-514.

[196] See more, Isakov V.B. Legal facts in Russian law. Tutorial. M.: Yuridichesky Dom "Yustitsinform", 1998. 48p. Pp.25-28. // Исаков В.Б. Юридические факты в российском праве. Учебное пособие. М.: Юридический Дом «Юстицинформ», 1998. 48с. С.25-28.

2.1.3. The formation of inheritance foundation.

The introduction of the inheritance foundation changed the content of inheritance relations, where it acts as a participant. It is worth briefly describing the procedure established by law for the creation and participation of the inheritance foundation in the acceptance of the inheritance (further it will be considered this process in more detail).

According to paragraph 4 of Article 50 of the RCC, the Decision on the establishment of the inheritance foundation (hereinafter the Decision) is made by a citizen based on a will drawn up by it, certified by a notary. The said Decision shall contain information on the establishment of the inheritance foundation after this citizen's death, on the approval of the Charter of the inheritance foundation (hereinafter the Charter), the Conditions of managing of the inheritance foundation (hereinafter the Conditions), on the procedure, size, methods, and timing of formation of the ownership of the inheritance foundation, people appointed to the governing bodies of this foundation, or definitions of such people[197]. This will is certified by a notary and kept by it. After the citizen's death the notary conducting the relevant inheritance case shall send an application for state registration of the inheritance foundation to the authorized state body (a regional division of the Ministry of Justice), indicating the name of the person (s) exercising the powers of the sole executive body of the foundation. After state registration the inheritance foundation begins to exist as a full-fledged subject of civil law with the right to participate in the inheritance relationship. Its legal status before state registration

[197] Since the time of Roman law, this type of transaction has been called *negotia mortis causa*. The German professor R.Sohm noted, "the full validity of such transactions comes only with the death of the person in charge". See more in his book, R.Sohm. Institutionen: Geschichte und System des Römischen Privatrechts. Quoted from his book, Р.Зом. Институции. История и система римского гражданского права. (Ч.2. Система). Выпуск I. Общая часть и вещное право. Перевод с 14-го издания под редакцией приват-доцента А.Н.Беликова. Сергиев Посад, 1916. Pp.69-70. In this case, it is the action of such a transaction.

resembles the inheritance relationship with a child conceived but not born at the testator's death (*nasciturus*)[198].

To the inheritance foundation, to the previously discussed features of its legal entity, there is the flip side of a coin of the inheritance foundation. That implies its participation in inheritance relations, where it is one of the prominent people. The involvement of the inheritance foundation significantly complicates the inheritance relationship by the fact that at the time of opening the inheritance, the heir, that is, the inheritance foundation, is absent since there are no actions for its direct state registration until that moment. The basis for performing these actions is the moment of opening the inheritance, which occurs with a citizen's death following Article 1113 of the RCC.

After the testator's death the inheritance foundation becomes the principal participant in the developing relationship regarding the inheritance, since the fulfillment of the conditions of the testator's will depends on its actions, including the support of beneficiaries and other people.

2.1.4. The inheritance foundation as a forced heir.

The recent reform of Russian inheritance legislation introduced not only new institutions, previously unknown to national law, but also established a unique quality of formerly known participants in inheritance relations. It means that the inheritance foundation received the status of a forced heir which was not previously in the legislation, except for the provisions of the law on escheat property. According to the past and present law heirs (except for the inheritance foundation) have always had the right to accept or refuse to accept the inheritance. In the case of the inheritance foundation, the new civil law was established

[198] In the German theory, such a legal state was proposed to be named as rights in a state of uncertainty (in relation to *nasciturus*) or as a simple connectedness of a person or thing (the second definition is more appropriate for this situation). See more, Enneccerus L., Kipp T., Wolff M. Lehrbuch des Bürgerlichen Rechts. Elwert'sche Verlagsbuchhandlung, Marburg, 1923. Quoted from: Эннекцерус Л., Кипп Т., Вольф М. Курс германского гражданского права. Том I, полутом 1. Москва: Издательство иностранной литературы, 1949. Pp.276-279.

otherwise. *De lege lata* as a participant in the "new" inheritance relations, it is the heir under the will without the right to refuse to accept the inheritance. The whole point is that it is created only for adoption to manage an inherited estate. Otherwise this legal structure would not be needed. In legal theory this type of heir is called a forced heir, and that it was previously unknown to Russian law.

The forced heir in respect of the estate transferred to him/her is the full legal successor and cannot refuse the transferred estate in whole or in any part of it. Therein lies the duty to accept the inheritance specified in the testator's will.

Of course, the inheritance foundation's possibilities for inheritance will depend on the inheritance system adopted in certain countries[199]. For example, adhering to the system of rejection of inheritance German law does not explicitly provide for the foundation's obligation to accept the estate. Simultaneously Articles 1943-1944 BGB contain the heir's right to refuse to accept the inheritance. Hence hypothetically, the foundation has such a right[200]. However the common opinion, supported by Articles 82, 84 BGB, is that the foundation is obliged to accept the inheritance[201]. This theoretical opinion is based on the foundation's goals and activities[202]. Considering the foundation as a structure for managing the inherited estate it is evident that the foundation is subordinate to the will of the testator (described in the testament and foundation's papers) and its unconditional

[199] See Civil law: textbook: in 3v. Vol.3 / Ed. A.P.Sergeev. 2nd ed., Revised and add. Moscow: Prospect, 2016. 736p. P.681. // Гражданское право: учебник : в 3т. Т.3 / Под ред. А.П.Сергеева. 2-е изд., перераб. и доп. Москва: Проспект, 2016. 736с. С.681.

[200] Some authors share that point of view. See for example, Schmidt O. Das Ausschlagungsrecht von Unternehmensträgerstiftungen bei letztwilligen Zuwendungen – Beseitigung der Geschäftsgrundlage der stiftungsrechtlichen Genehmigung? / ZEV, 4/1999. Pp.141-143.

[201] See more Muscheler K. Stiftungsrecht. Gesammelte Beiträge. 2.unveränderte Auflage. Baden-Baden: Nomos Verlag. 2011. 393p. P.168. See also D.Olzen. Erbrecht. 2., neu bearbeitete Auflage. Berlin: De Gruyter Recht. 2005. Pp.34, 462; M.Rudolf, R.Redig, U.Stehlin. Anwalts-Taschenbuch Erbrecht. Köln: Verlag Dr.Otto Schmidt, 2003. Pp.520-521.

[202] See more, Kroch A. Die Kollision von gesellschaftsvertraglicher Abfindungsbeschränkung und Pflichtteilslast in der Person des GesellschafterßErben. Tübingen: Mohr Siebeck, 2014. Pp.231-232. Also see, Morsch in: Herberger/Martinek/Rüßmann/Welth/Würdinger, juris PraxisKommentar BGB. Band 1 – Allgemeiner Teil. Saarbrücken, 9.Auflage 2020, §83 BGB, Unit 8; Ellenberger, Commentary on §83 Rn.1 // Palandt, Bürgerliches Gesetzbuch. München: Beck Verlag, 2016.; Weidlich, Commentary on §1942 Rn.2// Palandt, BGB, 78.Aufl. München 2019.

execution, even without a direct indication of the law on the mandatory acceptance of inheritance by the foundation[203]. The foundation needs some property and assets to fulfill its tasks formulated by the testator and its governing bodies should reach them[204]. Otherwise the foundation will turn out to be incapable of fulfilling the testator's will and maybe liquidated by paragraph 1 of Article 87 BGB[205]. In general one should agree with this opinion, since otherwise, the inheritance foundation's activity will be impossible. In my opinion the Russian practice should take it in this way.

In addition the inheritance foundation is also limited in use of the inherited estate. Foundation cannot lose the estate, transfer it to third parties, i.e., take actions contradicting the goals of establishing an inheritance foundation and managing the estate. The inheritance foundation shall be obliged to use the inherited estate for the intended purpose specified by the testator and not contradicting the features of the property itself. That already has a key difference in comparison with the status of an ordinary heirs. They can dispose of the inheritance received by its will and interest, as follows from the common rules of civil law following paragraph 2 of Article 1 and paragraph 2 of Article 209 of the RCC.

In the following pages the content of inheritance relations will be considered in which the inheritance foundation participates. It is composed of subjects participating in any way in inherited relations, their rights and obligations arising from the transfer of the ownership as an inherited estate.

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[203] See A.Dutta. Warum Erbrecht? Das Vermögensrecht des Generationenwechsels in funktionaler Betrachung. Tübungen: Mohr Siebeck. 2014. Pp.21-23 and others; Arnold J. Die selbständige Stiftung und der Testamentsvollstrecker. Frankfurt am Main: Peter Lang GmbH, 2010. Pp.9-10.

[204] Schniger A. Die Stiftung als steuerliches Gestaltungsmittel zur Sicherung des Fortbestandes eines Unternehmens? Hamburg: Diplomica GmbH. 2006. Pp.22-23; König Christian. Die Stiftung als Instrument der Nachlassplanung. Tübungen: Mohr Siebeck, 2018. Pp.80-81.

[205] See Hüttemann R., Rawert P. Article 83 BGB / J.von Staudingers Kommentar zum Bürgerlichen Gesetzbuch: Staudinger BGB – Buch 1: Allgemeiner Teil: §§80-89 (Stiftungsrecht). Editor H.Roth. Neuarbeitung. Berlin: deGruyter Sellier. 2017. Unit 6 and others.

2.2. The inheritance's participants and entities associated with the inheritance foundation.

2.2.1. Testator.

i) Status of testator.

In inheritance law the main person is the testator, the one who bequeaths ownership to relatives or third parties, and becomes it only after its death (or recognition as deceased in court in the presence of exceptional circumstances following Article 45 of the RCC). Depending based on inheritance – by law or by will/inheritance contract, the law imposes different requirements on the testator. The testator, whose heritage is transferred by law, may be disabled, which is not allowed in the case of inheritance by the active expression of the testator's will by drawing up a will or concluding an inheritance contract[206].

According to paragraph 4 of Article 50.1 of the RCC only a citizen has the right to decide on establishing an inheritance foundation when drawing up a will. Only one individual can be the founder of the foundation. However changes in the inheritance legislation simultaneously with the introduction of the inheritance foundation established the possibility of drawing up a joint will of the spouses. The approval of only one founder of the inheritance foundation seems logical only in the light of the fact that the inheritance foundation is a foundation *mortis causa*[207]. In a joint will, the inheritance foundation can become a foundation *inter vivos* for the surviving spouse. Nowadays the law does not currently provide for the establishment of an inheritance foundation *inter vivos*.

ii) Testator's legal capacity.

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[206] See more, Tolstoy Y.K. Inheritance law. M.:"Prospect", 1999. 224p. P.26. // Толстой Ю.К. Наследственное право. М.:«Проспект», 1999. 224с. С.26.

[207] This provision is contained in the Austrian Foundations Act. See details, J.Zollner, Foundations I Austria: The Law of Public and Private Foundations/Developments in Foundation Law in Europe, Ius Gentum: Comparative Perspectives on Law and Justice 39, editor Chiara Prele. Springer, Netherlands. 2014. P.4.

The testator is an individual who acts according to its own will and solely in its interests, and his/her objectified and formalized testament is the essential basis for inheritance. Thus an individual receives the status of "testator" only after the external expression of his/her will to dispose of ownership by making a will in the form established by law. Here, again, the duality of the inheritance foundation is manifested as a forced heir on the one hand and as a legal entity on the other hand. Based on paragraph 2 of Article 1118 of the RCC, only a capable citizen can be a testator as regards the possibility to determine the way of the inherited property in particular by bequeathing it to the inheritance foundation[208]. To establish any legal entity the founder shall be a person with full legal capacity (active and passive). An individual has legal capacity from the moment of birth following Part 2 of Article 17 of the RCC. According to Part 1 of Article 21 of the RCC the concept of legal capacity is the citizen's ability to acquire and exercise civil rights by his/her actions, create civil duties for themselves, and fulfill them (civil-law capacity). By paragraph 1 of Article 22 of the RCC no one can be limited in legal capacity and capability only in the manner and cases established by law. The legal capacity of a citizen can be determined based on federal law and only to the extent necessary for protecting the grounds of the constitutional order, morality, health, the legitimate interests of others, ensuring the country's defense and state security following Article 55 of the Constitution of the Russian Federation, and Article 1 of the RCC.

Depending on the age, medical or social characteristics of an individual the current law differentiates between full, partial, and limited legal capacity. For purposes of this research maximum legal capacity is of interest, since, as previously indicated, only if it is available, a citizen can draw up and notarized papers on the establishment of an inheritance foundation. An individual becomes a fully capable person (i.e., can acquire rights by its actions, perform duties) from the

[208] The legal science names the ability to make a will as testamentary capacity (testamenti factio activa) and "one of the manifestations of the civil legal capacity of an individual." See more, International private law: textbook / V.I.Kainov. Moscow; Berlin: Direct-Media, 2020. 252p. Pp.179-180. // Международное частное право: учебник/В.И.Кайнов. Москва; Берлин: Директ-Медиа, 2020. 252с. С.179-180.

moment he/she reaches 18 years old, under Article 21 of the RCC[209]. However the current legislation provides two cases of recognition of an individual as a full participant in legal relations, i.e., fully capable, before reaching the specified age. In the first case this can happen in the case of emancipation when concluding an employment contract or registering as an entrepreneur (with the consent of his/her legal representatives) in accordance with Article 27 of the RCC. In the second case the basis for acquiring full legal capacity is marriage following paragraph 1 of Article 13 of the Family Code of the Russian Federation (Семейный кодекс Российской Федерации)[210].

The procedure for declaring a minor as emancipated is carried out by the decision of the guardianship authority or the judgment based on Articles 287-289 of the Civil Procedure Code of the Russian Federation (Гражданский процессуальный кодекс Российской Федерации)[211]. In both cases a citizen can become emancipated only after reaching the age of 16[212]. Emancipation is an irreversible process. Even after the specified conditions cease, for example the termination of an employment contract, renunciation of the status of an entrepreneur, divorce, the full legal capacity thus acquired remains[213]. That does not apply to cases where the registration of a marriage is declared invalid when the court may decide on the loss of full legal capacity based on part 3 of paragraph 2 of

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[209] There is another point of view about the possibility of bequeathing property to underage children. See more in details, Barshchevsky M.Y. Inheritance Law: Textbook. M.: White alves, 1996, 192p. P.65-66. // Барщевский М.Ю. Наследственное право: Учебное пособие. М.: Белые альвы, 1996. 192с. С.65-66.; Antokolskaya M.V. Family Law Lectures: Textbook. M.: Jurist, 1995. 144p. Pp.91-92.// Антокольская М.В. Лекции по семейному праву: Учебное пособие. М.:Юристъ, 1995. 144с. С.91-92.

[210] "Collection of legislation of the Russian Federation", 01.01.1996, No. 1, article 16.// «Собрание законодательства РФ», 01.01.1996, № 1, ст.16.

[211] "Collection of legislation of the Russian Federation", 18.11.2002, No. 46, article 4532. // «Собрание законодательства РФ», 18.11.2002, № 46, ст.4532.

[212] See Zaitseva T.I., Krasheninnikov P.V. Inheritance law. Commentary on legislation and its practice. Ed. 6th, rev. and add. M.: "Statut", 2009. 556p. + 1 appendix. P.35. // Зайцева Т.И., Крашенинников П.В. Наследственное право. Комментарий законодательства и практика его применения. / Т.И.Зайцева, П.В.Крашенинников. Изд. 6-е, перераб. и доп. М.: «Статут», 2009. 556с. + 1прилож. С.35.

[213] See Commentary on the Family Code of the Russian Federation / Ed. I.M.Kuznetsov. Moscow: BEK Publishing House. 1996. 512p. P.47. // Комментарий к Семейному кодексу Российской Федерации/Отв.ред. И.М.Кузнецов. М.: Издательство БЕК. 1996. 512с. С.47.

Article 21 of the RCC. In the latter case the validity of the papers on the establishment of an inheritance foundation may be challenged, and for that the law does not contain any special requirements.

Consequently the current legislation considers an adult or emancipated individual with full legal capacity and ability as the founder of an inheritance foundation[214]. It should be noted that the rights of foreign citizens or stateless people to have testamentary legal capacity on the territory of the country are recognized by the legislator[215]. The RCC does not oblige the testator to have Russian citizenship based on the Basic Law. Part 3 of Article 62 of the Constitution of the Russian Federation grants equal legal status to these people unless otherwise provided by federal law or an international treaty. Thus the RCC presents the same rights to citizens, foreign citizens, and stateless people, including to be a participant in inheritance relations, can bequeath their ownership, become an heir, etc., as well as establish legal entities, including an inheritance foundation, regardless of the place of residence of these people (non-citizens).

The presence of legal capacity of individuals is closely related to the possibility of lawful and correct drawing up of a will and other papers on the establishment of an inheritance foundation, such as Decision, Charter, Conditions of the inheritance foundation. Historically Russian law does not allow for the possibility of the testator is in a state in which it is not able to realize its actions and direct them at the time of performing certain legally significant activities, i.e., even if it temporarily lacks the physical and mental ability to perform these actions[216]. To be

[214] German doctrine and BGB provides for the term capable to contract (Geschäftsfähigkeit), which includes marriage capacity and testamentary capacity. According to part 1 Article 2229 BGB, a minor child can make a will at the age of 16, including establishing a foundation, which must be certified by a notary per Article 2233 BGB. See more, Jan Schapp, Wolfgang Schur, Einfühlung in das Bürgerliche Recht. Quoted from their book Система германского гражданского права: учебник/ Пер.с нем. С.В.Королев. М.: Международные отношения, 2006. 360p. Pp.250-252. Also see Löhnig M. Erbrecht. 3., neu bearbeitete Auflage. München, Verlag Franz Vahlen. 2016. 144p. Unit 13. P.5.

[215] See Boguslavsky M.M. Private International Law: Textbook. M.:NORMA, 2018. 672p. Pp.152-153. // Богуславский М.М. Международное частное право: Учебник. М.:НОРМА, 2018. 672с. С.152-153.

[216] Of course, this is only valid for individuals with full legal capacity. See more, Meyer D.I. Russian civil law. (in 2 parts). Corrected and added by the 8th ed., 1902. Ed. 2nd, rev. M.:"Statut", 2000. 831p. Pp.784-

declared invalid the interested person shall provide necessary documents and evidence that at the time of signing the will, the testator was in a state that precludes the possibility of controlling its actions[217]. The judicial practice also confirms this approach. In clause 27 of the Resolution of the Plenum of the Supreme Court of the Russian Federation dated May 29, 2012, No. 9 (as amended on April 23, 2019) "On Judicial Practice in Inheritance Cases" the Supreme Court pointed out that wills could be invalidated by failure to comply with the requirements established by the Civil Code of the Russian Federation, namely, the full legal capacity of a citizen making a will under paragraph 2 of Article 1118 of the RCC[218].

A different view of this problem is demonstrated by US law which regulates the testamentary capacity explicitly in the necessary state of mental health (mental capacity) of the founder of the trust[219]. Full sanity is not required to draw up a will. Even if the court has declared the person incapacitated (incapacitation order), this does not mean that the person has lost the mental state necessary to draw up a will. When drawing up the will a person shall have testamentary capacity (capacity to make a will, testamentary capacity)[220]. Thus the Court of Appeals of Utah in the case of Estate of Ioupe, 878 P.2d 1168 (Utah Ct.App. 1994) ruled that the will of the testator with paranoid schizophrenia, confirmed by a medical report, with its incapacity and the appointment of a guardian was not invalid. Since at the time of the execution of the will the testator was competent and was not under the

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785. // Мейер Д.И. Русское гражданское право. (в 2ч.). По исправленному и дополненному 8-му изд., 1902. Изд. 2-е, испр. М.: «Статут», 2000. 831с. С.784-785.; Tolstoy Y.K. Inheritance law. M.:"Prospect", 1999. 224p. P.27. // Толстой Ю.К. Наследственное право. М.: «Проспект», 1999. 224с. С.27.

[217] See more review of judicial practice in cases of this category, Zaitseva T.I. Judicial practice in inheritance cases. M.: Wolters Kluver, 2007. 472p. Pp.90-94. // Зайцева Т.И. Судебная практика по наследственным делам. М.: Волтерс Клувер, 2007. 472с. С.90-94.

[218] Published by “Rossiyskaya gazeta”, June 6, 2012. No. 127. // «Российская газета», 6 июня 2012. № 127.

[219] The latter can be considered as an integral part of the active capacity of the individual. See more about that, Shumilov V.M., Akchurin T.F. Ibid., p.262.

[220] This ability of an individual is also part of a broader capacity for performance of legal act. See also, Shumilov V.M., Akchurin T.F. Ibid., p.263.

influence of third parties. Hence it had the right to draw up a testament[221]. In another case the Supreme Court of Virginia in case 44 S.E.2d 16 (Va. 1947) held that the testator should have a mental condition that would enable it to 1) initiate the drafting of a will, 2) remember its property, and 3) name the beneficiaries[222]. That is sufficient to confirm the testamentary capacity of an individual even in the case of mental illness. Thus, under these conditions, the state laws recognize the existence of testamentary capacity and the possibility of making a will in people with any mental illness.

2.2.2. Beneficiaries.

i) Determination of beneficiaries and separate people.

The next prominent people in inheritance relations formed with the participation of the inheritance foundation are beneficiaries and "third parties" (hereinafter-separate people), which the legislator first mentions in paragraph 4 of Article 123.20-1 of the RCC. The law does not unite them into one group which according to the rules of legislative technique gives reason to speak of their heterogeneity. The latter lies in the different legal status of these ones. So, concerning third parties (if they are legal entities), there are no restrictions on the organizational and legal form, in contrast to beneficiaries, which cannot be commercial organizations. They also differ in the scope of individual rights concerning the inheritance foundation[223]. The RCC grants them equal rights only about receiving part of the estate transferred by the testator to the inheritance foundation or receiving income from the foundation's activities. Besides the beneficiaries have the information and control rights for the inheritance foundation under paragraphs 4 and 5 of Article 123.20-3 RCC; the right to challenge a notary's actions conducting an inheritance case and the establishment of inheritance foundation under part 5 of paragraph 2 of

[221] See, https://www.courtlistener.com/opinion/1188967/estate-of-ioupe/. Last access 02.07.2020.
[222] See, https://casetext.com/case/gilmer-v-brown/. Last access 02.07.2020.
[223] See Markina T.V. Civil legal personality of the inheritance foundation: basic provisions // Inheritance law. 2017. No. 4. Pp.12–14. // Маркина Т.В. Гражданская правосубъектность наследственного фонда: основные положения // Наследственное право. 2017. №4. С.12-14.

Article 123.20-3 of the RCC; the right to recover losses caused by the activities of the foundation following paragraph 6 of Article 123.20-3 of the RCC. Almost separate people are represented as recipients of certain property content without any counter-rights and obligations with the inheritance foundation and beneficiaries, excluding the possibility of refusal to accept the foundation's property, which is not considered by law essential circumstance. They depend entirely on the successful operation of the inheritance foundation and/or the amount of inherited estate transferred to the foundation.

The beneficiaries of the inheritance foundation are determined by the testator when approving the Conditions[224]. Following paragraph 2 of Article 123.20-3 of the RCC, any participants can be the beneficiaries of the inheritance foundation in relations regulated by civil law, except for companies[225]. Thus the beneficiaries could be:

1) some people, including foreign citizens and stateless people, minor children, people with limited legal capacity, completely incompetent people;
2) legal entities - non-profit organizations established per national or foreign legislation, international organizations, municipalities, subjects of the Russian Federation (regions), the Russian Federation, foreign countries.

Individuals as beneficiaries can be determined precisely in accordance with civil and family law and the very fact of their existence. Additional clarifications are

[224] See more, Sinitsyn S.A. Development of civil legislation // Scientific concepts of the development of Russian legislation: monograph. 7th, add. and rev./ ed.-in-chief T.Ya.Khabrieva, Yu.A.Tikhomirov; ILCJ under the Government of Russian Federation. M.: PH Jurisprudence, 2015. 544p. P.105.// Синицын С.А. Развитие гражданского законодательства// Научные концепции развития российского законодательства: монография. 7-е изд. доп. и перераб./ отв.ред. Т.Я.Хабриева, Ю.А.Тихомиров; ИЗиСП при Правительстве Российской Федерации. М.: ИД Юриспруденция, 2015. 544с. С.105.

[225] In this case, it is difficult to explain the position of the legislator in the exclusion of companies from the list of beneficiaries, since, as indicated earlier, the difference between companies and non-commercial organizations is in the presence of a goal - making a profit is not limiting when receiving property from third parties. Besides, a beneficiary with legal capability can also dispose of the estate transferred to him/her in the form of contributing this asset to the company's capital.

required regarding the beneficiaries - legal entities, since they may be renaming, transformation, bankruptcy, and annulment (liquidation).

ii) Legal entities as beneficiaries.

According to Russian law, legal entities are recognized as the subject of law only if they are state registered following paragraph 2 of Article 48 of the RCC. Consequently, they can be designated as beneficiaries, provided that they existed on the day of the opening of the inheritance. In accordance with clause 2 of Article 11 of the Federal Act "On State Registration of Legal Entities and Individual Entrepreneurs" (Федеральный закон «О государственной регистрации юридических лиц и индивидуальных предпринимателей»)[226] dated August 08, 2001, No. 129-FZ (as amended on 26.11.2019), the moment of state registration of a legal entity is the entry of an appropriate record about this legal entity in the corresponding state register by the registering authority. The termination of the legal entity's existence is the entry of the corresponding entry in the specified state register following paragraph 9 of Article 63 of the RCC. Thus, establishing the existence of a legal entity at the time of its recognition as a beneficiary is carried out based on data from the state register of legal entities. The Federal Tax Service of the Russian Federation (FTS) is the state registration body for legal entities (other than non-profit organizations) and individual entrepreneurs. The Ministry of Justice of the Russian Federation (Ministry of Justice of Russia) based on of clause 30.7 of the Decree of the President of the Russian Federation No. 1313 of October 13, 2004 "Issues of the Ministry of Justice of the Russian Federation"[227] (ed. July 01, 2020) is the state registering body of non-commercial legal entities. The record sheet in the State Register of Legal Entities, the form of which was approved by Order of the Federal Tax Service of Russia dated September 12, 2016, No. MMB-7-

[226] "Collection of legislation of the Russian Federation", 13.08.2001, No.31 (part I), article 3431. // «Собрание законодательства РФ», 13.08.2001, №31 (часть I), ст.3431.

[227] "Collection of legislation of the Russian Federation", 18.10.2004, No.42, article 4108. // «Собрание законодательства РФ», 18.10.2004, №42, ст.4108.

14/481@[228] is a supporting document on the entry of a legal entity into the state register of legal entities and, accordingly, on state registration of a legal entity. Thus based on the specified document and data of the state register of legal entities, interested people – the testator, notary, registering body shall be aware of a specific legal entity that will become the beneficiary. It should be noted that all-important information about the existence of the organization, such as founders, participants, managers, as well as all any changes that occur with a legal entity: changes in the composition of participants, governing bodies, location, type of activity and others are entered in the state register of legal entities. Ergo, a legal entity needs to be recognized as a beneficiary legally. It retains its identity (legal personality), i.e., remained an organization with its legal nature, which was indicated by the testator as to the beneficiary[229]. In this case this identity will be confirmed by the set of characteristics of the legal entity which it will have at the time of its inclusion in the will and other documents on creating the inheritance foundation. However a long period may elapse between the drawing up of a will and the establishment of an inheritance foundation, during which a legal entity may undergo certain changes that are independent of the will of the testator especially if it is not a participant, executive, etc. There are no changes in the name of a legal entity, location, types of activity, which, as a general rule, does not entail changes in the constituent documents of a legal entity, except for a change in its name and does not affect the legal essence of the organization[230]. There are many forms of the reorganization of a legal entity in which it can change or lose its legal personality. Formal proof of this circumstance will exclude this legal entity from the state register of legal

[228] "Bulletin of Normative Acts of Federal Executive Bodies", No.43, 24.10.2016. // «Бюллетень нормативных актов федеральных органов исполнительной власти», №43, 24.10.2016.

[229] In this regard, it is worth noting what is necessary for the testator when choosing a legal entity as a beneficiary. Is it essential to describe in the will the conditions of activity, the personal composition of the participants, or the governing bodies of such a legal entity, the change of which would be significant for the testator? So far, this has not been regulated in any way by law or judicial practice.

[230] There is one more problem worth raising. In this context, it should be possible to assume about the future beneficiary (or might define as a testamentary beneficiary), because any person becomes a beneficiary only after state registration of the inheritance foundation. It is no coincidence that the law establishes the name of this status as "the beneficiary of the inheritance foundation", and not the inheritance.

entities by the state registration authority. Article 57 of the RCC provides for several types of the reorganization of legal entities, in which an existing legal entity can be retained with the original data, among which there are: 1) accession, when one or more other legal entities join an existing legal entity, while the latter are excluded from the state register of legal entities; 2) separation, when one or more other legal entities are separated from an existing legal entity, while they are subject to entry into the state register of legal entities and 3) transformation, when an existing legal entity is transformed into another organizational form if such reorganization is provided for by law, (for example, reorganization of foundation is not allowed in accordance with paragraph 3 of Article 123.17 of the RCC)[231]. The other two types of reorganization of legal entities are mergers (two or more legal entities form one) and demergers (one legal entity is divided into two or more new organizations), in which the existing legal entity is excluded from the Unified State Register of legal entities[232]. Along with the question of the reorganization of the legal entity that the testator has appointed to be the beneficiary of the inheritance foundation, there is also the question of the succession of the rights of the future beneficiary, which inevitably arises in any procedure of reorganization of the legal entity. Considering the preceding after the state registration of the inheritance foundation, only a legal entity that retained the record of its state registration that

[231] See more in detail, Civil law: textbook: in 4 vol./ Editor-in-chief E.A. Sukhanov. 2nd ed., rev. and add. Moscow: Statut, 2019. Vol.I: General. 576p. Pp.203-207. // Гражданское право: учебник: в 4т. / отв.ред. Е.А. Суханов. 2-е изд, перераб.и доп. Москва: Статут, 2019. Т.I: Общая часть. 576с. С.203-207.; Civil law of Russia. Part One: Textbook / Ed. Z.I.Tsybulenko. M.: Jurist, 1998. 464p. Pp.81-85. // Гражданское право России. Часть первая: Учебник/ Под ред. З.И.Цыбуленко. М.:Юристъ, 1998. 464с. С.81-85; Zhdanov D.V. Reorganization of joint stock companies in the Russian Federation. 2nd ed., Rev. and add. M .: "Lex-Kniga", 2002. 303p. Pp.9-10, 43-45, 64-66, 71-78. // Жданов Д.В. Реорганизация акционерных обществ в Российской Федерации. Изд.2-е, перераб. и доп. М.: «Лекс-Книга», 2002. 303с. С.9-10, 43-45, 64-66, 71-78.

[232] Some scholars consider that any reorganization of the legal entity terminates its ability to become the heir. See Civil law: textbook: in 3v. Vol.3 / Ed. A.P. Sergeev. 2nd ed., Revised and add. Moscow: Prospect, 2016. 736p. Pp.581-582.// Гражданское право: учебник: в 3 т. Т.3/ Под ред. А.П.Сергеева. 2-е изд., перераб. и доп. Москва: Проспект, 2016. 736с. С. 581-582.

existed at the time of drawing up the will by the testator shall have a right to become the beneficiary of the inheritance foundation[233].

iii) State authorities as beneficiaries.

As indicated above, in addition to non-profit organizations, beneficiaries can be public law entities, which include: the state - Russian Federation, the regions of the country, municipalities, foreign governments, as well as international organizations. They can also be beneficiaries of the inheritance foundation, provided that they existed on the day of the opening of the inheritance. Individual state authorities that are entrusted with activities in property administration can act in this capacity on behalf of the state. For example, the Federal Agency for State Property Management, working based on the Decree of the Government of the Russian Federation "On the Federal Agency for State Property Management"[234] dated June 05, 2008, No. 432 (as amended on April 12, 2020) is such a state body on behalf of the Russian Federation, which represents its interests in the field of acceptance, management of property, which becomes the property of the state. At the level of regional or municipal authorities, there are also designated authorities determined by the region or municipality.

iv) Legal status of beneficiaries.

Consideration of the specific composition of beneficiaries is also associated with their legal status in inheritance relations with the participation of the inheritance foundation. In a certain sense the legal status of the beneficiary shall somehow correspond to the standard level of the heirs as the closest category of people

[233] In this case, the question remains unclear - do the rights of the future beneficiary exist on recognizing him as the beneficiary of the inheritance foundation, and whether they can be transferred to a third party in the event of the reorganization of such a legal entity in the form of a merger or division, where the existing legal entity that was appointed as the beneficiary of the inheritance foundation is lost? As well known, the newly created organizations are transferred to a different extent of the reorganized legal entity's rights and obligations based on Article 58 of the RCC. Whether they can obtain and exercise such a right - the law does not contain an answer to this question, which adds discussion topics around the inheritance foundation.

[234] “Collection of legislation of the Russian Federation”, 09.08.2008, No. 23, article 2721. // «Собрание законодательства РФ», 09.08.2008, №23, ст.2721.

involved in inheritance relations and having certain rights and duties in connection with the receipt of inherited estate. In my opinion, the legal status of the beneficiary is not equivalent to the legal status of the heirs. There are undoubtedly similarities between them, but they are limited only to obtaining inherited estate (heirs by will). Obviously legally heirs have more differences from beneficiaries. According to Articles 1142-1146 of the RCC they are determined by 1) the presence of family ties along the ascending and descending lines, 2) the sequence corresponding to the degree of kinship with the testator. In addition, concerning the heirs (by law and by will), there is a possibility of deprivation of their inheritance in full due to their unlawful actions against the testator, against his/her last will, or any of the heirs. That is a category of so-called "unworthy heirs" by Article 1117 of the RCC. And one thing to notice is that the law does not provide for such status for beneficiaries, obviously due to the legal impossibility of such a qualification, since the inheritance foundation is the heir to the testator's estate[235]. Unlike the heirs the RCC does not mention the possibility of including people conceived during the testator's life and born alive after its death (*nasciturus*) in the number of beneficiaries. According to the rules of formal logic, speaking of beneficiaries as participants in civil law relations, the law refers to real people. Consequently *nasciturus* will not be considered beneficiaries. However it is quite possible that the issue can be attributed to the discretion of the estate management authorities per the testator's will expressed in the Conditions. It should be noted that at present, no solution has been found on this issue.

As can be seen from the above comparisons with the status of heirs, it cannot be concluded from the provisions of the law that the beneficiaries of the foundation shall necessarily be heirs. It is quite possible that, in reality, this will be the case,

[235] An interesting rule is contained in par.5 of Article 1117 of the RCC that the rules on unworthy heirs are also applied to legacy receivers, while legates are very similar in their status to beneficiaries. However, concerning the beneficiary, par.5 of Article 123.20-1 of the RCC provides for the possibility of changing the Charter if the beneficiary is declared as an unworthy heir. That is a reason for a detailed discussion because the beneficiary is not the heir and here it could be talked about the status of an unworthy beneficiary but current law does not yet know such a concept.

but under the law, it can be any person appointed by the testator-founder of the inheritance foundation.

Turning to the content of the legal status of the beneficiary, it should note that the beneficiary has proprietary, information, and control rights, and individual rights of claim to the inheritance foundation and to other people accompanying the process of organizing and operating the inheritance foundation, provided for by law:

- the beneficiary's proprietary rights include the rights to receive all or part of the foundation's ownership by the Conditions based on paragraph 2 of Article 123.20-3 of the RCC;
- the information rights of the beneficiary include the rights to request and receive information from the inheritance foundation about the its activities in cases provided for by the Charter of the inheritance foundation based on of paragraph 4 of Article 123.20-3 of the RCC;
- the beneficiary's control rights include the right to request an audit of the foundation's activities by the auditor chosen by the beneficiary at his/her expense or the expense of the foundation, if the inheritance foundation's Board of Trustees makes such a decision in accordance with paragraph 5 of Article 123.20-3 of the RCC;
- the rights to challenge the notary's actions to establish an inheritance foundation in the event of their contradiction with the testator's orders refer to the rights of claim of the beneficiary based on part 5 of clause 2 of Article 123.20-1 RCC, and the right to claim compensation for losses incurred by the beneficiary in case of violation of the Conditions, if this right is provided for by the Charter of the foundation following clause 6 of Article 123-20.3 of the RCC[236].

[236] See Petrov E.Y. Reform of Russian inheritance law: commentary on the main changes. // Bulletin of Civil Law, 2016. No.5. Vol.16. P.82. // Петров Е.Ю. Реформа российского наследственного права: комментарий основных изменений // Вестник гражданского права, 2016. №5. Т.16. С.82.

Obviously the rights of the beneficiary of the inheritance foundation are inalienable and they cannot be foreclosed on for the beneficiary's obligations. The rights of a citizen-beneficiary of the inheritance foundation are not inherited. The rights of a legal entity – beneficiary are terminated when any form of reorganization is performed, except in cases of transformation, if the Conditions do not provide for the termination of the rights of such a beneficiary during its shift[237]. The beneficiary is not liable for the obligations of the foundation, and the foundation is not responsible for the beneficiary's duties in accordance with clause 7 of Article 123.20-3 of the RCC.

The beneficiaries of the foundation to whom the estate of the inheritance foundation is shall be transferred may be determined by the foundation's governing bodies under the Conditions. It follows that the beneficiaries of the inheritance foundation can be determined not only by the testator but also by the management bodies of the inheritance foundation under paragraph 2 of clause 4 of Article 123.20-1 of the RCC. The procedure for the transfer of all or part of the foundation's ownership including income from the foundation's activities, to the beneficiaries or separate people, shall be determined by the Conditions with indicating the type and size of the transferred estate or the procedure for determining that, including proprietary rights (for example, the right to use property, the right to pay for work, services rendered by third parties to beneficiaries or separate people), the period or frequency of transfer of estate, as well as the circumstances upon the occurrence of which such transfer is carried out in accordance with clause 3 of paragraph 4 of Article 123.20- 1 RCC.

The legal status of the beneficiary of the inheritance foundation is new and has not been sufficiently studied in the theoretical literature. On the one hand, the description of their rights and obligations does not lead to well-known figures of inheritance law. On the other hand, he/she also does not refer to a participant in

[237] This rule contrasts with the possibility of preserving the legal personality of the legal entity-beneficiary of the inheritance foundation. It is possible to note some inconsistencies of the legislator with unclear reasons for such a decision.

corporate relations within a legal entity, for example, as a shareholder, etc. Also beneficiary cannot be equated with the creditor's identity in the committed relationship. The latter does not enter into these relations of its free will, disagrees on the terms of its participation, does not bear any obligations. A third party-the testator shall appoint the beneficiary with the right to receive specific estate from the heir if they meet certain conditions, such as successful management of inherited estate, expressed in planned digital values. In this case the question arises about the possibility of the beneficiary's right to claim a particular estate following the Conditions. If this is allowed, what is the nature of this right of claim? In foreign law beneficiaries have the right to file lawsuits against foundations for providing a particular estate[238]. According to Russian law the right of the beneficiary to claim damages from the inheritance foundation in case of violation of the Conditions is based on paragraph 6 of Article 123.20-3 of the RCC, indirectly indicates the existence of such a right of a claim. Outwardly this is similar to the right to claim a legal entity or its participants for damages received by a legal entity due to the fault of its managers under Article 53.1 of the RCC. However, in this case, there is a different kind of legal relationship, for example, based on the employment contract of an organization as an employer and organization's managers as an employee. It can be assumed that the answer to this question will depend on the possibility of recognizing the relationship of the inheritance foundation and the beneficiary as the execution of the will where the inheritance foundation fulfills the prescribed role of the heir, and the beneficiary is the legatee[239]. It is impossible to directly name the relationship between the inheritance foundation and the beneficiary as a testamentary refusal (legate) since the RCC does not now indicate such a possibility. Besides the feature of a testamentary

[238] See for example, Dr.J.Gasser. Asserting beneficiaries' rights in a Liechtenstein Family Foundation//Trusts & Trustee, Vol.9, Issue 2, 2003. Pp.11-13.

[239] Such a relationship can be classified as a legate of obligation known from Roman law (legatum per damnationem). See more about that, Fleischitz E. Testament and legate in Soviet civil law // Scientific notes. Issue VI. Moscow: Legal Publishing House of the USSR Ministry of Justice, 1946. Pp.91-94. // Флейщиц Е. Завещание и легат в советском гражданском праве// Ученые записки. Выпуск VI. Москва: Юридическое издательство Министерства юстиции СССР, 1946. С.91-94.

refusal is the performance through inheritance of a property obligation in favor of third parties who acquire the right to demand the implementation of this obligation in accordance with part 1 of paragraph 1 of Article 1137 of the RCC. The provisions of the RCC on obligations are applied to such relations. Therefore the law calls the heir - the debtor in this legal relationship, and the legatee - the creditor based on paragraph 3 of Article 1137 of the RCC. According to Russian law, the legate's distinctive features include a limited period of validity - three years. More importantly this duty is performed at the expense of inherited estate and not at the cost of its increase as a result of its management[240].

Thus the heir shall not be obliged to manage the inherited estate. It is only obliged to transfer it to the legatary (the legate's condition may include performing specific work, making periodic payments in favor of the legatary, etc.) following paragraph 2 of Article 1137 of the RCC. These provisions exclude the possibility of qualifying the relationship between the inheritance foundation and the beneficiary following the example of the legate.

Returning to the question of the possibility and nature of the beneficiary's right to claim against the inheritance foundation to transfer specific estate according to the Conditions, it should be noted that the law does not endow the beneficiary with such a claim. As can be seen, on the one hand, the beneficiary is not: 1) an heir, 2) a participant in the inheritance foundation, 3) a legatee. At the same time, on the other hand, the beneficiary receives inherited estate or part of it from the inheritance foundation as an heir following the testator's will, has the right to file a claim for losses in case of violation of the Conditions, and, importantly, has the right to receive information about the foundation's activities and demand an audit

[240] Some authors expressly indicate that the result of the duty's fulfillment of the heir to the consignee decreases the inherited estate. See Khaskelberg B.L. Legal relationship from testamentary renunciation and its elements. // Civil-law studies. First edition: Collection of scientific papers in memory of Professor I.V.Fedorov / Ed. B.L.Khaskelberg, D.O. Tuzov. M.: "Statut", 2004. 380p. Pp.109-110. // Хаскельберг Б.Л. Правоотношение из завещательного отказа и его элементы. // Цивилистические исследования. Выпуск первый: Сборник научных трудов памяти профессора И.В.Федорова / Под ред. Б.Л.Хаскельберга, Д.О.Тузова. М.: «Статут», 2004. 380с. С.109-110.

of the foundation. Given that the main goals of the inheritance foundation are to increase and further distribute the estate to beneficiaries, i.e., to ensure the ownership maintenance of these people, it is reasonable to grant the beneficiary the right to demand from the inheritance foundation the final fulfillment of the primary purpose of establishing the foundation. The closest to this right of claim will be the legatee's right. In this sense it will be permissible to use the analogy of law based on Article 6 of the RCC. Probably this issue will require broad scientific discussion and verification by judicial decisions.

2.2.3. Heirs with a compulsory portion.

In addition to beneficiaries and separate people there is another group of people who become beneficiaries under certain conditions. These are the heirs who have the right to a compulsory portion (*portio debita*), or "compulsory heirs"[241]. According to clause 1 of Article 1149 of the RCC, regardless of the content of the will, the young people or disabled children of the testator, his/her disabled spouse and parents, as well as disabled dependents of the testator own the inheritance of at least half of the share that would have belonged to each of them in case of the estate by law. The law established the possibility to ensure the interests of disabled family members. These other people have lost the receipt of foundations for their maintenance from the testator with the testator's death. The right to a compulsory portion is expressed in the fact that a certain circle of heirs is granted the right to receive a share in the inheritance despite the content of the will. The list of compulsory heirs contains is limited. Besides there are individual requirements for dependents whose do not belong to any of the agendas of heirs named in the law. They have the right to a compulsory portion of the inheritance if they are disabled on the day of the testator's death and were dependent on it for at least a year before his/her death following paragraph 2 of Article 1148 of the RCC. Grandchildren and great-grandchildren of the deceased who may be called to inherit by right of

[241] In the scientific literature, they are also called "necessary heirs". See more, Tolstoy Y.K. Inheritance law. M.:"Prospect", 1999. 224p. Pp.99-101. // Ю.К.Толстой. Наследственное право. М.: «Проспект», 1999. 224с. С.99-101.

representation (i.e., if their parents died before the opening of the inheritance) are not forced heir, except if they were dependents. The heir's right to a compulsory portion is personal, i.e., it is inextricably linked with the personality of such an heir. Therefore such a right is absolutely non-negotiable - it can not be transferred to other inheritors by right of representation, in the order of inheritance transmission, or case of refusal of inheritance, or to third parties in the order of civil transactions. The right of the heir to a compulsory portion has always been considered as an exclusive right. This right can only be revoked if the heir is deemed unworthy. The amount of the compulsory portion of the heir is not less than 1/2 of the share that the heir would have received by law according to paragraph 1 of Article 1149 of the RCC.

The new inheritance law established that the heir who has the right to a compulsory portion, which is indicated by the beneficiary of the inheritance foundation in the will and other documents, and also agrees to be one, shall lose the right to a compulsory portion of the inheritance. If within the time limit set for accepting the estate, such an heir declares to the notary conducting the inheritance case that it renounces all the rights of the beneficiary of the inheritance foundation, it has the right to a compulsory portion by part 1 of paragraph 5 of Article 1149 of the RCC. In case of heir's refusal from the rights of the beneficiary of the inheritance foundation, the court may reduce the amount of the heir's compulsory portion if the value of the estate significantly exceeds the number of foundations required for the maintenance of a citizen due to it as a result of inheritance, taking into account its reasonable needs and obligations to third parties as of the date of opening the inheritance, as well as the average amount of expenses and the standard of living before the testator's death based on part 2 of paragraph 5 of Article 1149 of the RCC. The peculiarity of this situation is that it is impossible to accurately predict the ratio of the value of estate grants received by the heir as a compulsory portion and in part of an individual estate transferred by the inheritance foundation to the heir or income from its activities. Thus this new

construction of determining the property content of the heir who has the right to a compulsory portion in the inheritance is quite challenging to understand and requires some experience in its application[242].

2.3. The inheritance foundation's procedure of establishment and annulment.

2.3.1. Notarial and other official acts linked to the inheritance foundation.

The inheritance foundation should be a tool for the fastest and most efficient transfer of inherited estate to preserve or maintain its effectiveness and functionality. That is very important if the estate is an operating business or other assets that require constant participation and control. At present inheritance relations with the participation of the inheritance foundation can hardly be an example of such a transfer of an estate in Russia[243]. Firstly the procedure for establishing an inheritance foundation is not different from the establishment of other legal entities, which is not fast and requires a certain amount of time. Secondly the process of transferring the inherited estate to the inheritance foundation also remained the same as for ordinary heirs by will. It is difficult to avoid certain inconveniences during the inheritance period, and civil law has not yet responded to overcoming them. Considering these circumstances, in a separate Chapter 65 of the RCC "Succession of specific types of assets" the legislator tried to solve the problem of the transfer of the so-called vacant succession *(hereditas jacens)*[244], especially with an operating business. Still these provisions did not

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[242] See Abramenkov M.S. Concept and essence of inheritance // Inheritance law, 2015. №1. P.6. // Абраменков М.С. Понятие и сущность наследования// Наследственное право, 2015. №1. С.6.

[243] See Kozlova N.N. Inheritance on demand. // Rossiyskaya gazeta. Federal issue. 31.07.2017. No.168 (7334).// Козлова Н.Н.. Наследство до востребования // Российская газета. 31.07.2017. №168 (7334).

[244] This issue includes the scientific problem of the definition of the "right to inheritance", the legal nature of which has a long discussion. See the review of scientific opinions, for example, Shershenevich G.F. Civil law course. (Edition 1901). Tula: Autograph, 2001.720p. Pp.679-683. // Шершеневич Г.Ф. Курс гражданского права. По изданию 1901г. Тула: Автограф, 2001. 720с. С.679-683.; Serebrovsky V.I. Essays on Soviet inheritance law (ed. 1953) / Serebrovsky V.I. Selected Works. M.: Statut (in the series "Classics of Russian civil law"), 1997. 567p. Pp.179-184. // Серебровский В.И. Очерки советского наследственного права (по изданию 1953г.) / Серебровский В.И. Избранные труды. М.: Статут (в серии «Классика российской цивилистики»), 1997. 567с. С.179-184.; Tolstoy Y.K. Inheritance law. M.:"Prospect", 1999. 224p. Pp.22-23. // Ю.К.Толстой. Наследственное право. М.: «Проспект», 1999.

crucially affect the reduction of the terms of inheritance transfer.

The emergence of inheritance foundations demonstrates the expansion of the scope of inheritance by will, since it is an independent way of disposing of ownership in case of death.

As well known, in accordance with paragraph 4 of Article 50 of the RCC the Decision on the establishment of the inheritance foundation is made by a citizen based on his notarized will. The testator shall indicate information about the establishment of the inheritance foundation, the approval of its Charter and Conditions of the inheritance foundation, the procedure, size, methods, and terms of the formation of the foundation's property, as well as the citizens appointed to the governing bodies of the foundation, or the procedure for choosing such people, in this paper. The Decision is an integral part of the will and other inheritance papers. It can be executed only after the occurrence of other legal facts - the death of the testator and the opening of the inheritance[245]. At the request of the law the will containing the testator's Decision is subject to notarization. That justifies the need to consider notary's actions accompanying the establishment of the inheritance foundation and papers certified by a notary in more detail.

i) Notarial acts.

In the sphere of inheritance relations traditionally the notary performs the function of giving the inheritance rights the necessary certainty and indisputability. The notarial procedure for formalizing inheritance relations ensures guarantees of the freedom of a will and its enforceability, helps to protect the interests of citizens

224c. C.22-23; Civil law: a textbook for bachelors. V.2. / Ed. V.L.Slesarev. Moscow: Prospect, 2016. 768p. Pp.616-617. // Гражданское право: учебник для бакалавров. Т.2 / отв.ред. В.Л.Слесарев. Москва: Проспект, 2016. 768с. С.616-617.

[245] See more, Kalinova K.V., Kuropatskaya E.G. Changes in legislation: inheritance funds and organization of notarial activities. / Notarial Bulletin. 2018. No.8. P.4. // Калинова К.В., Куропацкая Е.Г. Изменения в законодательстве: наследственные фонды и организация нотариальной деятельности.// Нотариальный вестникъ. №8, 2018. С.4.

during hereditary, and ensures the safety of the inherited estate until the heirs accept the inheritance[246].

By paragraphs 1 and 5 of Article 1124 of the RCC it is the notary who draws up and certifies the will, as well as the testator's Decision, the Charter, and Conditions. Thus the law establishes three required documents which, along with the main form containing the last will of the testator - the will, are the primary constituent documents of the inheritance foundation. Certainly such a will is a very complex legal document and the preparation of such a paper seems to be an act of exceptional standard Art[247].

Order of making the testament

The drafting and certification of any testament shall be carried out in accordance with the requirements of the law for its form. Thus a will must be made in writing. The technical means that a testator can use to formalize its will are not limited by law. The testator can execute a will with its hand, typed using a typewriter or computer, written down by another person or a notary from the words of the testator per paragraph 1 of Article 1125 of the RCC. If a notary writes down a will from the words of the testator, then before signing it, the testator shall read it in the presence of a notary following paragraph 2 of Article 1125 of the RCC. If the testator is not able to do this (poor eyesight, illiteracy, etc.), the notary reads it out to the testator, and a corresponding entry is made on this on the will, indicating the reasons why the testator could not personally read the will under that paragraph of Article 1125 RCC. In some instances, under penalty of nullity, the law requires only the handwriting of a will (closed testament, will in an emergency). The place

[246] See, Cheremnykh G.G. Inheritance law of Russia: a textbook for open source software. 2nd ed. Moscow: Yurayt Publishing House, 2018.516p. P.99. // Черемных Г.Г. Наследственное право России: учебник для СПО. 2-е изд. М.: Издательство Юрайт, 2018. 516с. С.99.

[247] Indeed, as will be shown below, this paper is so complex and voluminous that, given the law, it does not consider in detail all issues related to the inheritance foundation. Therefore, the impression is created that it is actually impossible to draw up such a document not only by a notary, but also by any qualified lawyer at the present time. This indicates a certain naivety of the legislator when creating such an institution of inheritance law.

and date of its certification shall be indicated in the will. The testator must sign the will by own hand[248]. In exceptional cases if the testator, due to physical disabilities, severe illness or illiteracy, cannot sign the will himself, such a will, at the testator's request, maybe signed without fail in the presence of a notary by another person (a handler) following paragraph 3 of Article 1125 of the RCC. The will itself must indicate why the testator could not sign the will personally: critical health problems that do not limit his legal capacity, other reasons that deprive the testator of the opportunity to sign the will with his/her hand[249]. The procedure for attesting a will allows the presence of witnesses by paragraph 4 of Article 1125 of the RCC. Witnesses may be present at the request of the testator itself. Still, in some cases, the law provides for the mandatory participation of witnesses: when making a will in emergency circumstances, as well as a will equivalent to a notarized one. The following people cannot be witnesses: a notary or other person certifying a will, people in favor of whom a will was drawn up (heirs by will) or a legacy was made (legacy recipient), as well as the spouse, children, and parents of such people; citizens who do not have full legal capacity; illiterate; citizens with such physical disabilities that do not allow them to fully realize the essence of what is happening (deaf, dumb, blind, etc.); people who do not know the language in which the will is drawn up (except for cases when a closed testament is drawn up) under paragraph 2 of Article 1124 of the RCC. The will must contain information about all people present at its execution: last and first name, patronymic, place of residence in accordance with identity documents. The purely personal nature of the will also predetermine the consolidation in the law of a strict requirement to maintain the secrecy of the will to all people who took part in its attestation: notaries, any other officials who were granted the right to attest a will, translators, executor of the will, witnesses, people signing the will instead of the testator (handlers), are not entitled

[248] In opposite of this rule German law (Articles 2232, 2247 BGB) does not provide for different provisions of the will's signing. See more, Löhnig M. Erbrecht. 3rd Edition. München, Verlag Franz Vahlen. 2016. Units 18-34. Pp.7-10.

[249] See more, Zaitseva T.I. Judicial practice on inheritance cases. M.:Wolters Kluver, 2007. 472p. Pp.106-107. // Зайцева Т.И. Судебная практика по наследственным делам. М.: Волтерс Клувер, 2007. 472с. С.106-107.

to inform anyone before the opening of the inheritance about the execution of the will, its content, change or cancellation, about which each of them is warned. In case of violation of these requirements the testator has the right to demand compensation for losses caused to it, as well as compensation for moral damage based on Part 2 of Article 1123 of the RCC. The will must be drawn up in triplicate two of which shall be kept by the notary who certified it, under paragraph 5 of Article 1124 of the RCC. In addition, following clause 35 of the Procedure for Maintaining Registers of the Unified Information System of Notaries[250] when registering the fact of attestation of a will providing for the establishment of an inheritance foundation, in the Register of notarial actions of the Unified System of Notaries a notary shall attach four files containing electronic images of the text of the will, the Decision, the Charter and the Conditions. This requirement is also contained in the Letter of the Federal Notary Chamber of the Russian Federation dated August 29, 2018 No. 4299/03-16-3[251]. That allows keeping the notarial secret concerning other orders of the testator included in the will when carrying out the procedure for state registration of the inheritance foundation. In this regard electronic images of the will and the Conditions are not sent to the territorial body of the Ministry of Justice of Russia for state registration by a notary[252]. Clause 2 of Article 123.20-1 of the RCC provides for the need to attach to this application only electronic images of the Decision and Charter of the inheritance foundation.

Form of the testament

[250] This regulation was approved by Order of the Ministry of Justice of Russia dated June 17, 2014 No. 129 (as amended on February 7, 2020) "On approval of the Procedure for maintaining registers of the unified information system of notaries" (together with the "Procedure for maintaining registers of the unified information system of notaries", approved by the Decision of the Federal Notary Chamber's Board dated 02.06.2014, by order of the Ministry of Justice of Russia dated 17.06.2014 No. 129) (Registered in the Ministry of Justice of Russia 18.06.2014 No. 32716) / «Российская газета», №136, 20.06.2014.

[251] See, https://www.consultant.ru/document/cons_doc_LAW_305826. Last access 14.07.2020.

[252] See more in detail, Ignatenko A.V., Kuropatskaya E.G. Novels of inheritance and contract law: law enforcement in notarial activities. / Notarial Bulletin. 2018. No. 8. Pp.3-4. // Игнатенко А.В., Куропацкая Е.Г. Новеллы наследственного и договорного права: правоприменение в нотариальной деятельности./ Нотариальный вестникъ. 2018. №8. С.3-4.

It should be noted that the Decision cannot be made by notarizing a closed will based on paragraph 5 of Article 1126 of the RCC. The inheritance foundation is set in the case of a direct indication of this in the will. In this case the legislator logically limited the conditions for its execution, since a closed will guarantees the absolute implementation of the principle of the secret of a will. Even in the absence of such a complex legal structure as an inheritance foundation a closed will is often the subject of a will challenge. It also takes into account the fact that the drafting the Charter of the inheritance foundation is impossible without qualified legal assistance and the participation of professionals in the field of business management in various areas where the very meaning of the secret of a closed will loses its unique significance. Also paragraph 4 of Article 1129 of the RCC excludes the possibility of the testator drawing up a will containing a Decision in simple written form under extraordinary circumstances, i.e., in a situation clearly threatening the life of the testator[253]. The testator guided by the principle of freedom of will has the authority to revoke the will or change it in this part which is provided for in Articles 1119 and 1130 of the RCC.

Another officials

There are situations when, due to objective reasons, a testator can't apply to a notary to attest a will. Then it becomes necessary to solve this problem so that the testator could exercise right to dispose of the estate. To solve this problem the law establishes a list of officials who have been granted rights similar to those of a notary in terms of the certification of wills. So, according to clause 7 of Article 1125 of the RCC, such a right is granted to officials of consular institutions of the Russian Federation. This rule is of a reference nature, namely to paragraph 1 of Article 26 of the Consular Regulations of the Russian Federation (Консульский

[253] In this case, the logic of the legislator is also incomprehensible. Apparently, that can be explained by the real danger and transience of such circumstances, during which it is impossible to create full-fledged documents on the inheritance foundation. At the same time, the law allows to dispose of estate in a less formalized manner without appropriate control, that is, by determining the heirs.

Устав Российской Федерации)[254] which provides for the right of these people to perform such a notarial act as the attestation of a will.

The main list of officials who have the right to perform such a notarial act as certifying a will is given in the RCC. According to paragraph 1 of Article 1127 of the RCC, notarially certified will include:

1) the wills of citizens who are being treated in hospitals, other medical organizations in inpatient conditions or living in homes for the elderly and disabled, certified by the chief doctors, their deputies for the medical department, or doctors on the duty of these hospitals and other medical organizations, and also heads of hospitals, directors or chief physicians of homes for the elderly and disabled;

2) the wills of citizens sailing on ships under the State flag of the Russian Federation, certified by the captains of these ships;

3) the wills of citizens on exploration, Arctic, Antarctic, or other similar expeditions, approved by the heads of these expeditions, Russian Antarctic stations or seasonal field bases;

4) the wills of military personnel, and at points of deployment of military units where there are no notaries, also wills of civilians working in these units, members of their families and family members of military personnel, certified by the commanders of military units;

5) the wills of citizens in places of deprivation of liberty, approved by the heads of the locations of lack of freedom.

Content of the testament

All general rules on the form and procedure for making it in accordance with paragraph 2 of Article 1127 of the RCC apply to a will equated to a notarially

[254] Federal Act dated on 05.07.2010 №154-ФЗ (as amended on 26.07.2019) / "Collection of the legislation of the Russian Federation", 12.07.2010, No.28, article 3554 // «Собрание законодательства РФ», 12.07.2010, №28, ст.3554.

certified one. Therefore the will must comply with the requirements of the legislation contained in Articles 1124 and 1125 of the RCC. A will made in this manner shall be sent by this official who has attested the will, to the notary who exercises its functions in the testator's residence as soon as possible.

It is worth to consider the content of the will and other papers based on which the inheritance foundation will be established. The testator shall unambiguously express the decision to make the inheritance foundation. The notary shall correctly understand and fix it in the will and other documents on the inheritance foundation[255]. Accepting the will as a unilateral transaction of the testator based on paragraph 5 of Article 1118 of the RCC, such legal action shall contain the necessary conditions or content for its legitimacy. Otherwise it may be invalidated not only because of a defect in form but also because of a defect in content. These are the general rules for making transactions, contained in Chapter 9 of the RCC "Transactions"[256].

Since the law does not contain the necessary information on the content of the Decision, it is likely that the testator as the founder of the inheritance foundation shall indicate in the will approximately the following minimum sheet of information indicating its intention to establish an inheritance foundation:

- the Decision on the establishment of the inheritance foundation and its name;

- approval of the Charter of the inheritance foundation;

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[255] The notary must be a proactive consultant in the execution of notarial actions and help the applicant in formulating his will, as well as inform about the possibilities of legislation. See more, Jean Yaigre, Jean-Francois Pillebout. Droit professionnel notarial. Quatrieme Edition. Paris. 1996. 190p. Quoted from book: Ж.Ягр, Ж.-Ф.Пиепу. Профессиональное нотариальное право/пер. с франц. Юристъ, 2011. 224р. Pp.171-172.

[256] See more, Denisevich E.M. Unilateral volitional acts: classification models. // Civilian Notes: Interuniversity collection of scientific papers. Issue 4. M.:Statut; Yekaterinburg:Institute of Private Law, 2005. 606p. Pp.390-403. // Денисевич Е.М. Односторонние волевые акты: модели классификации.// Цивилистические записки: Межвузовский сборник научных трудов. Выпуск 4. М.: Статут; Екатеринбург: Институт частного права, 2005. 606с. С.390-403.

- the information on the support of the Conditions of managing of the inheritance foundation;

- the information about the estate transferred to the inheritance foundation, such as the name, type, assessment, other information that makes it possible to identify this estate uniquely;

- the information about the people who have been invited (approved) and/or from whom consent has been obtained to join the governing bodies of the foundation;

- the information about the beneficiaries or the procedure for determining such people;

- other conditions that may be included at the request of the testator, not contradicting the law.

In my opinion, this information gives a clear idea of the testator's will to establish an inheritance foundation and comply with the law. Generally now there are two options for specifying such information in a will since there are no special requirements of the law in this regard. It should name the first option as “reference”. Here the testator can confine itself to indicating the intention to create an inheritance foundation with the chosen name and make a reference to the necessary information that will have to be contained in the remaining documents on the inheritance foundation in order to create complete clarity about the established foundation. In another case – it should name as "complete" - the will shall include the content of all documents prescribed by the law which will then be repeated in them again, which will undoubtedly significantly complicate the work with such a will. The advantage of the latter option is the possibility of reliable fixation by a notary (or an authorized official) of the true testator's will, which is

expressed through the signature of a will[257]. In a certain way this is confirmed by the obligations of a notary to collect information, documents necessary for the performance of a notarial act, provided for in the "Regulations for the performance of notarial acts by notaries which establish the amount of information required by a notary to perform notarial acts, and the method of recording it" approved by Order of the Ministry of Justice of Russia dated on 30.08.2017 №156[258]. Now it is difficult to imagine how the law enforcement practice will be formed concerning the execution of this kind of will. In any case the testator's will shall be expressed very accurately and not create obstacles to the activities of the inheritance foundation in the future.

For the implementation of the will the law provides for a unique participant in inheritance relations, such as the executor of the will. Its legal status can also have an impact on the development of inheritance relations with the participation of the foundation. Taking into account the above, it should be considered executor's powers and possibilities.

ii) Executor of the will.

In the period between the opening of the inheritance, the establishment of the inheritance foundation (with its state registration), and the transfer of the estate to the inheritance foundation, it may be necessary to take legal and actual actions to ensure the safety, functioning, protection of inherited estate[259]. In the scientific literature the complex of these actions is called the execution of the will, since the

[257] See in detail, Legal bases of notarial activity. Tutorial. Edited by V.N. Argunov. M.: Publishing house BEK, 1994.480p. Pp.194-195. // Правовые основы нотариальной деятельности. Учебное пособие. Под редакцией В.Н.Аргунова. М.: Издательство БЕК, 1994. 480с. С. 194-195.

[258] See more, https://www.base.garant.ru/72295978. Last access 14.07.2020.

[259] For example, according to German law an executor has the same powers. See J.von Staudinger. Kommentar zum Bürgerlichen Gesetzbuch mit Einführungsgesetz und Nebengesetzen. Erbrecht: §§2197-2228: (Testament 2, Testamentsvollstreckung) von Wolfgang Reimann. Neubearb., Berlin: Otto Schmidt/De Gruyter. 2016. Units 8-13 to §2205 BGB. See also https://www.juris.de/r3/document. Last access 27.08.2020.

law does not give a legal definition to this institution of inheritance law[260]. The performance of a will is a set of legal and actual actions carried out by the executor of the will or the heirs in accordance with the testator's will and law. These activities of the executor of the will must be carried out to implement the testamentary dispositions[261]. Usually the implementation of the will is carried out by the heirs themselves indicated by the testator in the will based on Article 1133 of the RCC. However the testator can entrust the execution of the will to the executor (executor of the will). The latter can be any citizen or legal entity regardless of the presence or absence of any status in specific inheritance relations[262]. The appointment of an executor of a will is a particular testamentary order of the testator[263]. It must be contained in the testament following part 1 of paragraph 1 of Article 1134 of the RCC. The systematic interpretation of the civil law indicates that the legislator limited the range of executors of the will, in contrast to the heirs or beneficiaries. So, the RCC names an individual who can be an executor, a citizen which excludes the possibility of attracting foreign citizens or stateless people[264].

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[260] The scientists have expressed different opinions about the legal nature of this institution, characterizing it as a relationship of representation, assignment, etc. See the review of that in more detail, Shershenevich G.F. Civil law course. Edition 1901. Tula: Autograph, 2001.720p. Pp.710-712. // Шершеневич Г.Ф. Курс гражданского права. По изданию 1901г. Тула: Автограф, 2001. 720с. С.710-712.

[261] See more, Civil law: textbook: 2vol. Vol.2. / ed.S.A.Stepanov. 2nd ed. rev. and add. Moscow: Prospect, 2019. 928p. Pp.627-628. // Гражданское право: учебник: в 2т. Т.2./ под ред. С.А.Степанова. 2-е изд. перераб. и доп. Москва: Проспект, 2019. 928с. С.627-628.

[262] This rule has existed in national civil law for a long time. See more in detail Serebrovsky V.I. Essays on Soviet inheritance law (ed.1953) / Serebrovsky V.I. Selected Works. M.: Statut (in the series "Classics of Russian civil law"), 1997. 567p. P.163. // Серебровский В.И. Очерки советского наследственного права (изд.1953г.)// Серебровский В.И. Избранные труды. М.:«Статут» (в серии «Классика российской цивилистики»), 1997. 567с. С.163.

[263] See Civil law. Textbook. Part III / Ed. A.P.Sergeev, Y.K.Tolstoy. M.: Prospect, 1998. 592p. P.546. // Гражданское право. Учебник. Часть III./ Под ред. А.П.Сергеева, Ю.К. Толстого. М.:ПРОСПЕКТ, 1998. 592с. С.546.

[264] See more Civil law: textbook: 2vol. Vol.2. / Ed. S.A.Stepanov. 2nd ed, rev. and add. Moscow: Prospect, 2019. 928p. P.627. // Гражданское право: учебник: в 2т. Т.2./ под ред. С.А.Степанова. 2-е изд, перераб. и доп. Москва: Проспект, 2019. 928с. С.627.

Also see Zaitseva T.I., Krasheninnikov P.V. Inheritance law in notarial practice: comments (Civil Code of the Russian Federation, Part 3, Section V): guidelines, samples of documents, regulations, judgments: practical guide / Zaitseva T.I., Krasheninnikov P.V.; Federal Notarial Chamber of Russia. Center for

According to part 3 of paragraph 1 of Article 1134 of the RCC the person who is to execute the will after the opening of the inheritance shall express the consent in the following ways. This can be a handwritten signature of an individual or an authorized person of the organization on the will, submitting an application to a notary for consent before the opening of the inheritance or within one month from the date of commencement of the inheritance as well as by actions meaning the performance of their functions. If the executor of the will can't fulfill these obligations due to various circumstances, it may be released from these obligations by a court decision issued at the request of the executor or heirs.

The executor's powers are not limited by law. The executor shall take any measures necessary to execute the will to ensure the transfer of the inherited estate to the heirs due to them following the testator's will expressed in the testament. Article 1135 of the RCC provides an approximate list of measures that the executor is entitled to take to ensure the completeness and safety of the inherited estate and the fulfillment of the testator's will: to receive debts owed to the testator in the form of funds or other property, to take measures to protect or manage the estate independently or through a notary (transfer estate for custody or establish a fiduciary administration contract), require the heirs to fulfill a testamentary refusal or a testamentary laying or take measures to complete the testamentary assignment. The will may also provide for other powers of the executor. Thus the executor may be charged with the obligation to ensure the payment of the testator's debts, protect the interests of the unborn heir by will, etc. According to part 1 of paragraph 1 of Article 1135 of the RCC the powers of the executor are confirmed by a Certificate issued to him/her by a notary. Based on this paper the executor conducts business related to the execution of the will on his/her behalf, but in the interests of the heirs. It can act in court, including as a plaintiff (for example, to recover property from

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Notary Research, 5th ed., rev. and add. M.: Wolters Kluver, 2007. 800p. Pp.139-140. // Зайцева Т.И., Крашенинников П.В. Наследственное право в нотариальной практике: комментарии (ГК РФ, ч.3, разд.V), метод.рекомендации, образцы док., норматив.акты, судеб.практика: практ.пособие/ Т.И. Зайцева, П.В.Крашенинников; Федер.нотар.палата России. Центр нотар.исслед.5-е изд., перераб. и доп. М.: Волтерс Клувер, 2007. 800с. С.139-140.

the testator's debtors) or as a defendant (for example, upon filing a claim against it for reimbursement of expenses caused by the testator's death as well as the costs of protecting and managing the inheritance according to the requirements of the testator's creditors, etc.), to administer with any state authorities as well as in relations with the participation of legal entities and citizens according to instructions specified in the will[265].

Paragraph 2.1. of Article 1135 of the RCC provides explicitly for the possibility of the testator to indicate the powers of the executor to perform legal and actual actions in connection with the establishment of an inheritance foundation. In the absence of the practice of establishing a large number of inheritance foundations, it is difficult to assume what actions the executor is entitled to perform in connection with the establishment of an inheritance foundation since the main legal actions for creating an inheritance foundation and transferring the bequest to it are performed by a notary. After the state registration of the inheritance foundation all managing this estate will be carried out by the foundation's governing bodies. Probably only the executor can perform some actual actions during the establishment of the inheritance foundation and the transfer of inheritance to it.

Regarding the terms of implementing the executor's activities, it should be indicated that they cannot exceed the total term of the inheritance case provided for by Article 1154 of the RCC. According to universal succession rule the transfer of inherited estate and the heirs' associated rights and obligations completes the inheritance relationship. After the end of the transfer of inheritance the executor's powers are considered terminated in connection with the achievement of the will's goals[266]. The inheritance procedure ends when the inherited estate passes to the

[265] See more, Rakitina L.N., Mozhaeva O.A. Notarial certification of wills. M.: FRPK, 2009.144p. P.65. // Ракитина Л.Н., Можаева О.А. Нотариальное удостоверение завещаний. М.: ФРПК, 2009. 144с. С.65.

[266] See Commentary on the Civil Code of the Russian Federation (educational and practical) / ed. S.A.Stepanov. 4th ed. Moscow: Prospect; Yekaterinburg: Institute of Private Law, 2015. 1616p. P.1032. // Комментарий к Гражданскому кодексу Российской Федерации (учебно-практический)/под ред. С.А.Степанова. 4-е изд. Москва: Проспект; Екатеринбург: Институт частного права, 2015. 1616с. С.1032.

heirs as new owners. The usual term for the transfer of inheritance is six months, which can be increased in some cases by three months. If the testator establishes a legacy or a testamentary assignment, this will be executed by the will. The law does not limit the term of such testamentary dispositions. Another approach is established in Germany[267].

Undoubtedly the execution of a will may require certain expenses (for example, the payment of a state fee for implementing various state actions - registration of an inheritance foundation, registration of the transfer of rights to estate, issuance of multiple certificates, property valuation, etc.). Expenses incurred by the executor of the will are reimbursed at the cost of the estate which is provided for in Article 1136 of the RCC. It can also receive remuneration from the estate only if it is provided for in the will itself[268].

2.3.2. The papers of the inheritance foundation.

In addition to the testament the Act only named other documents that shall confirm the testator's will to establish an inheritance foundation and perform its functions. Such documents are the Decision, the Charter, and the Conditions of the inheritance foundation[269]. The content of these papers is not disclosed in the law at all. Moreover the law speaks of them in Article 1124 of the RCC, dedicated to the actions of a notary to draw up a will, and not in the articles of the RCC devoted to the inheritance foundation as a non-profit organization.

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[267] See judgment of OLG Frankfurt am Main, dated October 15, 2010. https://duetrust.de/4472__trashed-3-11-4. Last access 03.11.2020. See also, Hüttemann R., Rawert P. Article 83 BGB / J.von Staudingers Kommentar zum Bürgerlichen Gesetzbuch: Staudinger BGB – Buch 1: Allgemeiner Teil: §§80-89 (Stiftungsrecht). Editor H.Roth. Neuarbeitung. Berlin: deGruyter Sellier. 2017. Unit 18.

[268] For example, in Germany the testator may provide various forms of remuneration for the executor. See Molitoris Kl. Die Verwaltung des Nachlasses durch mehrere Testamentsvollstrecker. Dissertation zur Erlangung des Doktorgrades. Aachen: Shaker Verlag. 2005. Pp.155-157.

[269] See more, Kalinova K.V., Kuropatskaya E.G. Changes in legislation: inheritance funds and organization of notarial activities./Notarial Bulletin. 2018. No.8. P.4. // Калинова К.В., Куропацкая Е.Г. Изменения в законодательстве: наследственные фонды и организация нотариальной деятельности./ Нотариальный вестникъ. 2018. №8. С.4.

i) The Decision on the establishment of the inheritance foundation.

Based on the general meaning of corporate law, concerning the Decision on the establishment of the inheritance foundation and approve its Charter, the testator and, accordingly, the notary may be more easily guided by similar provisions of civil law on the establishment of various foundations taking into account the peculiarities of the inheritance foundation. This circumstance indirectly indicates that the testator shall probably be guided by the common rules of the RCC about non-profit organizations in general and about foundations in particular which does not come close to disclosing the essence of the inheritance foundation as a legal entity.

Based on the general meaning of corporate law represented not only by companies but also by non-profit organizations the Decision and its Charter are standard papers with a known list of terms and conditions that must be contained in them. The law does not explicitly regulate the Decision regarding its content. Therefore the general rules for drawing up this document, contained in paragraph 3 of Article 50.1 of the RCC, shall be applied. The Act provides for the inclusion in the Decision on the establishment of a legal entity of information about that procedure, the approval of its Charter, the process and conditions for the formation of the organization's ownership, and the election (appointment) of the governing bodies of the legal entity. Usually in practice such a Decision is a short document containing a list of information about the non-profit organization being created, including the announcement of its creation in a specific organizational and legal form, the name of the organization, location and postal address, a description of the transferred property and its assessment, including money, people participating in governing bodies and other bodies of the legal entity, if necessary (approximately the same information should be contained in the Charter of a legal entity following paragraph 4 of Article 52 of the RCC). If necessary, the term for the creation of a legal entity may be indicated. Concerning the inheritance foundation, it can be created both indefinitely and for a specified period in accordance with the

Conditions following paragraph 1 of Article 123.20-1 of the RCC. The Decision on establishment of a legal entity usually approves the Charter and other necessary papers of the legal entity. It is signed by the participant(s). In the case of an inheritance foundation since the Decision is part of a notarized will, it is also subject to a notarization by paragraph 2 of Article 123-20.1 of the RCC.

ii) The Charter of the inheritance foundation.

The law gives more details regarding the Charter. In accordance with paragraph 4 of Article 50.1 of the RCC the Charter shall contain provisions on the Conditions, on the procedure, size, methods, and timing of the formation of the ownership of the inheritance foundation, people appointed to the governing bodies of the foundation, or on the procedure for determining such people. The name of the inheritance foundation shall contain the words "inheritance foundation". Following the same rule of the RCC the Charter and the Conditions cannot be changed after the establishment of the inheritance foundation, except for a change based on a judgment at the request of anybody of the foundation in cases where the management of the inheritance foundation under the aforementioned Conditions became impossible due to circumstances the occurrence of which during the creation of the foundation could not be assumed as well as if it is established that the beneficiary is an unworthy heir unless this circumstance was known at the time of the establishment of the inheritance foundation. Another rule in paragraph 4 of Article 52 of the RCC provides that the Charter of non-profit organizations shall also contain the subject and objectives of its activities which, probably, should be included in its Charter to avoid difficulties during state registration of the inheritance foundation. The special rules of the RCC provide that the Charter may contain the receipt of consent by the Supreme collegial body of the foundation or another body of the foundation approval for the transactions specified in the Charter in accordance with paragraph 6 of Article 123.20-2 of the RCC. That is reminiscent of the acceptance of large transactions, transactions with a particular type of property and assets, such as real estate, dealings with interested parties of

participants in governing bodies, provided for by corporate law concerning companies.

iii) The Conditions of managing of the inheritance foundation.

The most mysterious document in hierarchy of the foundation's papers is the Conditions. The law does not state anything specific about this document, other than that it should contain:

1) the provisions on the transfer of the estate of the inheritance foundation to beneficiaries or separate people, including the type, procedure, period, size, circumstances under which such a transfer can occur, as provided for in paragraph 4 of Article 123.20-1 RCC;

2) the provisions on the right of the governing bodies to appoint beneficiaries and separate people who can receive part of the property inherited by the foundation, which is also provided for by paragraph 4 of Article 123.20-1 of the RCC;

3) the conditions shall be brought to the people included in the governing bodies of the foundation and "may be disclosed to beneficiaries", as provided for in paragraph 6 of Article 123.20-1 RCC;

4) the possibility of publishing a report on the use of property following paragraph 9 of Article 123.20-2 RCC.

Considering these rules it could be concluded that this document is similar to the constituent and internal papers of companies in terms of the procedure for making decisions on the payment of dividends. Firstly there is a list of people who can claim to receive the estate, which resembles the closing of the list of shareholders on a specific date when the general meeting of shareholders decides to pay dividends following paragraph 3 of Article 42 of the Federal Act "On Joint Stock

Companies" (Федеральный закон «Об акционерных обществах»)[270] dated December 26, 1995, No. 208-FZ (ed. on November 04, 2019, as amended on April 07, 2020), (hereinafter referred to as the Act On Joint Stock Companies). Secondly the conditions under which such a payment can be made are named which corresponds to special legislation, in particular, Article 43 "Restrictions On The Payment Of Dividends" of the Act on Joint Stock Companies which prohibits the payment of dividends under certain circumstances, for example, when a company meets the signs of bankruptcy as well as practice approval of documents on the financial results of companies under which they can pay dividends[271]. Thirdly given the particular procedure for establishing an inheritance foundation it is logical to assume that future managers should be aware of the conditions of their activities which also resembles the rules of the Labor Code of the Russian Federation (Трудовой кодекс Российской Федерации), dated December 30, 2001, No. 197-FZ[272] (as amended on May 25, 2020) about familiarization of the employee by the employer with working conditions contained in Article 68 of this Code. Concerning beneficiaries this rule on familiarization with the Conditions makes sense only if these people are heirs with a compulsory portion who shall have the right to choose their status in inheritance relations: remain an heir with a compulsory portion or become a beneficiary of the inheritance foundation. Thus the Conditions shall be a paper of the inheritance foundation following which the Policy (rules) for the distribution of the assets of the inheritance foundation, including those formed from the activities of the foundation, shall be constructed in accordance with the testator's will, including the determination of people entitled to

[270] "Collection of the legislation of the Russian Federation", 01.01.1995, No. 1, Article 1. // «Собрание законодательства РФ», 01.01.1995, №1, ст.1.

[271] See more, Kashanina T.V. Business partnerships and companies: legal regulation of intra-firm activities. Textbook for universities. M.: Publishing group INFRA * M-KODEKS, 1995. 554p. Pp.235-240. // Кашанина Т.В. Хозяйственные товарищества и общества: правовое регулирование внутрифирменной деятельности. Учебник для вузов. М.: Издательская группа ИНФРА*М-КОДЕКС, 1995. 554с. С.235-240.

[272] "Collection of legislation of the Russian Federation", 07.01.2002, No.1 (part 1), article 3. // «Собрание законодательства РФ», 07.01.2002, №1 (ч.1), ст.3.

receive an individual property grant from the inheritance foundation, if the testator did not previously name them.

iv) Some issues about inheritance foundation's papers.

All of these papers (the will, the Decision, the Charter, the Conditions) are important for the establishment and functioning of an inheritance foundation. However, they cannot be called the constituent documents of the inheritance foundation in the full sense, since the common rule outlined in paragraph 1 of Article 52 of the RCC provides that the Charter approved by the founder is the constituent document for legal entities. At the same time, a special rule in part 2 of paragraph 5 of Article 1124 of the RCC states that the notary who manages the inheritance business shall transfer the Decision and the Charter of the foundation to the state authority for state registration. Whether it can be considered in this case that the Decision is a constituent document remains unclear since the law does not directly name it. However according to the rules of legal interpretation it is known that in the case of competition between general and special rules, preference is given to the special rule (*lex specialis derogate generali)*. Probably the answer to this question will have to be provided by the practice of applying this law and judicial practice.

A more critical problem seems to be the ratio of these documents in terms of their legal force and content mainly if after the death of the testator, discrepancies, inaccuracies, or contradictions are found in them[273]. If these papers' goals separate from different angles, it could get a reasonably coherent system of their "interaction" and what is essential for drawing up such serious documents. In short, it should look like this. The Decision is a confirmation of the testator's will to establish an inheritance foundation which in certain sense can be considered the title page of the rest of the package of these papers. The Charter is the primary document of this non-profit organization according to which the leading corporate

[273] This problem would not exist if the inheritance foundation were a lifetime foundation. It could have been possible to bypass or correct various imperfections in its "corporate life".

events of the foundation take place - the activities of the governing bodies and other bodies and officials of the foundation, carried out following their rights and duties, the implementation of the foundation's activities in accordance with certain conditions following from the Charter, forms, and methods of reporting and control over the governing bodies provided for in the Charter. The Conditions are a kind of its "investment declaration" and should provide for a list of the assets of the inheritance foundation and the rules for interaction with beneficiaries and separate people (if the testator is indicated - the definition of such people) regarding the distribution of the assets of the inheritance foundation, indicating the size, timing, type and forms of transfer of such property and specific circumstances in the presence of which such transfer will be made. The will as the first paper of the specified hierarchy should ideally include all the conditions and rules of these documents or contain precise references to them, limited to the Decision on the establishment of the inheritance foundation, people participating in the management bodies of the inheritance foundation, listing the transferred property, a list of beneficiaries and separate people, or terms for their determination. In such a ratio it will be possible to avoid friction between various participants in inheritance relations with the participation of the inheritance foundation. Apparently all of the above assumes just a tremendous amount of work by a notary or third-party lawyers to prepare drafts of these papers to ensure the correct operation of the inheritance foundation.

2.3.3. State registration of the inheritance foundation and transferring the estate.

As a matter of fact the actions of the testator's actions and the notary described above to draw up the relevant documents will be only preparatory in the process of establishing the inheritance foundation since the establishment of the inheritance foundation itself and the transfer of inherited estate to it will be carried out only after the death of the testator. As already mentioned, the leading work on the state registration of the inheritance foundation and support for transferring the estate to

the inheritance foundation is carried out by a notary. After the death of the testator notary takes the necessary actions in this direction which can be conditionally divided into two groups that again emphasize the dual nature of the inheritance foundation as a legal entity and as a forced heir.

i) Notarial acts.

The first group of efforts of a notary is associated with the establishment of an inheritance foundation, and is as follows:

1) From the moment of the opening of the inheritance, the notary invites the people indicated in the Decision, or people who can be determined in the manner established by the Decision, to join the governing bodies of the inheritance foundation. With the consent of these people to become a member of the governing bodies the notary shall send information about them to the authorized state body within three days[274]. If the person specified in the Decision refuses to join the management bodies of the inheritance foundation and it is impossible to form the governing bodies, the notary has no right to send an application to the authorized state body for the establishment of an inheritance foundation by paragraph 3 of Article 123.20-2 RCC[275].

2) Inform people who are members of the governing bodies of the inheritance foundation and beneficiaries about the Conditions following paragraph 6 of Article 123.20-1 RCC.

3) Sending to the territorial body of the Ministry of Justice one copy of the Decision together with its Charter and an Application for State registration of the inheritance foundation, no later than three working days from the date of the

[274] See more, Bespalov Y.F. Participation of a notary in the exercise of inheritance rights // Notary. 2014. No.8. P.9. // Беспалов Ю.Ф. Участие нотариуса в осуществлении наследственных прав // Нотариус. 2014. № 8. С.9.

[275] Some researchers believe that the notary has the right to postpone the performance of the specified notarial act for one year. It might be based on Part 4 of Article 63.2. of the Fundamentals of Legislation on Notaries. See in more detail, Kalinova K.V., Kuropatskaya E.G. Changes in legislation: inheritance funds and organization of notarial activities. / Notarial Bulletin. 2018. No.8. Pp.5-6. // Калинова К.В., Куропацкая Е.Г. Изменения в законодательстве: наследственные фонды и организация нотариальной деятельности./ Нотариальный вестникъ. 2018. №8. С.5-6.

opening of the inheritance case after the death of a citizen, based on paragraph 2 of Article 123.20-1, paragraph 5 of Article 1124 of the RCC.

The actions of the notary described in the first and second paragraphs must coincide. Then the notary shall perform the steps from the third paragraph. The law does not say anything about the responsibility of a notary or other people for exceeding these deadlines. It is also silent about any impact of a violation of these deadlines on the state registration of the inheritance foundation. The indicated terms are not preventive and their offense cannot be the basis for refusal of state registration of the inheritance foundation.

The second group of actions of a notary which should be considered in more detail is aimed at carrying out directly inheritance measures related to the identification of inherited estate, and as a result, transferring papers of the estate to the heirs[276]. The main actions are provided for by the Fundamentals of Legislation on Notaries and the RCC. The entire procedure is described in detail in a departmental act of a non-governmental nature - Guidelines for the registration of inheritance rights[277]. Briefly the inheritance process carried out by notaries must go through the following stages:

1) Opening inheritance proceedings, consideration, and evaluation of all inheritance documents currently available to the notary.

2) Establishment of heirs and their priority, inheritance rights, rights of third parties to inherited estate, legal claims of creditors of the testator.

3) Implementation of actions related to the determination of inherited estate, including establishing its location.

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[276] See more about the stages of notarial proceedings in Notarial law: Textbook / Ed. Prof. V.V.Yarkov. 2nd ed., Rev. and add. M.:Statut, 2017. 576p. P.152 and others// Нотариальное право: Учебник/ Под ред. проф. В.В.Яркова. 2-е изд., испр. и доп. М.: Статут, 2017. 576с. С.152 и далее.

[277] Approved by the decision of the Board of the Federal Notary Chamber of 03/25/2019, Minutes No. 03/19. See more, http://docs.cntd.ru/document/456043939. Last access 15.07.2020.

4) Implementation of measures associated with preserving inheritance-if necessary, protection, fiduciary administration of the inheritance.

5) Issue of title papers for inheritance after the expiration of the period of acceptance of the inheritance provided by law or testator. This is a Certificate of inheritance rights according to paragraph 3 of Article 123.20-1 of the RCC. Indeed the actions provided for in this paragraph can only be carried out after the state registration of the inheritance foundation.

The actions of the notary in paragraphs 3-5 need a more detailed explanation except for paragraphs 1 and 2, which contain the formal beginning of the inheritance process.

ii) Testator’s property and assets transferred to the inheritance foundation.

The actions of the notary on the actual determination of the inheritance, i.e., inherited estate, including its location, the absence of creditors' claims regarding this estate, and its transfer to heirs, go in parallel with legal verification of the possibility of inheritance of particular property following applicable law. In accordance with part 1 of Article 1112 of the RCC the estate includes things that belonged to the testator on the day the inheritance was opened, other property, including proprietary rights and obligations, the circulation of which is permitted by law. That also includes the rights of the testator arising from contracts to which the testator was a party, including labor rights (in terms of inheritance of the wages accrued during the work of the testator, but not paid to him); the right to receive funds awarded to the testator, but not received by him; obligations, including debts within the value of the inherited estate transferred to the heirs following paragraph 1 of Article 1175 of the RCC. According to parts 2 and 3 of this Article of the RCC rights and obligations that are inextricably linked with the personality of the testator, or the transfer of which by way of the estate is prohibited by current legislation as well as the personal non-proprietary rights of the testator, cannot be inherited. So, in particular, the inheritance does not include the right to alimony

and alimony obligations, rights, and duties arising from agreements on gratuitous use, orders, commissions, agency agreements, and others.

The law most generally refers to ownership and proprietary rights that can be objects of inheritance, similarly dealing with those rights that cannot be objects of inheritance[278]. For a complete understanding of the definition of inherited estate it is necessary to refer to the description of items of civil law, the turnover of which is allowed. According to Article 128 of the RCC the inheritance shall be referred the things among them money and securities, and also the other kinds of the property, including proprietary rights, uncertified securities, digital rights; the works and services; results of intellectual activities, and means of individualization equated to them (intellectual property); other non-material values[279]. From this list, the estate will not include objects of intellectual property and intangible benefits, since, as a rule, they are inextricably linked with the personality of a citizen[280].

Considering those mentioned above, it can be determined that any ownership allowed for inheritance can become the inheritance transferred to the inheritance foundation. Focusing on the goals of the inheritance foundation and world practice, it should assume that the relevant ownership will be one that can generate an individual income to ensure property grants to beneficiaries and separate people.

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[278] Some scholars point out that the testator is not obliged to provide evidence of ownership of this property at the time of the will. See in more detail, Vlasov Y.N. Inheritance law of the Russian Federation: general provisions, legal foundations, samples of standard documents: Study guide. 4th edition, addeed and revised. M.: Yurayt, 2000. 320 p. Pp.40-41.// Власов Ю.Н. Наследственное право Российской Федерации: общие положения, правовые основы, образцы типовых документов: Учеб.метод.пособие. 4-е издание, дополненное и переработанное. М.: Юрайт, 2000. 320с. С.40-41.

[279] That provision coincides with the German law. See J.von Staudinger. Kommentar zum Bürgerlichen Gesetzbuch mit Einführungsgesetz und Nebengesetzen. Erbrecht: §§2197-2228: (Testament 2, Testamentsvollstreckung) von Wolfgang Reimann. Neubearb., Berlin: Otto Schmidt/De Gruyter. 2016. Units 20-25 to §2205 BGB. See also, https://www.juris.de/r3/document. Last access 27.08.2020

[280] However, the last word belongs to judicial practice. So, cases of non-proprietary rights of testators are relatively common, for example, when exercising the right to privatize a dwelling (apartment), where the heirs contested the refusal to obtain ownership of this object on the grounds of the death of the testator. See paragraph 10 of the Review of Judicial Practice of the Supreme Court of the Russian Federation "No. 1 (2017), approved by the Presidium of the Supreme Court of the Russian Federation on February 16, 2017 // Bulletin of the Supreme Court of the Russian Federation, No. 1-3, 2018. / Бюллетень Верховного Суда РФ, №№1-3, 2018.

The law also draws attention to this aspect. So, following paragraph 3 of Article 123.20-1 of the RCC the ownership of the inheritance foundation is formed when the foundation is established, in the process of carrying out its activities as well as at the expense of income from the management of the assets of the inheritance foundation[281].

iii) Identification of the inherited estate.

In accordance with the legislation and notarial requirements, before the transfer of the estate the notary conducts a legal and factual identification of the suitability of this ownership to become an estate[282]. According to paragraph 3 of Article 1171 of the RCC to determine the composition of the inheritance, the notary searches (identifies) the inherited estate, which consists in the direction by the notary to various organizations or authorities of the requirements for providing legal information about the presence and belonging of specific things to the testator. Questions regarding the provision of answers to these inquiries of a notary are contained in the Fundamentals of Legislation on Notaries and other laws governing these areas of circulation of a particular ownership. For example, a notary can obtain information about the funds in the testator's bank accounts by sending a request to the appropriate bank. The latter shall be obliged to respond to the notary with the necessary documents attached based on part 8 of Article 26 of the Federal Act "On Banks and Banking"[283] (Федеральный Закон «О банках и банковской

[281] See more, Ananyeva K.Y., Khlystov M.V. Heirs and other individuals as participants in the inheritance relationship // Inheritance law, 2015. No.2. P.15. // Ананьева К.Я., Хлыстов М.В. Наследники и иные лица как участники наследственного правоотношения // Наследственное право, 2015. № 2. С.15.

[282] For example, one of the most frequent cases of verification of the legal possibility of property to be an inheritance may be the exclusion of the surviving spouse's share in joint property from the estate. For this, see the ruling of the Supreme Court of the Russian Federation dated 25.08.2009 No. 18-B09-54 // Judicial practice on notarial activities (2004-2009) / comp. E.Y.Yushkova. 3rd ed. M.: Infotropic Media, 2010. 504p. Par.13.2. // Судебная практика по вопросам нотариальной деятельности (2004-2009)/ сост. Е.Ю.Юшкова. 3-е изд. М.: Инфотропик Медиа, 2010. 504с. Пар.13.2.
See also, the Decision of the Judicial Collegium for Civil Cases of the Supreme Court of the Russian Federation dated February 28, 2017 No. 49-KG17-1 // Not published. See here, https://legalacts.ru/sud/opredelenie-verkhovnogo-suda-rf-ot-28022017-n-49-kg17-1/. Last access 02.08.2020.

[283] "Collection of the legislation of the Russian Federation", 05.02.1996, No. 6, article 492. // «Собрание законодательства РФ», 05.02.1996, №6, ст.492.

деятельности») dated December 02, 1990, No.395-1 (as amended on December 27, 2019). A similar procedure applies to real estate - information is provided by the regional body of the Federal Service for State Registration, Cadastre and Cartography under subparagraph 10 of paragraph 1 of Article 63 of the Federal Act "On State Registration of Real Estate"[284] (Федеральный Закон «О государственной регистрации недвижимости») dated July 13, 2015, No. 218-FZ (as amended on July 13, 2020). Concerning other assets, the notary sends inquiries based on Article 15 of the Fundamentals of the Legislation of the Russian Federation on Notaries. So, for example, information on road transport is provided by the regional body of the State Inspectorate for Road Safety of the Ministry of Internal Affairs of Russian Federation; information on the rights of participation in companies like its shares, the obligations of legal entities are provided by the companies or by an authorized registering body, for example, the Federal Tax Service, or by companies performing the registration (accounting and depository) functions of companies' obligations.

Given the diversity of ownership and the possible need to send a large number of inquiries to different organizations and possibly located in other regions of the country, the law established a deadline for identifying the composition of the inheritance no more than six months, and in some instances - no more than nine months from the date of opening the inheritance. After an appropriate check the specified estate is included in the inheritance by a notary.

iv) Acceptance of the inheritance.

According to paragraph 3 of Article 1153 of the RCC the acceptance of the estate by the inheritance foundation is carried out in the manner prescribed by clause 2 of paragraph 3 of Article 123.20-1 of the RCC which provides for the issuance of a Certificate of inheritance rights to the inheritance foundation by a notary. This Certificate is issued by a notary within the period specified in the Decision on the

[284] "Collection of the legislation of the Russian Federation", 20.07.2015, No. 29 (Part I), Article 4344. // «Собрание законодательства РФ», 20.07.2015, №29 (часть I), ст.4344.

establishment of the inheritance foundation, but no later than the period provided for in paragraph 1 of Article 1154 of the RCC according to which the inheritance can be accepted within six months from the date of opening the heritage, in exceptional cases not more than nine months as indicated above. If the notary fails to perform these duties, the inheritance foundation has the right to appeal against the notary's inaction in accordance with paragraph 3 of Article 123.20-1 of the RCC.

The Certificate of inheritance rights is considered to be the title certificate to the estate by the inheritance foundation as the heir [285]. After receiving this paper the inheritance foundation shall take the necessary steps to enter the inheritance. So, based on a Certificate of inheritance rights, the foundation has to perform registration actions for the transfer of ownership, if a particular type of asset requires this, or to take possession of other property.

v) Transfer of the rights on the inheritance.

It should be noted that under Russian law, there is a particular gap between the fact that the legal personality of an inheritance foundation arises after its state registration and the legal duty of the foundation to accept the inherited estate. The law contains a rule that the inherited estate belongs to the heir, regardless of the fact of ownership and even state registration following Article 1152 of the RCC. The jurisdiction of the Supreme Court of the Russian Federation has repeatedly confirmed this rule of the RCC[286]. Acceptance of the estate for the inheritance foundation is considered by the law to be the issuance by a notary of the inheritance foundation of a Certificate of the right to inheritance under clause 3 of Article 1153 and paragraph 3 of Article 123.20-1 of the RCC. The latter rule is

[285] See more, Tolstoy Y.K. Inheritance law. M.:"Prospect", 1999. 224p. P.79. // Толстой Ю.К. Наследственное право. М.:«Проспект», 1999. 224с. С.79.

[286] See paragraphs 34-38 of the Resolution of the Plenum of the Supreme Court of the Russian Federation "On judicial practice in inheritance cases" dated 05/29/2012 No. 9 (as amended on 04/23/2019) // "Rossiyskaya gazeta", No.127, 06.06.2012. / «Российская газета», №127, 06.06.2012.
Also see Determination of the Supreme Court of the Russian Federation No.5-B08-148, dated on 13.01.2009 // "Bulletin of the Supreme Court of the Russian Federation", 2009, No.10 / «Бюллетень Верховного Суда РФ», 2009, №10.

formulated too poorly and certainly needs an appropriate judicial interpretation or at least correction. Possession of a Certificate of the right to inheritance is not yet the duty of the inheritance foundation to accept this estate, because if the fact of that acceptance or the transfer of ownership of it is subject to state, technical, or legitimizing registration, then there is no responsibility of the heir to carry out these actions. It is officially considered the owner of the inheritance. However, with this approach, it will be difficult for the heir to exercise his/her rights as an owner. For example, since the entry in the Unified State Register of Real Estate real estate also has signs of publicity and public reliability according to which the owner of the property is considered to be the one who is included in this register as the owner[287]. Besides Article 1157 of the RCC does not provide for exceptions for the inheritance foundation in terms of refusal to accept the estate which further complicates the situation related to the acceptance of inheritance by the inheritance foundation, and in fact, with the acquisition of the property basis for the foundation's activities. Such a circumstance jeopardizes the existence of the inheritance foundation as a whole[288].

In my opinion, German law solves this issue in a more straightforward and very effective way. According to Article 84 of the BGB, if a foundation is recognized as legally capable only after the founder's death, then concerning the grants (inheritance) of the founder, it is considered that the foundation was formed before

[287] See more, Chubarov V.V. Issues of state registration of rights to real estate and transactions with it. // Problems of modern civil law: Collection of articles. M.: Gorodets, 2000.384p. Pp.152-155. // Чубаров В.В. Вопросы государственной регистрации прав на недвижимое имущество и сделок с ним. // Проблемы современного гражданского права: Сборник статей. М.: Городец, 2000. 384с. С.152-155.; Braginskyi M.I. Commentary on the Law of the Russian Federation "On state registration of rights to real estate and transactions with it." M.: Legal house "Yustitsinform". 1998. 64p. Pp.21-22. // Брагинский М.И. Комментарий к Закону Российской Федерации «О государственной регистрации прав на недвижимое имущество и сделок с ним». М.: Юридический дом «Юстицинформ». 1998. 64с. С.21-22.

[288] A similar problem exists with inheritance on several grounds, for example by will and in the presence of a compulsory portion of the heir. See for example, Zaitseva T.I. Judicial practice in inheritance cases. M.: Wolters Kluwer, 2007. 472p. Pp.206-208.//Зайцева Т.И. Судебная практика по наследственным делам. М.: Волтерс Клувер, 2007. 472с. С.206-207.

his/her death[289]. The inclusion of such a rule in Russian law has removed many controversial issues in the transfer of the inheritance. Also in this case it would be necessary to allow such types of registration of transfer of proprietary rights or registration of ownership transactions by a notary after receiving documents on state registration of the inheritance foundation. It makes sense that the inheritance foundation as a new subject of law will address the notary conducting "its" inheritance proceedings for obtaining a Certificate of inheritance rights. Such a decision will look logical, given the inheritance foundation's recognition as a forced heir, and can help avoid any disputes between the inheritance relationship participants. Also notaries are provided with all electronic and technical means for state registration of the foundation and transfer of inheritance[290]. For example, notaries have access to legal entities' registration systems and the register of transactions with real estate. These registration and notarial actions can be performed online in a short time[291]. As a result the inheritance foundation will be the actual owner of the bequest.

Another option may be prompted with the obligatory introduction of the procedure for the protection and management of inheritance (Article 1171 of the RCC), or its fiduciary administration (Article 1173 of the RCC) with the compulsory implementation of the subsequent registration of the right to inheritance for the estate by the people conducting these procedures, or again by a notary. These measures of the notary would significantly reduce the risks of non-acceptance of the inheritance by the inheritance foundation.

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[289] That is one of the best examples of the use of legal fiction. See more, Löhnig M. Erbrecht. 3., neu bearbeitete Auflage. München, Verlag Franz Vahlen. 2016. 144p. Units 63. P.17, Units 156. P.40; Hüttemann R., Rawert P. Article 84 BGB / J.von Staudingers Kommentar zum Bürgerlichen Gesetzbuch: Staudinger BGB – Buch 1: Allgemeiner Teil: §§80-89 (Stiftungsrecht). Editor H.Roth. Neuarbeitung. Berlin: deGruyter Sellier. 2017. Unit 6, 9 and others; Werner O., Saenger I. Die Stiftung: Recht, Steuern, Wirtschaft; Stiftungsrecht. Berlin: Berliner Wissenschafts-Verlag GmbH, 2008. P.178.

[290] See Notarial law: Textbook / Ed. Prof. V.V.Yarkov. 2nd ed., Rev. and add. M .: Statut, 2017. 576p. Pp.13-14, 214-254. // Нотариальное право: Учебник./ Под ред. проф. В.В.Яркова. 2-е изд., испр. и доп. Москва: Статут, 2017. 576с. С.13-14, 214-254.

[291] See Bryantseva O.V. The use of information technologies in notarial activities. // Bulletin of the SSLA. 2016. No. 1 (108). Pp.241-246. // Брянцева О.В. Использование информационных технологий в нотариальной деятельности. // Вестник СГЮА. 2016. №1 (108). С.241-246.

In addition a quantitative change in the inherited estate may occur during its search, identification and subsequent adoption by the inheritance foundation which is allocated by law or testator. In this case it would be appropriate to transfer control over the ownership of the inheritance foundation to a trustee or executor who would form the specified property on the date of transfer of the estate to the inheritance foundation.

The considered actions exhaust the role of the notary in the establishment of the inheritance foundation. As seen, from the attestation of a will and ending with the issuance of a Certificate of inheritance to the established foundation, that activity is invaluable. When performing these actions as well as with the proposed expansion of the notary's competence for state and other registration of inherited estate transferred to the inheritance foundation the notary has independent competence and the required powers to assess the necessity of their performance and legality, as well as the legality of the content of documents. Such notary powers are based on Article 5 of the Fundamentals of Legislation on Notaries, which says about guarantees of notarial activity and a notary's subordination only to the law[292]. In scientific literature is emphasized that a notary is a person authorized by the state, carrying out the activities on the principles of legality, independence, impartiality, discretion[293]. Thus the notary independently evaluates persons' legal capacity, the legality of the certified actions, and papers based on his expert assessment by Articles 15, 35, 43, 45 of the Fundamentals of Legislation on Notaries. In notarial practice the most complex transactions and documents subject to notarization are corporate events and inheritance cases. The legislation on the specified categories of notarial cases has undergone substantial changes in recent years. As mentioned earlier, new types of inheritance disposition have appeared in inheritance law, such

[292] Some authors qualify the notary activities as human rights and law enforcement. See Moiseeva O.V. Law enforcement practice of notaries in Russia. Abstract of dissertation of candidate of legal sciences. Nizhny Novgorod, 2019. 31p. Pp.24-25.// Моисеева О.В. Правореализационная практика нотариата в России. Автореферат дисс.канд.юрид.наук. Нижний Новгород, 2019. 31с. С.24-25.

[293] These principles belong to the Latin notary system, which includes the Russian notary, and given in the European Code of Notarial Professional Ethics. See more, https://www.eesc.europa.eu/sites/default/files/resources/docs/061-private-act.pdf. Last access 14.10.2020.

as inheritance contract and joint will. These documents are subject to notarization based on Articles 1118, 1124, 1125 of the RCC. That once again emphasizes the importance and necessity of the stability of inheritance relations. Even with the standard certification of documents, the importance of a notary can hardly be overestimated. Their role often becomes more critical when a complex of notarial actions is carried out when establishing an inheritance foundation.

vi) Challenging the notarial actions.

Any violated rights of interested parties following Article 11 of the RCC are subject to judicial protection; therefore, the notary's actions to establish an inheritance foundation can be challenged by participants in inheritance relations[294]. Civil law provides for two types of violations of a notary:

1) In case of non-fulfillment or improper fulfillment by a notary of its obligations to establish an inheritance foundation, an inheritance foundation may be made based on a judgment at the request of the executor or beneficiary in accordance with part 3 of paragraph 2 of Article 123.20-1 RCC. The grounds for such a claim may be deliberate incorrect preparation of papers for state registration, delay in the preparation and transfer of such documents to a state authority, etc.

2) The notary's actions to establish an inheritance foundation may be challenged by the beneficiaries of the inheritance foundation, the executor or heirs, if the notary violated the testator's instructions regarding the establishment of the inheritance foundation and the Conditions contained in the will or the Decision based on part 5 of paragraph 2 of Article 123.20- 1 RCC. Probably the law provides for such actions that shall involve a notary's subjective decision regarding, for example, the list of the estate transferred to the inheritance foundation, the composition of people who are invited to join the governing bodies of the inheritance foundation, etc.

[294] See more, Osokina G. L. Lawsuit (theory and practice). M .: Gorodets, 2000.192p. Pp.25-30. // Осокина Г.Л. Иск (теория и практика). М.: Городец, 2000. 192с. С.25-30.

In both cases the inheritance foundation shall be established following the testator's last will. Unless other insurmountable obstacles are established, according to which the inheritance foundation shall be liquidated, it will be described later. Also this does not apply to cases of challenging the testator's will on various grounds by any participants in inheritance relations, for example, heirs under the law, compulsory heirs, or third parties, for example, the testator's creditors, when the very basis for the establishment of an inheritance foundation as a will may be invalidated[295].

2.3.4. Annulment of the inheritance foundation.

For the annulment (or liquidation) of the inheritance foundation the law provides for some features that do not apply to other non-profit organizations. The general rules on annulment of legal entities provided for by the RCC and the Act on Non-Commercial Organizations are applied to inheritance foundations, taking into account the effect of the special rules of the RCC on inheritance foundations. So, for example, a feature of the annulment of the inheritance foundation is the determination of the path of the ownership of the inheritance foundation remaining after its abolition following part 2 of paragraph 7 of Article 123.20-1 of the RCC. It must be distributed among the beneficiaries by their rights established by the Conditions.

As mentioned earlier, the annulment of the inheritance foundation as any non-profit organization, with some exceptions, can only be carried out forcibly, that is, by a court[296]. The reasons for the annulment of the inheritance foundation can be divided into general and particular. Prevailing circumstances are those that are prescribed by law for all foundations under paragraph 2 of Article 123.20 of the

[295] See for more information on the grounds for invalidating a will, Civil law: a textbook for bachelors. V.2. / Ed. V.L.Slesarev. Moscow: Prospect, 2016. 768p. Pp.626-627. // Гражданское право: учебник для бакалавров. Т.2 / отв.ред. В.Л.Слесарев. Москва: Проспект, 2016. 768с. С. 626-627.

[296] Because of the judicial order of annulment of the foundation, some scholars call it the most "unapproachable" organization. See for example, Civil law: textbook: 2vol. Vol.1. / Ed. S.A. Stepanov. 2nd ed, rev. and add. Moscow: Prospect, 2017. 704p. P.127. // Гражданское право: учебник: в 2т. Т.1. / под ред. С.А.Степанова. 2-е изд., перераб. и доп. Москва: Проспект, 2017. 704с. С.127.

RCC. They are described in Chapter 1 of the thesis. So here will be focused only on additional (exceptional) grounds for annulment the inheritance foundation.

i) Additional grounds for annulment.

Exceptional grounds for the annulment of the inheritance foundation are provided by Part 1 of paragraph 7 of Article 123.20-1 RCC. These conditions are:

1) The time limit before which the inheritance foundation was created. The expiration of the "life" of the inheritance foundation is not a common reason for the annulment of legal entities in general and foundations in particular. However it is provided for by paragraph 2 of Article 61 of the RCC. To implement such a condition for the annulment of the inheritance foundation that must be provided for in the will and documents of the inheritance foundation. It is not clear why the legislator specifically named this reason for the annulment of inheritance foundations if it is enshrined as a general rule for all legal entities. In any case the authorized state body, which is the appropriate territorial authority of the Ministry of Justice of Russian Federation, shall initiate the procedure for liquidating the inheritance foundation regarding the expiry of the period of the inheritance foundation's activity by going to court.

2) The occurrence of the circumstances specified in the Conditions. The list of such events can probably be pervasive, from the distribution of all inherited estate transferred to the inheritance foundation to the death of beneficiaries and individuals, if such are only individuals. Obviously in this case it will be necessary to be guided only by the last testator's will indicated in the testament and other documents of the inheritance foundation.

3) The impossibility of forming the governing bodies of the foundation in accordance with paragraph 4 of Article 123.20-2 of the RCC. This reason is fraught with irreparable legal nonsense if it is strictly followed the letter of the law. So if it is impossible to form the governing bodies of the inheritance foundation within a year from the day a need for their formation arises that can be expressed in the

absence of a quorum in the foundation's collegial bodies, the lack of a sole executive body, the inheritance foundation is subject to an annulment based on paragraph 7 of Article 123.20-1 of the RCC at the request of the beneficiary or an authorized state body (for this reason, the annulment of the inheritance foundation is allowed at the request of a new entity - the beneficiary, which seems justified from protecting the interests of the latter). However the procedure for the formation of governing bodies directly depends on the possibility of recognizing the inheritance foundation as a subject of civil law, that is, its state registration. After a citizen's death the notary calls for people who shall join the governing bodies of the inheritance foundation following paragraph 1 of paragraph 3 of Article 123.20-2 of the RCC. In the absence of the consent of these people or their refusal, the notary is not entitled to send an application to the authorized state body for the establishment of an inheritance foundation according to clause 2 of paragraph 3 of Article 123.20-2 of the RCC. Consequently the inheritance foundation cannot be registered as a legal entity. Paragraph 4 of Article 123.20-1 of the RCC refers to the annulment of the inheritance foundation which has not yet been established and the fulfillment of its obligations by the sole executive body of the inheritance foundation (if there is such a body). That is not possible since the annulment procedure can only be carried out about a created legal entity, i.e., having a state registration. Undoubtedly it is not possible to speak of the annulment of the inheritance foundation, but only about the unavoidable impossibility of its establishment, since the indicated period is restrictive. That means that the *status quo* of the inheritance foundation cannot be restored. It may be necessary to settle this conflict at the legislative level, and in case of impossibility of state registration of inheritance foundation (only this can be discuss!) for the indicated reasons, to impose on the notary the obligation to refuse to perform the notarial act of registering the inheritance foundation based on clause 1 of paragraph 1 of Article 48 of the Fundamentals of the Legislation of the Russian Federation on Notaries, or to provide for the possibility for an interested person to apply to the court for such a decision.

ii) Remaining ownership.

After the annulment of the inheritance foundation the remaining ownership is subject to transfer to the beneficiaries in proportion to the volume of their rights to receive property or income from the foundation's activities, if the Conditions do not provide for other rules for the distribution of the remaining ownership, including its transfer to people who are not beneficiaries. Without the possibility of identifying people to whom the ownership remaining after the annulment of the inheritance foundation is subject to transfer, following the judgment, such property is subject to transfer to the ownership of the Russian Federation as escheat property based on paragraph 7 of Article 123.20-1 of the RCC. The procedure for the annulment of the inheritance foundation like any other legal entity is being completed after entering information about its termination in the Unified State Register of legal entities under paragraph 9 of Article 63 of the RCC.

2.4. The inheritance foundation’s system of the governing bodies.

i) General.

The formation of the governing bodies of the inheritance foundation is an essential point, especially when the foundation is established. There is no other legal entity that is so critical in the formation of management. The law linked the possibility of forming the governing bodies with the case of the existence of the inheritance foundation itself.

When establishing an inheritance foundation, before the notary sends an application for state registration of an inheritance foundation to the authorized state body, specified in paragraph 4 of clause 2 of Article 123.20-1 of the RCC, the notary proposes to the people determined in the manner prescribed by the Decision, become a member of the governing bodies of the inheritance foundation in accordance with paragraph 3 of Article 123.20-2 of the RCC. If they refuse or the procedure for determining these people does not allow the formation of the

governing bodies, the inheritance foundation cannot be established[297]. In this case the notary is not entitled to send an application for state registration to the registering authority following clause 2 of paragraph 3 of Article 123.20-2, clause 2 of paragraph 5 of Article 1124 of the RCC, part 4 of Article 63.2 of the Fundamentals of the Legislation of the Russian Federation on Notaries. Following paragraph 4 of Article 123.20-2 of the RCC, the inheritance foundation is subject to annulment at the request of the beneficiary or an authorized state body if it is impossible to form the governing bodies of the inheritance foundation within one year from the day the need arises to establish the inheritance foundation's bodies.

As can be seen, the Act is very strict about forming the governing bodies of the foundation which should correspond to the testator with a similar attitude to the personal selection of their participants or special rules for their formation. At the same time it should be pointed out that the law does not impose any special requirements for the qualifications, work experience, education, or business reputation of people who are offered to take up appropriate positions in the management of an inheritance foundation as it is for example in organizations related to the financial sector: banks, investment or insurance companies, and others[298]. The only restriction that the law provides is the prohibition of beneficiaries to be the sole executive body or a member of the collective executive body of the inheritance foundation following paragraph 1 of Article 123.20-2 of the RCC. Also the possibility of the beneficiary's participation in the composition of the Board of Trustees is controversial, since that paragraph of Article 123.20-2 of the RCC establishes the potential of the beneficiary's participation only in the Supreme collegial body of the inheritance foundation providing for the presence of

[297] This is a kind of legal conflict which will be considered further in the paragraph on annulment of the inheritance foundation.

[298] The most stringent requirements are the law and the supervisory authority - the Central Bank of Russian Federation sets out to the heads of banks in Article 11.1., clause 1 of part 1 of Article 16 of the Federal Act "On Banks and Banking Activities".

a Supreme collegial body and a Board of Trustees of the inheritance foundation[299]. It is worth noting that the law does not provide for the possibility of separate people participating in any of these bodies of the foundation.

The replacement of the members of the collegial bodies of the inheritance foundation and the person exercising the powers of the sole executive body is carried out in the manner prescribed by the Charter. The latter may provide for the procedure for determining the members of the collegial bodies of the foundation and the person exercising the powers of the sole executive body of the inheritance foundation, in the event of their retirement, including the provision of sub-appointment of these people from an individual list in accordance with paragraph 4 of Article 123.20-2 RCC. It should also be noted that based on the requirements of part 5 of Article 123.20-1 of the RCC, the Charter, the Conditions cannot be changed after the establishment of the inheritance foundation, except for changing the Charter and Conditions based on a judgment at the request of anybody of the foundation in cases where the management of the inheritance foundation on the aforementioned conditions became impossible due to circumstances that could not have been expected to arise when the foundation was established as well as if it is found that the beneficiary is an unworthy heir unless this circumstance was known at the time of the establishment of the inheritance foundation. Thus its Charter becomes extremely important in forming the foundation's governing bodies, since, unlike companies, it will be impossible to change the Charter by participants in this case due to the law and the absence of the founder. This once again testifies to the fact that the testator shall very carefully and in detail describe all the issues of the formation of governing bodies, both in the Charter and in terms of qualification requirements for people applying for positions in the foundation's governing bodies

[299] Some authors found these conditions reasonable based on research from a large number of foundations. For example, see more, B.McAllister & A.Allen. The Role of Founder and Other Family Participation on US Private Foundation Efficiency // Financial Accountability & Management, 33(1), February 2017. Pp.58-60.

or the procedure for determining them[300]. Such testator's powers as the founder of the inheritance foundation are provided by paragraph 4 of Article 50.1 of the RCC. Still, here it will be necessary to be guided by his/her life experience which may be insufficient. Indeed the inheritance foundation as a tool for managing valuable assets with a high value requires high-quality management and high competence of members of the governing bodies, which are usually characteristic of large companies, and fixing such requirements for top-level managers an inheritance foundation is a very time-consuming and meticulous work.

The RCC provides for a general structure for the management of the general foundation and consists of the following system of the governing bodies according to Article 123.19 of the RCC:

1) Board of Trustees;

2) The Supreme collegial body;

3) The sole executive body or the collegial executive body, or the sole executive body and the collegial executive body.

For comparison, paragraph 3 of Article 7 of the Act on Non-Profit Organizations refers only to the Board of Trustees as the body of the foundation, also providing in paragraph 4 of this Article that separate Acts can establish the structure of the governing bodies of certain types of foundations.

Concerning the inheritance foundation, the Act provides that its structure of governing bodies depends on the testator's instructions, expressed in the Charter. It follows from the interpretation of the law that the management system of the inheritance foundation does not necessarily have to correspond to the structure of the general foundation's governing bodies. Under part 2 of Article 123.20-2 of the RCC the Charter may provide for the creation of a higher collegial body and a

[300] That is also important because the accountability and turnover of the foundation's management bodies is difficult compared to companies. See for example, Charles A.Cain. A member of a foundation? // Trusts & Trustee, 2007, Vol.13, No.5. Pp.169-170.

Board of Trustees, but their presence is not mandatory, unlike general foundations. By Part 1 of this Article of the RCC only the formation of a sole executive body is required (although it is hardly possible to draw a firm conclusion about this from the wording of the law in favor of the obligatory collegial executive body of the foundation). In my opinion, the creation of a collegial executive body of the inheritance foundation is also optional. In addition, taking into account the requirements of Article 123.20-2 of the RCC, similar governing bodies can be created in the inheritance foundation. The Act does not say anything else about the powers and structure of them.

Moreover the competence of the governing bodies of the inheritance foundation is also not disclosed by law. Hence it is evident that, in this case, the competence of the governing bodies of the general foundation should also be applied to the relevant bodies of the inheritance foundation, except in cases of special instructions from the RCC about certain powers of the inheritance foundation's management bodies.

2.4.1. The Board of Trustees.

If the Board of Trustees of the inheritance foundation is established based on the foundation's Charter, then it will exercise general supervision over the foundation's activities and other bodies of the foundation in accordance with paragraph 4 of Article 123.19 of the RCC. The specified provision of the RCC provides for the general supervisory powers of this body over any governing bodies of the inheritance foundation which indicates its preferred position among other governing bodies of the inheritance foundation. The Board of Trustees of the Foundation oversees:

- conducting the foundation's activities;

- making decisions by different governing bodies of the foundation;

- ensuring the execution of decisions of the governing bodies;

- using the foundation's funds;

- the foundation's compliance with legislation.

The competence of the Board of Trustees may include consent to certain types of transactions made by the inheritance foundation if such authority of the Board is enshrined in its Charter based on clause 6 of Article 123.20-2 of the RCC.

However the Act does not endow the Board of Trustees with any control or executive functions to respond to certain shortcomings in the work of the inheritance foundation, including termination of the powers of members of any governing body. That is probably also the responsibility of the founder and relates to the quality of the preparation of the inheritance foundation's constituent documents which also complicates the testator's task.

As a general rule the Board of Trustees acts voluntarily (free of charge). It may be due to a particular social status of the members of the Board, or the special significance of the foundation itself. However paragraph 5 of Article 123.20-2 of the RCC states that the Conditions may provide for the payment of remuneration to members of any governing bodies of the inheritance foundation.

2.4.2. The Supreme collegial body.

The law does not explicitly define the competence and procedure for the formation of the Supreme collegial body of the inheritance foundation which also makes it possible to use the provision of the RCC on the competence of this body of the general foundation. Thus according to paragraph 1 of Article 123.19 of the RCC the exclusive competence of the Supreme collegial body of the inheritance foundation will be applied, unless otherwise provided by Charter:

- the determination of the priority directions of the inheritance foundation, the principles of formation and use of its ownership;

- the construction of other governing bodies of the inheritance foundation and the early termination of their powers, except for the Board of Trustees and executive bodies of the inheritance foundation;

- the approval of annual reports and accounting (financial) statements of the foundation;

- the making decisions on the foundation's establishment of business entities and (or) on the foundation's participation in them, except for cases when the Charter makes decisions on these issues within the competence of other collegial bodies;

- the making decisions on establishing branches and (or) opening representative offices;

- the approval of transactions made by the foundation in cases stipulated by law or the Charter.

In contrast to the general foundation a change in the inheritance foundation's Charter cannot be attributed to the competence of this body, since, as previously described, changing the Charter is prohibited, except for specific cases in accordance with paragraph 5 of Article 123.20-1 of the RCC. The Act or the Charter of the inheritance foundation may refer to the exclusive competence of the Supreme collegial body of the foundation to make decisions on other issues by paragraph 1 of Article 123.19 of the RCC. In certain sense this reflects the activities of the general meeting of participants (shareholders) in companies or the Board of Directors (with a three-tier system of governing bodies in a joint-stock company/AG or LLC/GmbH) which also form the strategy of companies, create executive governing bodies and approve essential financial and accounting papers[301].

[301] See more, Ph.Merle, A.Fauchon. Droit commercial. Societes commerciales. 7e edition. Paris: Dalloz. 2000. 895p. Pp.498-499; Y.Guyon. La Societe anonyme. Paris: Dalloz, 1994. 127p. Pp.40-49; Berens P. Legal status of partnerships and companies. Business law.//Grundlagenwerk zum Deutsch Zivil- und Wirtschaftsrecht. Moskau:Verlag Beck, 2001. 336p. Pp.274-276; Mogilevsky S.D. Joint Stock Companies. Series “Commercial Organizations: Commentary, Practice, Acts”. M.: Delo, 1998. 536p. P.98 //

A person or legal entity can act as a member of the collegial body of the inheritance foundation. The beneficiary may participate in the work of this management body of the inheritance foundation on an ongoing basis following paragraph 1 of Article 123.20-2 of the RCC. Thus the Supreme collegial body of the inheritance foundation carries out general management of the activities of the inheritance foundation with the possible participation of the heirs of the founder, if this is provided for by the documents of the inheritance foundation. In this case the beneficiaries can participate in running the inheritance foundation in a certain way and adjust their activities in their interests. That also seems quite reasonable and justified.

2.4.3. The executive bodies.

The Act provides for the possibility of any combination of options with the executive bodies of the inheritance foundation. These can be: 1) only the sole executive body or 2) the sole and collegial executive bodies, or 3) only the collegial executive body. A person or legal entity may act as members of any executive body of the inheritance foundation. The participation of an individual in a governing body is a common practice for any legal entity. The activity of a legal entity (and the law does not stipulate whether it should be a company or non-commercial organization) as a member of a governing body is unusual for a collegial body of an inheritance foundation since an individual authorized by this organization will still represent the interests of a legal entity. In my opinion, given that the inheritance foundation will be established to manage large fortunes, and in this sense, it should be similar to the level of corporate governance of companies, so it would be logical to apply existing company management practices to it.

Могилевский С.Д. Акционерные общества. Серия «Коммерческие организации: комментарий, практика, нормативные акты». М.: Дело, 1998. 536с. С.98.; Commentary to the Federal Act "On Limited Liability Companies" (itemized)./Chief-ed. Doctor of Legal Science V.V. Zalesskyi. M.: Law firm KONTRAKT; INFRA-M, 1998. 240p. P.118. // Комментарий к Федеральному закону «Об обществах с ограниченной ответственностью» (постатейный)./Рук. авт.колл. и отв.ред. д.ю.н. В.В.Залесский. М.: Юридическая фирма КОНТРАКТ; ИНФРА-М, 1998. 240с. С.118.

Following part 2 of Article 123.19 of the RCC the sole executive body of the general foundation is elected by the Supreme collegial body. About the inheritance foundation the Act does not contain such a rule. According to part 1 of paragraph 3 of Article 123.20-2 of the RCC the testator has the right to independently determine specific people for positions in these bodies of the inheritance foundation or establish its system (or criteria) for selecting candidates for positions in the foundation's management system. The peculiarity of the appointment or development of conditions for appointment to positions in the governing bodies of the inheritance foundation or the development of requirements for their compliance to occupy a particular position lies in the essence of the inheritance foundation as an organization existing without a founder. There is a possibility of many unforeseen situations in which the change of foundation managers (members of governing bodies) can significantly complicate the foundation's activities. The only tool for resolving such issues is a detailed description of all processes occurring in the inheritance foundation in the constituent and other documents of the inheritance foundation. Along with selecting participants in the governing bodies, it is vital to ensure their turnover and accountability to the people (or their representatives) for whose interests the inheritance foundation is established.

The competence of the executive bodies of the general foundation is "residual". It includes the solution of issues that are not within the exclusive competence of the Supreme collegial body of the foundation in accordance with paragraph 2 of Article 123.19 of the RCC[302]. In the case of an inheritance foundation this will also be determined by the Charter based on the testator's will. In my opinion, the testator shall practically introduce in the Charter voluminous legislative rules regarding the competence, rights, duties, powers of executive bodies, which are set

[302] This also resembles the practice of regulating management in joint stock companies. See in more detail, Shitkina I.S. Reform of Russian corporate legislation: an analysis of the novels included in Chapter 4 of the Civil Code of the Russian Federation “On Legal Entities.” // Law and Business. Supplement to the journal "Entrepreneurial Law". 2014. No.4. Pp.4-5. // Шиткина И.С. Реформа российского корпоративного законодательства: анализ новелл, внесенных в главу 4 ГК РФ «О юридических лицах».//Право и бизнес. Приложение к журналу «Предпринимательское право». 2014. №4. С.4-5.

forth, for example, in the Acts on JSC or LLC, as well as taking into account the relevant judicial practice. Undoubtedly the competence and responsibility of the governing bodies of the inheritance foundation, as suggested above, cannot seriously differ from the competence and commitment of the governing bodies of companies, since the rules of corporate governance and control in companies are carefully formulated and checked many times, including in the prevention of various violations and abuse. It is sufficient to cite as an example the transaction of the inheritance foundation (probably the Act means dealings with the ownership of the foundation), the right to approve which, under the Charter, is proposed to be vested in the Supreme collegial or other body of the inheritance foundation by clause 6 of Article 123.20-2 of the RCC. Approval of this type of transaction, such as transactions with the interests of members of the executive bodies or the Board of Directors of companies, large transactions are well known to corporate law. Thus in the Act on Joint Stock Companies and the Act on Limited Liability Companies, separate chapters and articles devoted to the regulation of these transactions: Chapter X "Major Transactions" (Articles 78-79) and XI "Interest in the Company's Transaction" (Articles 81-84) of the Act on Joint Stock Companies, Articles 45 and 46 of the Act on Limited Liability Companies. In addition these types of transactions have been the subject of repeated review by the supreme judicial authorities as a result of which a common practice for all courts of qualification of such transactions has been developed[303]. That shows a good experience of legal (at the level of Acts, judgments), practical (at the level of local regulation within companies) regulation, the powers and responsibilities of governing bodies of companies in making these transactions, minimizing their negative consequences, and so on, as well as their broad scientific discussion[304]. In

[303] See for example, Resolution of the Plenum of the Supreme Court of the Russian Federation "On challenging major transactions and transactions in which there is an interest" (Постановление Пленума Верховного Суда РФ «Об оспаривании крупных сделок и сделок, в совершении которых имеется заинтересованность») dated 26.06.2018 №27/ "Rossiyskaya gazeta", No. 145, 06.07.2018. / «Российская газета», №145, 06.07.2018.

[304] See more, Commentary to the Federal Law "On Joint Stock Companies" with an article-by-article application of normative acts, judicial practice and samples of documents / Compiled by E.I.Tkachenko.

my opinion, the best option on the part of the legislator would not be to increase the amount of legislative material but to allow the analogy of the law and extend the effect of the relevant legal provisions in regulating corporate governance to inheritance foundations as provided for example in German or Austrian legislation.

For the first time the Act mentions the sole executive body of the inheritance foundation only when describing its obligation to keep the Charter and the amendments and additions made to it that are registered in the prescribed manner, the Decision, papers confirming the rights of the foundation to its property, a document, containing the Conditions, annual reports, accounting records, financial statements, minutes of meetings of the foundation's collegial bodies, reports of appraisers, conclusions of the audit commission (auditor) of the foundation, auditor of the foundation, state and municipal financial control bodies, judicial acts on disputes related to the management of the foundation, other documents stipulated by the law, the Charter and the Conditions. At the same time the Charter may provide for the storage of the documents specified in the first paragraph of this clause with a notary following the rules provided for by the Fundamentals of the Legislation of the Russian Federation on Notaries following paragraph 8 of Article 123.20-2 RCC.

2.4.4. Responsibility of governing bodies.

M.: Berator-Press, 2003. 896p. Pp.678-702. // Комментарий к Федеральному закону «Об акционерных обществах» с постатейным приложением нормативных актов, судебной практики и образцов документов/ Автор-составитель Ткаченко Е.И. М.: Бератор-Пресс, 2003. 896с. С.678-702.; The article-by-article commentary to the Federal Law "On Joint Stock Companies". 2nd edition, added and revised / Executive editor, Judge of the Supreme Arbitration Court of the Russian Federation, Corresponding Member of the Russian Academy of Natural Sciences Shapkina G.S. Moscow: Law Firm CONTRACT; INFRA-M, 2000. 380p. Pp.218-231. // Постатейный комментарий к Федеральному закону «Об акционерных обществах». Изд.2-е, дополненное и переработанное /Ответственный редактор судья Высшего Арбитражного Суда РФ, член-корреспондент РАЕН Шапкина Г.С. Москва: Юридическая фирма КОНТРАКТ; ИНФРА-М, 2000. 380с. С.218-231.

Also see Georg von Schnurbein and Tizian Fritz. “Foundation Governance Im Kontext Von Reputation Und Legitimation.” Zeitschrift Für Öffentliche Und Gemeinwirtschaftliche Unternehmen: ZögU / Journal for Public and Nonprofit Services, vol.35, no.1, 2012, pp.61–75. JSTOR, www.jstor.org/stable/41634750. Last access 07.10.2020.

People authorized to act on behalf of the inheritance foundation are obliged to compensate for the losses caused by them to the foundation at the request of members of its Supreme collegial body acting in the foundation's interests in accordance with Article 53.1. of the RCC. The said people bear the responsibility mentioned above if it is proved that in the exercise of their rights and the performance of their duties, they acted in bad faith or unreasonably, including if their actions (inaction) did not correspond to the usual conditions of civil turnover or the typical business risk. This provision is general and probably applies to members of the governing bodies of the inheritance foundation, since the law does not provide for any exceptions for the inheritance foundation.

In case of violation of the Conditions the beneficiary (but not separate people!) is entitled to claim compensation for losses incurred if this is provided for by the Charter. So the legislator's reference to the possibility of the Charter (therefore, according to the subjective will of the testator) to regulate the granting of such a right to one of the main subjects of inheritance relations - the beneficiary for whose interests the inheritance foundation is actually created, seems illogical. For example, in a similar institution as fiduciary management, a trustee who is understood as a professional manager shall be liable for losses incurred to the founder of the fiduciary management, and for lost profits to the beneficiary based on paragraph 1 of Article 1022 of the RCC. Thus civil law in a practically similar case establishes specific types of liability for people managing assets in the interests of beneficiaries[305]. In my opinion, such a subjective right as one of the practical tools for protecting his/her interests should unconditionally belong to the beneficiary as the only person for whom the law provides for the establishment of the inheritance foundation. This participant in inheritance relations, along with separate people, directly depends on the successful activity of the inheritance

[305] See more, Gorbunov V.V. Property trust agreement. Abstract of the dissertation for the degree of candidate of legal sciences. Yekaterinburg, 2000. 24p. Pp.22-23. // Горбунов В.В. Договор доверительного управления имуществом. Автореферат диссертации на соискание ученой степени кандидата юридических наук. Екатеринбург, 2000. 24с. С.22-23.

foundation. Also the rights of the beneficiary to obtain information about the activities of the inheritance foundation, the requirements for auditing the foundation are actually devalued since the information received does not bring any value to the beneficiary, and he/she will not be able to protect its interests. It is evident that in the interests of beneficiaries and separate people, the law should have allowed not only the right of these people to make appropriate claims protected by a force of action, but also provide for the possibility of using other means that reduce the risks of poor-quality or unfair management of the inheritance foundation. In this regard it should return to the opportunities of corporate governance and the responsibility of governing bodies provided for in companies[306].

2.5. Taxation of the inheritance foundation.

2.5.1. Taxation of transferred inherited estate.

Russian tax legislation considers inheritance of a particular property as income received by a person or a legal entity as an heir. However the tax regime for obtaining an estate by an individual or a non-profit organization (especially an inheritance foundation) is straightforward. According to paragraph 18 of Article 217 of the Part Second of the Tax Code of the Russian Federation (Налоговый кодекс Российской Федерации) (ed. July 13, 2020)[307], the income of individuals

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[306] See more for a review and classification of such measures for company executives, Tekutyev D.I. Legal means of increasing the efficiency of the members of the management bodies of companies. // Law and Business. Supplement to the journal "Entrepreneurial Law". 2014. No.4. Pp.40-47. // Текутьев Д.И. Правовые средства повышения эффективности деятельности членов органов управления хозяйственных обществ.//Право и бизнес. Приложение к журналу «Предпринимательское право». 2014. №4. С.40-47.; Management and corporate control in a joint-stock company: Practical Guide / Ed. E.P.Gubin. M.:Yurist. 1999. 248p. Pp.137-161. // Управление и корпоративный контроль в акционерном обществе: Практическое пособие/ Под ред. Е.П.Губина. М.: Юристъ. 1999. 248с. С.137-161.

See also about the measures of responsibility of CEOs, Ilyutchenko N.V. Disqualification of the CEO and its consequences. // Law and business. Supplement to the journal "Entrepreneurial Law". 2014. No.4. Pp.47-50. // Ильютченко Н.В. Дисквалификация генерального директора и её последствия. //Право и бизнес. Приложение к журналу «Предпринимательское право». 2014. №4. С.47-50.

[307] "Collection of the legislation of the Russian Federation", 07.08.2000, No. 32, article 3340. // «Собрание законодательства РФ», 07.08.2000, №32, ст.3340.

in cash and in-kind, received by inheritance from individuals, is not subject to taxation. According to paragraph 2 of Article 251 of the Tax Code ownership and proprietary rights that are transferred to non-profit organizations by will and inheritance as target revenues (i.e., the ownership has a target character for the maintenance of non-profit organizations and their statutory activities, received free of charge based on decisions of individuals) are not taken into account when determining the tax base. In other words, the estate transferred to a non-profit organization from an individual by will is tax-exempt. Thus the receipt of inherited property by an inheritance foundation in any form (monetary, in-kind) and value have no taxation by the law.

2.5.2. Taxation of inheritance foundation's payouts.

Beneficiaries of the inheritance foundation as well as separate people can be any participants in civil-law relations, with the exception of companies, i.e. citizens and non-profit organizations. In accordance with the Tax Code, these entities as taxpayers have different tax regimes: various taxes, objects of taxation, tax rates, terms of payment, etc. Beneficiaries have the right to receive all or part of the ownership of the inheritance foundation (in cash or in-kind). Consequently the taxpayer's receipt of funds or property from a third party, with the exception provided for by law (for example, in the case of inheritance), will be its income from the tax law.

Firstly it should be described the taxation regime of income received by the beneficiary-an individual in any form from the inheritance foundation which pays them following the foundation's constituent documents and Conditions. The most surprising thing is that the current tax legislation does not provide for this type of income. According to paragraph 10 of Article 208 of the Tax Code only the kind of income designated as other income received due to the taxpayer's activities in the Russian Federation is close to this definition of income. Beneficiary does not carry out any activity but receives payments established for it by the testator or following his instructions from the inheritance foundation. So, abovementioned type of

income in Tax Code does not precisely correspond to the income received by the beneficiary from the inheritance foundation.

Following paragraph 5 of Article 3 of the Tax Code taxpayers cannot pay taxes that are not established by the Tax Code or in the manner prescribed by it. That is impossible to apply the analogy of law in tax law as a branch of public law in contrast to civil law. It is also unthinkable to imagine that the state refuses to tax such incomes of individuals. Hence the most logical way out of this situation is an appropriate judicial interpretation of the tax law or the introduction of clarifying changes to the Tax Code. The only way to classify such income is to define it as a non-defined income received from sources of the Russian Federation under paragraph 1 of Article 209 of the Tax Code (although it is hardly possible to overcome the above with a simple departmental interpretation, in comparison with how the Ministry of Finance which is formally responsible for the implementation of tax policy, periodically clarifies tax rules). Thus if the payments of the inheritance foundation made by it in favor of the beneficiary are recognized as income of an individual, the general tax rate for such income will be equal to 13%[308].

However the Tax Code provides for income that is not subject to taxation, among which paragraph 8.2 of Article 217 of the Code provides for the number of payments in the form of charitable assistance provided by the legislation on philanthropic activities. In this case it becomes possible to qualify payments to the beneficiary as generous with full exemption from taxation with the correct drawing up of the will, constituent documents, and Conditions. There are legal prerequisites for this since such payments have no other *causa* than charitable assistance. If the

[308] According to new Amendments of the Tax Code of the Russian Federation entered into force on January 1, 2021, if annual income of the individual is equal to or more than 5 million rubles that tax will be 650 000 rubles (about 7200 euro) plus 15% on the amount of income exceeding 5 million rubles. See more, Federal Act About changes in Part two of the Tax Code of the Russian Federation in the part of taxation of income of individuals exceeding 5 million rubles for tax period, dated November 23, 2020, № 372-FZ// "Collection of the legislation of the Russian Federation", 30.11.2020, No.48, article 7625. // «Собрание законодательства РФ», 30.11.2020, №48, ст.7625.

redistribution of the estate of the inheritance foundation in favor of the beneficiary as the person indicated by the testator is taken into account, then, in this case, the inheritance foundation is a final heir, and such payments are also exempt from taxation. Unquestionably the last word in resolving these legal conflicts will belong to the judicial practice or the legislator. The tax of the beneficiary as non-profit organization is less controversial since the gratuitous provision of ownership in any form to these organizations has long been regulated by laws. That is the same case as when receiving estate by the inheritance foundation. Following paragraph 2 of Article 251 of the Tax Code, earmarked receipts, i.e., outstanding purpose receipts, to non-profit organizations for their maintenance and their statutory activities are not subject to taxation. In other words, they are not taken into account when determining the tax base of the organization on which the corresponding taxes are accrued. Such receipts include, in particular, donations that are recognized as such by civil law. According to Article 582 of the RCC the donation is a giving of a thing or right for generally useful purposes which can be made to citizens and non-profit organizations with an indication (for citizens) or without a trace (for non-profit organizations) about the nature of its use. Thus similar to the conclusions about an individual beneficiary, with the competent preparation of documents on the inheritance foundation, the beneficiary, receiving payments from the inheritance foundation as donations, will be exempt from taxation in that part.

2.5.3. Taxation of the activities of the inheritance foundation.

The inheritance foundation as a non-profit organization has differences in the taxation regime to companies. At the same time the Tax Code does not provide for any peculiarities in the taxation of the activities of the inheritance foundation in comparison with other types of non-profit organizations. Consequently the inheritance foundation has a general tax regime for non-profit organizations. It should be borne in mind that modern tax legislation in some issues equalizes the taxation regimes for companies and non-commercial organizations, applying the

same approach in this, which does not exclude contradictions in the application of the law, since there are many ambiguities regarding the tax burden, reporting, tax administration, interpretation and application of norms of tax legislation to the results of the activities of a non-profit organization[309]. In this sense it is still difficult to talk about tax incentives for inheritance foundations and, consequently, their increased comfort in tax planning. The investment attractiveness of the inheritance foundation also remains controversial, in contrast to European foundations or trusts in common law countries.

Implementing the inheritance foundation's "own" (as yet challenging to qualify) activities may be directly related to its tax regime. As is known, non-profit organizations do not pursue profit-making goals and carry out business activities only insofar as it is necessary to fulfill their statutory tasks. In this sense the inheritance foundation has some peculiarities. The main activity of the inheritance foundation will be a business activity. Otherwise the meaning of its creation will be lost, except for the passive distribution of inherited estate to beneficiaries. Unlike other non-profit organizations, the inheritance foundation has only one source of ownership formation - the inheritance transferred to it. That is prohibited from accepting contributions, donations, etc. free of charge from third parties.

Therefore the inheritance foundation is obliged to manage the received estate with an individual income. These features of the inheritance foundation lead to the fact that it may not use some of the privileges provided by the Tax Code to non-profit organizations. The latter can engage in entrepreneurial activities that generate income. For example, children's educational or medical institutions may provide additional paid services. Accounting of income received by such

[309] See more detail about the problems of formation and development of Russian tax law, Vinnitskiy D.V. Russian tax law: problems of theory and practice. SPb.: Publishing house "Legal Center Press", 2003. 397p. Pp.14-30,78-118,126-127 and others. // Винницкий Д.В. Российское налоговое право: проблемы теории и практики. СПб.: Издательство «Юридический центр Пресс», 2003. 397с. С.14-30,78-118,126-127 и другие.

organizations based on the results of business activities will be carried out separately from the main action – educational or medical ones.

Further such payment shall be directed to the implementation of the main activity, and only in this case the amount received will not be subject to income tax. Concerning the inheritance foundation, there is a contradiction, since it can most likely conduct only one activity – entrepreneurial one. Still the income from it is directed to payments to beneficiaries which is difficult to recognize as the main activity. That is the difference between the approaches of civil and tax laws. It is not enough for the Tax Code to acknowledge a legal entity as non-profit following civil law to qualify its taxation regime accordingly. The Tax Code does not tax an organization, but rather its activities under Articles 38 and 39 of the Tax Code which shall contain certain features that make it possible to minimize taxation compared to companies (or which shall correspond to the taxation of non-profit organizations)[310]. In the case of an inheritance foundation it will be difficult to predict how tax law and practice will tax it, since there are obvious difficulties in interpreting the activities of the inheritance foundation as non-commercial or as commercial, serving as auxiliary to the purpose (not activity) of assisting beneficiaries. For example, under the general tax regime, non-profit organizations do not pay tax on profits from statutory non-profit activities. About the inheritance foundation, it cannot be stated what can be called as a statutory non-profit activity.

Consequently the tax authority will have the right to count on the payment of income tax by the inheritance foundation in the amount and terms established for the companies. Tax legislation grants the right to the inheritance foundation as a non-profit organization to choose its tax regime which also depends on the

[310] See more, Erdelevskiy A.M. Commentary on the Part First of the Tax Code of the Russian Federation (itemized). M.:Yurist, 1999. 285p. Pp.73-80. // Эрделевский А.М. Комментарий к части первой Налогового кодекса Российской Федерации (постатейный). М.:Юристъ, 1999. 285с. С.73-80; Tsygankov E.M. Taxation issues in relation to constitutional civil and administrative legislation. Tver:"GM", 2001. 192p. Pp.103-108. // Цыганков Э.М. Вопросы налогообложения в соотношении с конституционным гражданским и административным законодательством. Тверь:«GM», 2001. 192с. С.103-108.

conditions stipulated by law. The inheritance foundation can use: 1) a general taxation system or 2) a simplified taxation regime[311].

i) General tax regime.

The general taxation regime is characterized by the fact that any legal entity, company or non-profit organization, pays all taxes stipulated by tax legislation in the manner prescribed by it. In this case there are the central (federal) taxes (income tax and value-added tax), and other (regional, local) taxes (have much lesser importance, reduced tax rates, less reporting, and other facilities).

Federal taxation

1) Income tax

The implementation of business activities by the inheritance foundation in the form of administration of the inherited estate and, accordingly, the receipt of income from this activity is a means to achieve another goal, for which the inheritance foundation is also created – to provide property maintenance to beneficiaries and individuals. The income of the inheritance foundation, in this case, should have a fundamentally different meaning from taxation than the profit of companies. Unquestionably the revenue received by the inheritance foundation in the implementation of its activities will be subject to the corresponding income tax following Article 246 of the Tax Code. Certain types of profit are not included in the taxable base for this tax, namely the profit received on a gratuitous basis to ensure statutory activities, i.e., inheritance, according to Article 251 of the Tax Code.

Legal reduction in the tax base for profit from an inheritance foundation as a non-profit organization can only be applied when keeping separate records of the foundation's income and expenses. That means that the receipt of an inherited

[311] See more, Gryaznova, A.G., Markina, E.V. Finance: 2nd ed., Rev. and add. Moscow: Finance and Statistics, 2012. 496p. Pp.240-246. // Грязнова, А.Г., Маркина, Е.В. Финансы: изд.2-е, перераб. и доп. М.: Финансы и статистика, 2012. 496с. С.240-246.

estate in the case of an inheritance foundation as a type of targeted financing shall be taken into account by the inheritance foundation separately from its income from business activities. Then the target profit, i.e., inheritance, can be excluded from taxation based on benefits for non-profit organizations which shall be confirmed by a report. Inappropriate incomes are of two types: 1) trade income from any activity involving the provision of services, performance of work, sale of goods, etc.; and 2) non-trade payment which are not related to the activities of the foundation, for example, receiving interest on a bank deposit, etc. The non-earmarked income of the inheritance foundation will form the basis of income tax. If the inheritance foundation does not make separate accounting of the specified income, then all income, excluding expenses, will be subject to income tax on a general basis, i.e., as for companies. If the inheritance foundation uses the received estate for other purposes, these incomes will also be included in the taxable base as non-operating income. When calculating income tax, enterprises engaged in non-commercial activities have the right to reduce revenue by the number of confirmed expenses, the list of which is specified in Article 253 of the Tax Code. Within a specified time frame (quarterly), the inheritance foundation is obliged to draw up tax returns and submit them to the tax authority at the place of its registration[312].

According to Article 284 of the Tax Code of the Russian Federation, paragraph 26 of Article 2 of the Federal Act "On Amendments to Parts One and Two of the Tax Code of the Russian Federation and Certain Legislative Acts of the Russian Federation" dated 30.11.2016 No.401-FZ (as amended on 27.11.2018)[313], paragraph 15 of Article 1 of the Federal Law" On Amending Part Two of the Tax Code of the Russian Federation "dated 03.08.2018 No. 301-FZ (as amended on 27.11.2018)[314] the

[312] See Voevodina N.A. and other. Non-profit organizations. Practical guide Voevodina N.A., Vyalshina A.A., Ermak T.L., Neveshkina E.V. Moscow: Practice book, 2012. 222p. P.53. // Воеводина Н.А. и др. Некоммерческие организации. Практическое пособие/ Воеводина Н.А., Вяльшина А.А., Ермак Т.Л., Невешкина Е.В. Москва: Научная книга, 2012. 222с. С.53.

[313] "Collection of legislation of the Russian Federation", 05.12.2016, No. 49, article 6844. // «Собрание законодательства РФ», 05.12.2016, №49, ст.6844.

[314] "Collection of legislation of the Russian Federation", 06.08.2018, No. 32 (part I), article 5094. // «Собрание законодательства РФ», 06.08.2018, №32 (часть I), ст.5094.

tax rate for income tax is 20%, with some exceptions, of which 2% of the tax amount is transferred to the Federal budget (3% - in the period 2017-2024), and 18% is transferred to the local budgets of the Russian Federation (17% - in the period 2017-2024).

2) Value-added tax (VAT)

The accrual and payment of VAT by non-profit organizations which corresponds to the inheritance foundation will be carried out in the usual manner as for any legal entity-taxpayer. The object of taxation by this tax is recognized as operations (transactions) of taxpayers on the sale of goods, products, works, and services following Article 146 of the Tax Code. It is still challenging to determine precisely whether the beneficiaries-legal entities of the inheritance foundation will be able to avoid paying this tax when transferring their property in kind, except for money and securities, since the law does not yet provide any benefits in this regard[315]. There is a list of certain types of activities of a non-profit organization according to which they are not subject to this tax. That is given in Chapter 21 of the Tax Code[316]. The total rate of this tax is 20% in accordance with paragraph 3 of Article 164 of the Tax Code. Also there are reduced rates of this tax (0%, 10%) provided for by this article of the Code, for activities carried out for socially useful purposes.

Local taxation

[315] Considering that this tax is one of the most "judicial" relationships between taxpayer companies and the Tax Service. See, for example, Shapovalov S.Y. How not to pay extra taxes and money? Moscow: TaxInform, 2003.168p. Pp.10-51. // Шаповалов С.Ю. Как не платить лишние налоги и деньги? М.: НалогИнформ, 2003. 168с. С.10-51.
See more, Judicial practice on tax disputes / compl. by B.O.Dzagoev. Moscow: TK Velby, Prospect Publishing House, 2006. 712p. Pp.354-371. // Судебная практика по налоговым спорам/сост.Б.О.Дзагоев. М.:ТК Велби, Изд-во Проспект, 2006. 712с. С.354-371. That circumstance may lead to disputes between the inheritance foundation and Tax Service.

[316] Look in more detail about these types of activities and the conditions for exemption from the payment of this tax, Krokhina Y.A. Tax Law: Textbook. Moscow: Higher education, 2005. 410p. Pp.331-343. // Крохина Ю.А. Налоговое право: Учебник. М.: Высшее образование, 2005. 410с. С.331-343.

The inheritance foundation shall also pay regional and local taxes on a general basis unless the local authorities establish some benefits about an object (a specific type of ownership) or a subject of taxation (any legal entities of significant public importance to the region, etc.), including full exemption from their payment[317]. The peculiarity of such taxes is that they are paid only if there is (registration) of the object of taxation on the territory of a specific region or municipality where the relevant authorities impose such a tax[318]. Among such taxes, there is a tax on the property of organizations established from January 01, 2019[319], only on real estate owned by the inheritance foundation and reflected in its accounting statements. The rate of this tax is 2.2% under article 380 of the Tax Code and can be reduced based on legal acts of regional authorities. The next local tax is the land tax and the object of such taxation can be not only the ownership of a land plot but also the possession of a land plot by a legal entity on a different property right. The rate of this tax is 1.5% of the cadastral value of the land plot following Articles 390 and 394 of the Tax Code. If the inheritance foundation has vehicles, they are subject to transport tax on a general basis[320]. The rate of this tax is established by local authorities depending on the type and power of the vehicle engine, based on the values provided for in Article 361 of the Tax Code.

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[317] See more about the powers of regional and municipal authorities to establish local taxes, Gadzhiev G.A., Pepelyaev S.G. Entrepreneur-Taxpayer-State. Legal positions of the Constitutional Court of the Russian Federation: Textbook. M.: FBK-PRESS, 1998. 592p. Pp.286-297. // Гаджиев Г.А., Пепеляев С.Г. Предприниматель-налогоплательщик-государство. Правовые позиции Конституционного Суда Российской Федерации: Учебное пособие. М.: ФБК-ПРЕСС, 1998. 592с. С.286-297.

[318] See for example, Commentary to the Tax Code of the Russian Federation (itemized). Part two / N.R.Vilchur, Y.G.Davydov, A.V.Zimin and others; ed. N.R.Vilchur, A.V.Zimin. M.: TK Welby, Prospect Publishing House, 2003. 1320p. Pp.1260-1268. // Комментарий к Налоговому кодексу Российской Федерации (постатейный). Часть вторая / Н.Р.Вильчур, Ю.Г.Давыдов, А.В.Зимин и др.; под ред. Н.Р.Вильчура, А.В.Зимина. М.:ТК Велби, Изд-во Проспект, 2003. 1320с. С.1260-1268.

[319] Federal Act "On Amendments to Parts One and Two of the Tax Code of the Russian Federation" dated 09.29.2016 No. 325-FZ (as amended on 03.26.2020) // "Collection of the legislation of the Russian Federation", 30.09.2018, No.39, article 5375./ «Собрание законодательства РФ», 30.09.2018, №39, ст.5375.

[320] See, Kosov M.E. Taxation of entrepreneurial activity. Theory and practice: a textbook... / M.E.Kosov, L.A.Kramarenko, N.D.Eriashvili. M.:UNITY-DANA, 2012. 431p. Pp.182-183. // Косов М.Е. Налогообложение предпринимательской деятельности. Теория и практика: учебник…/ М.Е.Косов, Л.А.Крамаренко, Н.Д.Эриашвили. М.: ЮНИТИ-ДАНА, 2012. 431с. С.182-183.

The inheritance foundation is obliged to provide a report on the grounds of taxation: income, benefits, taxable property, by transferring to the tax authorities, within the time limits established by the legislation, declarations for the relevant type of tax: income tax, VAT, property tax, land tax, transport tax[321].

Besides the inheritance foundation is obliged to submit to the Tax Service its balance sheet and a report on the intended use of foundations, containing information on the amount, movement, balance of foundations used in activities at the beginning and end of the reporting period, including profit from business activities, report about financial results. Undoubtedly the Tax Service has the right to exercise various forms of control over the correctness of the calculation and payment of taxes by the inheritance foundation by tax and administrative legislation[322].

ii) Simplified taxation regime.

The inheritance foundation has the right to choose a simplified taxation regime, which has undoubted advantages over the general tax regime[323]. So, the application of this type of taxation exempts the inheritance foundation from paying income tax, VAT, and property tax of organizations following paragraph 2 of Article 346.11 of

[321] For more information about the specified document of tax reporting see Tax administration: textbook / number of authors; ed.L.I.Goncharenko. M.: KNORUS, 2009. 448p. Pp.125-128.//Налоговое администрирование: учебное пособие/кол.авторов; под ред.Л.И.Гончаренко. М.: КНОРУС, 2009. 448с. С.125-128.

[322] See more, Zrelov A.P. Commentary on the latest changes to the Tax Code of the Russian Federation. Tax control and tax administration. M .: Yurayt-Izdat, 2007. 375p. Pp.236-291. // Зрелов А.П. Комментарий последних изменений к Налоговому кодексу Российской Федерации. Налоговый контроль и налоговое администрирование. М.: Юрайт-Издат, 2007. 375с. С.236-291.

[323] In some cases the use of such a tax regime reduces the tax burden of legal entities. See for example, Filina F.N. Tax planning in business / Ed. F.N.Filina. M.:GrossMedia: ROSBUKH, 2008. 336p. Pp.109-119, 271-272 and others. // Филина Ф.Н. Налоговое планирование в бизнесе / Под ред. Ф.Н.Филиной. М.: ГроссМедиа: РОСБУХ, 2008. 336с. С. 109-119, 271-272 и другие.

the Tax Code[324]. Instead the inheritance foundation will pay a single tax the rate of which will be:

a) when choosing the object of taxation "Income" — 6% of all income recognized as income following paragraph 1 of Article 346.20 of the Tax Code, the regional authorities have the right to reduce this rate to 1%, depending on the categories of taxpayers,

b) when choosing the object of taxation "Income reduced by the number of expenses" (income minus expenses) - 15% of the difference between income and expenses under paragraph 1 of Article 346.20 of the Tax Code, the regional authorities have the right to reduce this rate to 5%, depending on categories of taxpayers[325].

However, the inheritance foundation can use this taxation regime only subject to several restrictions established by Articles 346.12, 346.13 of the Tax Code. Thus a simplified taxation system can be applied by a legal entity subject to the following conditions:

- the amount of income as of October 1 of the current year did not exceed 112.5 million rubles (about 1.2 million Euro) for organizations moving from a new reporting year (for newly created organizations, they can apply for choosing this taxation system within one month after state registration),

- the number of employees does not exceed 100 people,

- the residual value of the organization's property (fixed assets and intangible assets) exceeds 150 million rubles (about 1.6 million Euro).

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[324] See for example, Doroshina O. P. Taxation of the non-profit sector: problems and innovations in 2015 // Bulletin of state and municipal administration. No. 3. 2015. Pp.72-84. // Дорошина О.П. Налогообложение некоммерческого сектора: проблемы и новации в 2015г.// Вестник государственного и муниципального управления. № 3. 2015. С.72-84.

[325] For more details on the advantages of these types of simplified taxation see Barulin S.V. Tax management: textbook. Moscow: Omega-L, 2008. 269p. Pp.230-242.// Барулин С.В. Налоговый менеджмент: учеб.пособие. Москва: Омега-Л, 2008. 269с. С.230-242.

Paragraph 3 of Article 346.12 of the Tax Code also contains many restrictions regarding the list of legal entities that cannot use the described taxation system. Still, the inheritance foundation is not included in their number. Given the purpose of the inheritance foundation and the expected scale of its activities, there are certain doubts about the ability of the inheritance foundation to take advantage of this type of taxation. Perhaps, if the legislator recognizes the appropriateness of such a regime for large inheritance foundations, it may be necessary to change the tax law in terms of increasing the amount of income of the inheritance foundation and the estate transferred to it.

The remaining tax obligations of the inheritance foundation under this tax regime remain the same. Thus, the foundation shall keep separate records of income and expenses for earmarked income received following Article 346.24 of the Tax Code. At the end of the tax period, defined as a calendar year, the inheritance foundation will be required to file a tax return on the simplified taxation system, which reflects all calculations on taxes paid to the budgets of all levels following Article 346.23 of the Tax Code. The inheritance foundation shall also provide the accounting documents and reports listed above.

2.6. The control over the inheritance foundation’s activity.

Control over the activities of the inheritance foundation can be of several types, depending based on the classification: 1) state supervision, public, corporate (private) control, 2) external (by third-party organizations) or internal (by divisions or officials of the organization), 3) mandatory (by law or other legal act) or initiative (by a decision of the governing bodies or other authorized people), 4) continuous (all activities of the organization) and selective (concerning certain aspects of the foundation's actions), planned (following the inspection schedule) and sudden (depending on the event), etc. Also these types of control can be combined. For example, the state control is external and mandatory. It could be planned and selective. Corporate audit can be external, initiative, continuous. Indeed control over any side of the activities of the inheritance foundation has one

common and important feature - to ensure compliance with the requirements of the law and constituent documents by the management bodies of the foundation and its officials in the activities of the foundation. In this paragraph it should be described the forms of the state control (this type is preferably called supervision to distinguish concepts from the previous kind of control) over the activities of the inheritance foundation carried out by the Ministry of Justice and corporate control (external and internal audit) carried out by audit companies, authorized bodies of the inheritance foundation.

2.6.1. State control.

The state control over non-profit organizations is provided by law in contrast to companies. Article 32 of the Act on Non-Profit Organizations provides for various types of such control over the activities of a non-profit organization, depending on numerous aspects of the activities carried out. It is possible to define the types of the state control as general and particular. Public control over the actions of a non-profit organization, including the inheritance foundation, is carried out in terms of its compliance with the laws by the Ministry of Justice. Individual state bodies carry out particular types of control in the areas of activity of a non-profit organization. Thus a non-profit organization provides information: on its activities - to State Statistics Service, Tax Service, on unusual financial transactions established by law - to the State Financial Monitoring Service and others. In this paragraph, it should be described in more detail the procedure and forms of control over non-profit organizations carried out by the authorized state body - the Ministry of Justice of the Russian Federation.

Ministry of Justice

The Ministry of Justice of the Russian Federation, its territorial divisions (hereinafter referred to as the "authorized body"), following the Regulations on the Ministry of Justice of the Russian Federation, approved by the Decree of the President of the Russian Federation "Issues of the Ministry of Justice of the

Russian Federation" dated October 13, 2004, No.1313[326], is the body authorized to adopt decisions on state registration of non-profit organizations and control over their activities. To exercise the powers granted, the Ministry of Justice has adopted its legal documents regulating these procedures. Thus the process for state registration of non-profit organizations is determined by the Administrative Regulations for the provision by the Ministry of Justice of the Russian Federation with the state function for making a decision on state registration of non-profit organizations approved by Order of the Ministry of Justice of the Russian Federation dated December 30, 2011, No.455 (as amended of November 21, 2017)[327]. The procedure for conducting inspections of non-profit organizations is determined by the Administrative Regulations for the execution by the Ministry of Justice of the Russian Federation of the state function of monitoring the compliance of the activities of non-profit organizations with their statutory objectives and tasks, branches, and representative offices of international organizations, foreign non-profit, non-governmental organizations with the declared goals and functions as well as their compliance with the laws approved by the Order of the Ministry of Justice of the Russian Federation dated December 30, 2011, No.456 (as amended of June 01, 2018)[328]. The powers to adopt these administrative regulations are provided for by the Federal Act "On the Protection of the Rights of Legal Entities and Individual Entrepreneurs in the Exercise of State Control (Supervision) and Municipal Control" (Федеральный закон «О защите прав юридических лиц и индивидуальных предпринимателей при осуществлении государственного контроля (надзора) и муниципального контроля») dated December 26, 2008, No.294-FZ (as amended of April 1, 2020)[329], which defines the types and the procedure for carrying out various types of control of these entities. In addition to these legal acts, the Ministry of Justice is also entrusted with implementing federal

[326] "Collection of the legislation of the Russian Federation», 18.10.2004, №42, article 4108. // «Собрание законодательства РФ», 18.10.2004, № 42, ст. 4108.

[327] "Rossiyskaya gazeta", No.58, 16.03.2012. // «Российская газета», №58, 16.03.2012.

[328] "Rossiyskaya gazeta", No.58, 16.03.2012. // «Российская газета», №58, 16.03.2012.

[329] "Collection of legislation of the Russian Federation", December 29, 2008, No. 52 (part 1), article 6249. // «Собрание законодательства РФ», 29.12.2008, №52 (ч.1), ст.6249.

state supervision of non-profit organizations under clause 4.1 of Article 32 of the Act on Non-Commercial Organizations, and the Regulation on Federal-State Supervision of the Activities of Non-Commercial Organizations[330]. This type of control generally repeats the kinds of audits, methods, and terms of their implementation, which are carried out by the Ministry of Justice based on its Regulation on the Ministry. In the regions of the country, state registration of non-commercial organizations and control over their activities is carried out by the territorial bodies of the Ministry of Justice.

The main form of control over the activities of non-profit organizations provided for by these legal documents is the conduct of inspections by the Ministry of Justice for the compliance of the activities of non-profit organizations, including the expenditure of funds and the use of property with the goals provided for by the constituent documents of non-profit organizations and the Acts. The inspections carried out in most cases are scheduled and are carried out under the approved plan of checks for the corresponding calendar year, posted on the official website of the Ministry of Justice and/or the General Prosecutor's Office. Unscheduled inspections are carried out in cases prescribed by law. Inspections of non-profit organizations are also on-site when the check is carried out at the location of the legal entity, or documentary when the inspection body examines the documents requested from the inspected non-profit organization.

The Ministry of Justice has accumulated some experience in implementing such forms of control over the activities of non-profit organizations. The most frequent violations of non-profit organizations for the compliance of their activities with the current laws are violations related to the misuse of finances and property, the implementation of entrepreneurial activities that do not correspond to the goals of the actions of a non-profit organization and does not serve to achieve the goals of non-profit organizations, as established by law; abuse of ownership by officials of

[330] Approved by the Decree of the Government of the Russian Federation of July 11, 2012 No.705 (as amended on December 23, 2014).// "Collection of legislation of the Russian Federation", July 16, 2012, No. 29, art.4130.

non-profit organizations when using it not in the interests of the organization; non-submission of annual reports to the Ministry of Justice (territorial division) according to the forms and within the terms determined by the authorized executive body; non-compliance with the requirements of constituent documents, including non-compliance with the competence of the management bodies of a non-profit organization; failure to comply with the terms of office of the governing bodies; violation of the frequency of meetings of the management bodies of a non-profit organization and others.

In the event the violations are revealed as a result of checking the activities of a non-profit organization, the Ministry of Justice shall be empowered to apply specific measures of influence to non-profit organizations that have violated the relevant legal documents. According to Clause 78 of the Administrative Regulations for the execution by the Ministry of Justice of the Russian Federation of the state function of monitoring the compliance of the activities of non-profit organizations with their statutory goals and objectives, branches and representative offices of international organizations, foreign non-profit, non-governmental organizations with the declared goals and objectives, as well as their compliance with laws, the Ministry may take the following measures:

1) warning was issued (a presentation was made);
2) case on an administrative offense has been initiated.

These powers determine the procedure for the actions of civil servants of the Ministry of Justice when carrying out inspections, and specific violations identified by them shall be qualified under administrative offenses provided for by the relevant laws, for example, the Code of Administrative Offenses (Кодекс об административных правонарушениях) or individual rules. Also in cases where the Ministry of Justice detects violations of laws, control over the implementation of which falls within the competence of other state bodies, information about them is sent to the indicated state bodies for an appropriate response to the identified violations.

By the law non-profit organizations are entitled to appeal against the actions and (or) inaction of civil servants of the Ministry of Justice in a pre-trial and judicial order. These provisions expand the rights of non-profit organizations to protect their interests and make the control measures of regional justice bodies more transparent. Besides Article 3 of the Federal Act "On the Protection of the Rights of Legal Entities and Individual Entrepreneurs in the Exercise of State Control (Supervision) and Municipal Control" establishes a presumption of good faith among legal entities and individual entrepreneurs. All these forms of government control will apply to the estate as a non-profit organization, and the law does not contain any exceptions in this regard. Generally the system of the state control is intended to prevent the implementation of illegal activities or activities contrary to the constituent documents of a non-profit organization. That is viewed as a specific positive moment for activating additional protection of interests of beneficiaries and separate people.

2.6.2. Internal control.

i) Auditing.

The law provides for an external audit of the inheritance foundation activities on the grounds under the Conditions and at the request of the beneficiary under clause 7 of Article 123.20-2 of the RCC. Thus these are two conditions for conducting an external audit. Therefore such an audit can be classified as corporate, external, initiative[331]. The content of such a basis in the management of the inheritance foundation requires the testator to formulate the reasons, the procedure, and, maybe, setting the tasks to be solved by the audit in the specified document, and, per the latter, indicate the scope of the audit. Indeed the definition of the tasks of an external audit cannot be arbitrary for the founder of the inheritance foundation,

[331] It is necessary to emphasize that subparagraph 3 of paragraph 1 of Article 5 of the Act on Auditing provides a mandatory audit concerning general foundations. In this case, there is a competition between the provisions of this Act and the RCC, which should be interpreted in favor of the Code, given its greater legal force under Article 3 of the RCC.

since the rules for conducting an audit are also established by law. Auditing activities in the Russian Federation are carried out under the Federal Act "On Auditing" (Федеральный закон «Об аудиторской деятельности») dated December 30, 2008, No. 307-FZ[332] (as amended of April 01, 2020) (hereinafter - the "Act on Auditing") and the relevant adopted laws regulating relations arising from the implementation of audit activities. According to Article 1 of this Act there is an independent audit by a third-party organization of the financial statements of the audited entity to express an opinion on the reliability of such information, i.e., their compliance with laws and other legal norms. Also the audit company can provide several related services of legal, accounting, tax, consulting, and appraisal nature. Based on the functions of the auditing company, the testator and, then, the inheritance foundation can entrust it with checking their activities for compliance with the correctness of accounting statements as well as providing any additional services offered by the auditing company, based on the strategy and current needs of the inheritance foundation. It must be pointed out that the audit results, in addition to their application by the governing bodies of the inheritance foundation for internal use and the adoption of managerial decisions, may be requested by state authorities, for example, when carrying out their audits for the compliance of the organization's activities with the current laws, or by the courts when qualifying solvency and assessing the possibility of bankruptcy.

Besides it will be essential to describe the parameters for choosing an audit firm following the preferences of the testator or depending on the specifics of the inherited property, which may be necessary for such an audit. It is known that an audit in business practice is an expensive procedure. Usually a company announces a tender for conducting an audit with known parameters: objectives, scope, terms, cost, etc. Consequently such conditions should also be reflected in the Conditions to exclude any unfair actions on the part of the management of the inheritance foundation or beneficiaries to oppose the audit of the foundation.

[332] “Collection of legislation of the Russian Federation”, 05.01.2009, No.1, article 15 // «Собрание законодательства РФ», 05.01.2009, №1, ст.15.

In addition to the possibility of conducting an external audit under the Conditions, the beneficiary shall be entitled to require an external audit under clause 5 of Article 123.20-3 of the RCC. The beneficiary shall independently choose an auditor regardless of any corporate procedures, if any policies will provide for the rules for selecting an audit company. However the law does not describe the mechanism for exercising such powers of the beneficiary; and this is an obvious omission of the legislator. Firstly the beneficiary is most likely not a professional in the audit services market. It would be unreasonable to expect him to make a high-quality choice of an audit company. Secondly the beneficiary's intention to perform his right to audit the inheritance foundation may have numerous obstacles associated with both bureaucratic barriers established by the inheritance foundation authorities and the reluctance of the governing bodies to conduct such an audit. Such behavior may presumably take place since the law does not provide for liability for officials and other people of the foundation who are guilty of obstructing the conduct of an external audit. To avoid such difficulties, the law must provide for the procedure, terms of such an audit, probably with the participation of such an interested person as a beneficiary, the obligation to provide the necessary information to the auditing company, and the responsibility of the governing bodies of the inheritance foundation for counteracting any form of external audit. Another difficulty for implementing the beneficiary's right to require an audit of the inheritance foundation is the need to pay for the auditor's services at the expense of the beneficiary. The costs of paying for the auditor's services can be reimbursed to the beneficiary of the foundation by the decision of the Board of Trustees under clause 5 of Article 123.20-3 of the RCC. As mentioned earlier, conducting an external audit is an expensive procedure. The beneficiary may not have the necessary funds to pay for the services of the audit firm. The power of the beneficiary may be invalid for this reason. On the other hand, the foundation cannot be obliged to pay immensely for this audit carried out according to various requirements of the beneficiary or several beneficiaries due to possible abuse of their rights or deliberate stopping of the foundation's activities with a

continuous series of such claims. The possibility of the legislator to introduce the responsibility to conduct an annual external audit with the participation of interested people and bodies of the inheritance foundation in the selection of an audit company seems to be more reasonable in this case. The details of the choice of audit companies and the rest of the details of the external audit can be reflected in the Conditions with the possibility of their revision within specified period.

ii) Revision and internal control.

Like any legal entity the inheritance foundation is entitled to conduct an internal audit of its activities. Such an audit is carried out by the legal entity itself and is conditionally divided into two types: revision and internal control. They differ in the purpose of inspections and the presence and subordination of authorized people carrying out such assessments.

Revision is a system of mandatory control measures for documentary and factual verification of the legality and validity of the organization's economic and financial operations performed in the audited period. Revision is usually carried out by several employees from different departments of a legal entity, which is sometimes referred to as a revision commission. The revision procedure is carried out based on internal (local) regulations under a schedule approved by the executive body of the legal entity. Conducting a specific revision with an objective, tasks, and terms is established based on the order of the head of the organization. The purpose of the revision is to monitor compliance with the laws in the implementation of these operations (transactions, settlements, transfer of property, etc.), their validity (i.e., the presence of economic sense), the correct use of material, financial and other resources of the organization following the approved budget and financial plan for a certain period. Based on the results of this control, the revision participants draw up the Revision Report which is signed by the auditors (members of the revision), the head of the revised division, and the executive body of the legal entity. This Report serves as the basis for making certain conclusions regarding the proper use of human resources, optimization of

technical, financial processes within the organization, exclusion of actions of personnel and managers that is contrary to laws or other legal documents, including local acts of a legal entity. Concerning the inheritance foundation, the main tasks of the revision can be the inspection of 1) the compliance of the activities carried out with the constituent documents of the inheritance foundation and the Conditions, 2) ensuring the safety of funds, and ownership of the foundation, 3) the correctness of accounting and reporting, 4) the validity of operations (transactions) with property, funds, securities, banking operations, investment transactions, 5) the correctness and timeliness of tax payments, payroll settlements with individuals, 6) complete formation of financial results and their proper distribution, and others. Thus the revision is an internal check of the results of the economic activity of the inheritance foundation for a certain period to confirm the correctness of their recordings in accounting and tax accounting.

Unlike revision, an internal audit is carried out by a specifically formed internal division of the legal entity which is usually subordinate to the supreme governing body of the organization. So, that relates to companies, for example, according to Article 85 of the Act on Joint-Stock Companies, such a division (the company's revision commission) is subordinate not to the executive bodies and the Board of Directors, but to the General meeting of the company's shareholders which approves their structure, remuneration, inspection schedules and their reports about audits. The competence of this body should be provided for in the company's Charter, thus establishing the independence of this body and the impartiality of its decisions[333]. Similar rules are contained in Article 47 of the Act on Limited Liability Companies. Concerning non-profit organizations, the formation of such a body and the empowerment of it with the specified powers to conduct audits within the organization is a matter for the founders when forming the constituent documents of a non-profit organization. The scope of internal audit tasks is much

[333] See more, Laptev V.V. Joint-Stock Law. Moscow: Law Firm “Kontrakt”; INFRA-M, 1999. 254p. Pp.89-91. // Лаптев В.В. Акционерное право. М.: Юридическая фирма «Контракт»; ИНФРА-М, 1999. 254с. С.89-91.

broader than that of the revision. Internal audit (sometimes called internal control) can be characterized as a methodological and situational tool that makes it possible to increase the efficiency of decisions of the organization's management bodies to achieve its plans, for example, achieving a certain level of profit, etc. Conducting an effective internal audit allows coordinating the efforts of all governing bodies of the organization in one direction, which meets the interests of a legal entity and is enshrined in its constituent or local documents. At the same time it is essential to understand the specifics of the activity of inheritance foundations as non-profit organizations. If the inheritance foundation has entrepreneurial activities, its income and expenses should be accordingly reflected in the accounting, as the tax regime of the inheritance foundation depends on this. The main direction in conducting internal control in the inheritance foundation as a non-profit organization will be the control over the expenditure of the inherited property received. That emphasizes the importance of implementing internal control measures in inheritance foundations, as in any other legal entity managing significant assets[334]. Also according to the information of state-authorized bodies (described below), when carrying out control procedures in non-profit organizations, cases of the inconsistency of the its activities with statutory documents, exceeding the powers of management bodies, false accounting of property and directions of its expenditure are often revealed which in some instances may appear the basis for its conversion into state revenue. Concerning the inheritance foundation, this can also mean checking the effectiveness of using the foundation's assets to achieve the goals set out in the Charter and the Conditions. In current terms internal control can give an accurate picture of all

[334] See more about the role of these bodies in the activities of companies, Kashanina T.V. Corporate law (Law of business partnerships and companies). Textbook for universities. M.:Publishing group NORMA-INFRA*M, 1999. 815p. Pp.497-502. // Кашанина Т.В. Корпоративное право (Право хозяйственных товариществ и обществ). Учебник для вузов. М.: Издательская группа НОРМА-ИНФРА*М, 1999. 815с. С.497-502.
Of course, such officials as auditors or separate audit departments are represented in foreign law, called "company supervisory bodies". See for example, Y.Guyon. La Societe anonyme. Paris: Dalloz, 1994. 127p. Pp.49-51; Ph.Merle, A.Fauchon. Droit commercial. Societes commerciales. 7e edition. Paris: Dalloz. 2000. 895p. Pp.557-572.

aspects of the activities of the inheritance foundation, including the legality of various transactions, asset protection, prevention of multiple violations in accounting and tax accounting, detection, and prevention of abuse by staff or third parties. The internal control measures carried out should give the governing bodies and stakeholders confidence that the objectives of such control, which are to ensure completeness, legality, expediency, and other operations, will be achieved, as well as a full understanding that accounting and management accounting accurately reflect financial and economic activities of the inheritance foundation.

Consequently the results of inspections of internal control in the inheritance foundation should be available to the heads and managers responsible for the inheritance foundation. Considering the above, internal control should be used in the inheritance foundation as an integral part of making managerial decisions. Therefore the law should provide for the mandatory or voluntary introduction of procedures and internal control bodies for inheritance foundations or the conditions under which their presence will be required (perhaps the obligatory presence of such authority will depend on the size of the assets of the inheritance foundation), as well as the right of the testator to establish internal audit in founding and other documents of the inheritance foundation.

Taking into account the above, the difference between external audit on the one hand and revision, internal audit, on the other hand, becomes quite apparent, despite the similar objectives and methods used in conducting audits. If the external audit is responsible for the reliability of official reporting and its compliance with the nature and scale of the activities of a non-profit organization, then the revision examines the issues of the correctness of accounting in certain areas to a greater extent. Internal audit is focused on identifying various kinds of opportunities to improve the activities and reporting of the organization.

Chapter III

Open questions: Considerations *de lege lata* and *de lege ferenda.*

3.1. General.

Analysis of the inheritance foundation's legal status reveals that the law does not answer all questions arising from its establishment and operation. Therefore theoretical ideas might help to overcome some of the difficulties of using this institution of inheritance law in practice. In this Chapter some general recommendations and proposals would be formulated for improving the inheritance foundation's regulation, taking into account the existing inaccuracies of the new legislation and the lack of established judicial practice on these issues. It would also be considered the questions of theoretical, legal, and practical nature concerning the research object. They could be possible divided into three groups.

The first group deals with the legal status of the inheritance foundation and issues related to clarifying its position as a forced heir, on the one hand, and as a type of non-profit organization, including the characteristics of the purposes of its establishment, on the other hand; improvement of the procedure of the establishment, functioning and annulment of the foundation, including the state registration, the transfer of the inherited estate, the peculiarities of the formation of the foundation's governing bodies and the presence of requirements for their participants.

The second group covers issues related to the inheritance foundation's activities, expanding its capabilities to achieve statutory goals, exercising appropriate control over the foundation's activities, clarifying the specifics of its taxation, and its payments to beneficiaries and separate people.

The third group of issues deals with clarifying the legal status of the subject composition of the inheritance foundation, describing the rights of some people not connected to the establishment or activities of the foundation, but who have

demands towards the testator or estate transferred to the inheritance foundation, such as the testator's creditors, heirs with a compulsory portion. Besides that also includes consideration of controversial issues of regulating spouses' joint ownership rights when establishing an inheritance foundation, since the law also does not yet contain special rules on this object.

3.2. Determination of legal status of the inheritance foundation.

i) Inheritance foundation as a forced heir.

As it is pointed out earlier, the inheritance foundation is a forced heir and one central figure in the inheritance relationship. That means all inheritance rules apply to it, except for some features related to its status. Since Roman law has been known, the formula "*nemo plus iuris transferre potest quam ipse habet*" is fundamental to inheritance law. It assumes that inheritance relationships are built on the legal basis of universal succession, i.e., the testator transfers the inheritance to the heir with all rights and obligations which the heir has the right to accept in full without objections and restrictions, or to make a complete refusal to accept the inheritance. This provision corresponds to paragraph 1 of Article 1110 of the RCC. As is described, the inheritance foundation is deprived of the right to refuse to accept the inherited property because this estate constitutes the very reason for its establishment. *De lege lata* the inheritance foundation becomes one of the heirs along with the citizens or organizations specified in the will, or along with the heirs by law, without the right to refuse to accept the property transferred to it which will serve as the basis for its activities carried out in the interests of the beneficiaries. The inheritance foundation is a tool of managing the testator's separate ownership in the beneficiaries' interests.

The legal structure of the inheritance foundation provided by law vests a third party - notary with the obligation to establish an inheritance foundation which does not yet exist as a legal entity, and subsequently transfer the estate to it. Notary carries out the prescribed actions following the will of the testator expressed in the

testament. In essence, this contradicts the idea of inheritance in its original sense according to which the estate is transferred to the heirs. In necessary cases notary only accompanies these actions, not being responsible for the final result of the transfer, acceptance, and use of the property. Here the testator instructs the notary to create a direct heir to support the beneficiaries as indirect heirs with whom any obligations bound the testator, whether of a family, contractual, or other nature, including non-property ones. Transfer of inheritance through inheritance foundation differs from the will of the testator, expressed in the testament, on the transfer of money or other property and assets to heirs which have a real legal effect, i.e., transfer of ownership from ultimate ownership and use of the direct subject - the heir who becomes the owner. With the appearance of an inheritance foundation in inheritance relations a transition from one connection to another occurs. So the proprietary-right respect of inheritance is transformed into a traditional relation of obligation to participate in the management of the inheritance foundation or the acquisition of estate from the foundation. Even though the estate is transferred to the inheritance foundation for further distribution among beneficiaries who may not only be “legal heirs”, during the entire period of the foundation's existence, it belongs only to it. By accepting the inherited estate, the inheritance foundation assumes all the testator’s rights and duties in the testator's value or debts associated with this estate.

ii) Clarification of the legal status of the inheritance foundation as a non-profit organization.

In the course of the study the provisions of civil legislation and the authors’ positions regarding the organizational form of the inheritance foundation were analyzed. According to Article 123.20-1 of the RCC the inheritance foundation is a unitary non-profit organization. The unitary organization is an organization that does not have a membership, i.e., there are no participants in it. Therefore the ownership of the foundation is indivisible into shares between participants, stakeholders, etc. Thus, by its legal nature, the inheritance foundation is a legal

entity acting based on the property received by the testator to preserve it from splitting into inheritance shares and for its further accrual. The Conditions and the transferred estate's use are determined by the testator and closed to public.

From standard technology it is probably optimistic that the inheritance foundation is a subspecies of the general concept of a foundation as a type of non-profit organization. That means the possibility of further use of the legal reserve of rules on non-profit organizations in general and foundations in particular as well as the application of some court decisions on inheritance relations and the activities of general foundations to create legal practice concerning inheritance foundations as a new institution of civil law.

As indicated, from a legal point of view an inheritance foundation is a separate legal entity - a subspecies (debatable!) of general foundation that belongs to unitary non-profit organizations. Meanwhile special rules governing the inheritance foundation's activities significantly distance the legal nature of the inheritance foundation from the general concept of foundations and, to a certain extent, from non-profit organizations. Analysis of the existing legislative framework showed the need to clarify the rules for the inheritance foundation's creation and operation. It should be marked the following legal collisions that reveal the features of the legal status of the inheritance foundation in comparison with the general concept of the foundation:

1) According to the rule set out in paragraph 1 of Article 123.17 of the RCC the general foundation's assets are made up of voluntary contributions and donations. In contrast to this provision, according to paragraph 3 of Article 123.20-1 of the RCC the inheritance foundation cannot acquire property on a gratuitous basis, including the impossibility to accept voluntary property contributions from third parties. Of course, the initial endowment of the inheritance foundation with the testator's ownership also occurs without remorse and constitutes the property basis for the foundation's activities. However emphasizing the unique feature of creating

an inheritance foundation as a tool for managing only this property, the legislator prohibits using other property and funds. This step's practicality is difficult to assess since establishing an inheritance foundation is also the purpose of its existence - the use of the estate to ensure beneficiaries' well-being. Moreover as a result of its activities, the inheritance foundation will increase its estate, at the same time, use the assets received for-profit and possibly dispose of it in the interests of the foundation, including its alienation. Thus the species composition of the ownership of the inheritance foundation can change. Therefore the immutability of the estate is not the goal of the inheritance foundation. Refusal to acquire ownership by accepting voluntary property contributions from third parties does not make logical sense too. In my opinion, it can be canceled with an indication of the different use and accounting of property received from the testator and third parties, or it is possible to establish an appropriate condition in the foundation documents - the Decision, the Charter which will provide the proper right to the inheritance foundation. That will also bring the regulation of the inheritance foundation closer to the norms of general foundations if the legislator wishes to consider it as a subspecies of the broad family of foundations.

2) The following rule is connected with the prohibition of the inheritance foundation to accept property from third parties, stating that, following paragraph 9 of Article 123.20-2 of the RCC the report of the inheritance foundation is not subject to publication, except for cases determined by the Conditions of managing of the inheritance foundation. In contrast, the general foundation is obliged to publish reports on its property annually under paragraph 2 of Article 123.18 of the RCC. Perhaps the legislator's logic is that it considers the inheritance foundation to be a tool of hiding some assets of the testator and the inheritance foundation from the public. It is difficult to explain this circumstance differently. However such an approach is also not justified since any necessary actions with the testator's

ownership, except for movable property (except for those subject to state or technical registration, such as vehicles), are subject to registration with open public access. This applies to state registration of the transfer of ownership of real estate (by Article 62 of the Act "On State Registration of Real Estate"), the transfer of large blocks of shares or shares in companies that are required to publish reports for their shareholders and participants in various papers for government services, investors, etc. (for example, such a duty is provided for concerning joint-stock companies in Articles 6, 91 of the Act on Joint Stock Companies). In this case, the lack of publication of a report on using the foundation's estate is *le secret de Polichinelle*. This rule does not make much sense, and it would possibly make sense to restrict the limits of its appliance, providing certain conditions concerning specific types of an estate or its absolute value.

3) The management of the inheritance foundation is carried out not following Article 123.19 of the RCC which establishes the general rules for the power of the foundation, but according to the testator’s instructions based on Article 123.20-2 of the RCC.

Information about principles and modalities of managing the inheritance foundation is closed to third parties. Those can be disclosed only to beneficiaries as well as to state bodies and local self-government bodies - in cases provided by law following paragraph 6 of Article 123.20-1 of the RCC. In that case the goals of the inheritance foundation are determined by the testator independently. These rules contradict the provisions on the functioning of general foundations according to which a foundation is created exclusively for charitable and other socially useful purposes following paragraph 1 of Article 123.17 of the RCC, and the Conditions are incredibly transparent and open which is typical of non-profit organizations in general.

4) According to paragraph 1 of Article 123.20-2 of the RCC the inheritance foundation must have a one-person executive body and probably

a collegial executive body. In the case of a particular instruction in the Charter of the foundation, it may be possible to form Supreme collegial body and Board of Trustees which, according to law, the foundation is not obliged to have. That also distinguishes it from the general foundation for which the law establishes the imperative nature of the presence of a three-tier system of governing bodies - 1) executive governing bodies (sole, collegial), 2) the highest collegial governing body, and 3) Board of Trustees. In my opinion, the legislator unnecessarily simplified the creation of such a system of governing bodies for the inheritance foundation. If only executive bodies are available, the beneficiaries cannot exercise control over the foundation and managing bodies' activities. In a sense such a state would be contrary to the essence of corporate governance, even in non-profit organizations. The principle of "four (or six) eyes" will be infringed upon, because the concept of "corporate governance" has the same principles for any legal entity, especially since it is entrepreneurial goal that has great power for the inheritance foundation.

5) In the event of creating Board of Trustees of the inheritance foundation, remuneration may be paid to its members based on paragraph 5 of Article 123.20-2 of the RCC. In contrast members of the Board of Trustees of the general foundation voluntarily follow their activities by paragraph 4 of Article 123.19 of the RCC. In addition to the difference in approaches to the remuneration of the services of members of the foundation's supervisory body which perform essential functions of overseeing the activities of the organization, control over management bodies, spending funds, compliance with the law, and the apparent need to pay any remuneration or its equivalent, the legislator's logic concerning the general foundation cannot be easily explained. In this case, considering the inheritance foundation's goals the compensatory nature of the functions of the members of the Board of

Trustees of the foundation seems reasonable[335]. Perhaps the legislation should be changed accordingly. *De lege ferenda* that may increase the interest of the members of the Board of Trustees in the proper performance of their duties and strengthen the protection of beneficiaries from the top management of the inheritance foundation's illegal actions.

6) The general procedure for changing the Charter of the foundation, provided in Article 123.20 of the RCC, does not apply to the inheritance foundation. According to the general rule outlined in paragraph 5 of Article 123.20-1 of the RCC the Charter of the inheritance foundation after the establishment of the foundation cannot be changed at all, except for extraordinary cases of impossibility to continue the work of the inheritance foundation and that can be done only in court. In this case it is unlikely that special rules are more rational than general ones. In my opinion, the general rules for changing the statute concerning the inheritance foundation should also be extended. That would provide the necessary flexibility in making timely decisions since court decisions take a long time, inconvenient for the foundation itself, beneficiaries, and third parties.

7) Upon annulment of inheritance foundation its property is to be sent to the beneficiaries, i.e., to people determined by the Conditions and/or to third parties based on part 2 of paragraph 7 of Article 123.20-1 RCC. When a general foundation is liquidated, the ownership and other assets are transferred for the purposes established by the Charter of the general foundation following paragraph 3 of Article 123.20 of the RCC. This difference seems to be justified since it proves the formation of an inheritance foundation as a tool for managing inheritance property that serves to support beneficiaries. After the annulment of the inheritance

[335] See more, Kartashov M.A. Inheritance Foundation: New Russian Legislation and Foreign Experience. // Modern Law. 2017. No.10. Pp.87-88. // Карташов М.А. Наследственный фонд: новое российское законодательство и иностранный опыт.// Современное право. 2017. №10. С.87-88.

foundation the property is distributed among the people to whom it should have gotten initially at the testator's will.

8) An even more explicit distinction between the general foundation as a type of non-profit organization and inheritance foundation can be seen when analyzing the inheritance foundation's establishment and activities' goals. Following paragraph 1 of Article 123.17 of the RCC general foundations are created to implement social, charitable, cultural, educational, or other socially useful purposes. For the inheritance foundation the law provides for only one purpose - the management of the received estate for payments (property support) to beneficiaries or separate people as follows from the analysis of paragraph 1 of Article 123.20-1 of the RCC. That goal is associated with the increment of assets and its further distribution in a particular part to the specified people. Unlike general foundations which have a primary function - distribution of property received mostly from third parties in the form of donations to the recipients of grants, the goal of earning money independently by increasing their property is not excluded, but it is not the main one. Inheritance foundations are obliged to achieve an increase in the value of assets by themselves. In other words, to receive income in favor of certain people, i.e., fulfill the primary purpose of their activities. As it is seen, the non-commercial nature of the inheritance foundation is not apparent since, at least, there is a goal of making a profit. That must be qualified as an entrepreneurial activity following part 3 of paragraph 1 of Article 2 of the RCC and another purpose - the distribution of income which can be modified as non-commercial. It is the second goal that does not contain any restrictions for the testator in his declaration, i.e., in the naming of people, objects of support by funds or estate of the inheritance foundation in the Conditions. In my opinion, in contrast to establishing general foundations' public-benefit goals, this goal-setting is of an individual rather than a socially helpful nature and is associated with the need to manage and preserve a particular person's inheritance. It should also be

noted that the testators are not limited in their right to indicate a wide range of people as beneficiaries of the inheritance foundation which can combine the ultimate goal of creating an inheritance foundation and the generally useful, social, charitable, etc. target. Therefore it may be worth clarifying the specified legal provisions that determine the features of the goals of creation and activities of the inheritance foundation, indicating that the activity of the inheritance foundation for managing estate can also be aimed at achieving individual socially useful goals listed in paragraph 1 of Article 123.17 of the RCC[336].

An analysis of the inheritance foundation's goals is essential since the foundation's objectives directly affect the issue of whether such a legal entity is recognized as a company or non-commercial organization. The RCC conducts a division of legal entities on that target basis following paragraph 1 of Article 50 of the RCC. That raises the problem of determining the volume of legal capacity of the inheritance foundation. As already noted, non-profit organizations have limited legal capacity than companies with unlimited (full) legal capacity. Total legal capacity means the ability to carry out any commercial activity for making a profit, except for which a special permit (license) is required. This wording can be applied to the inheritance foundation without restrictions since the goal of increasing assets with a simultaneous prohibition of receiving assets on a gratuitous basis from third parties excludes other possibilities of growing support of the inheritance foundation. That is only possible by doing business[337].

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[336] Some scholars point to the obsolescence of these concepts in civil law. See Civil law: textbook: 3vol. Vol.1./ N.N.Agafonov, S.V.Artemenkov, V.V.Bezbakh and others; Editor-in-chief V.P.Mozolin. 2nd ed., rev. and add. Moscow:Prospect, 2016. 816p. Pp.142-143.// Гражданское право: учебник: в 3т. Т.1. / Н.Н.Агафонов, С.В.Артеменков, В.В.Безбах и др.; отв.ред.В.П.Мозолин. 2-е изд., перераб. и доп. Москва: Проспект, 2016. 816с. С.142-143.

[337] Some compromise may be as follows. One of the latest judgments of the Supreme Court of the Russian Federation dated 16 September, 2020, №305-ЭС20-4513 recognized the economic activity (hence the commercial) of a non-commercial legal entity as an activity "associated with the production, distribution, exchange, consumption of resources and goods" (at the time of writing the thesis, this decision has not yet been published). Such an interpretation of the law may be related to recognizing the foundation's activities as economical to avoid the above contradictions.

Moreover several prohibitions established by law for the inheritance foundation and companies coincide. For example, companies have a particular ban on receiving assets free of charge from other commercial organizations. A similar rule applies to the inheritance foundation does not accept donations from third parties following paragraph 3 of Article 123.20-1 of the RCC. Thus in terms of the purposes of establishing the inheritance foundation, it is not easy to refer to non-profit organizations pursuing charitable, cultural, educational, or other social and socially useful purposes[338].

The described differences between the general foundation and the inheritance foundation are critical for treating these organizations as one kind of non-profit foundations[339].

The inheritance foundation does not fully meet the characteristics of such an organizational form of a non-profit organization as a foundation. That follows from the fact that the non-commercial nature of the activity is highly controversial. The goals of the inheritance foundation's establishment and functioning correspond to entrepreneurial activity which indicates the full legal capacity of the inheritance foundation. Thus the ownership is formed by the inheritance foundation independently (after receiving the inheritance). The Conditions are not disclosed and there are no mandatory requirements for disclosing information about the foundation's activities. Thereby the signs inherent in the foundation as a non-profit organization are absent or have a very changed substance. That will conclude that the inheritance foundation should take a different place in the Russian legal entities' system. Whether the inheritance foundation should remain a foundation as

http://www.consultant.ru/cons/cgi/online.cgi?req=doc;base=ARB;n=639186;dst=100041#008816272211140563. Last access 25.09.2020.

[338] For example, this author draws attention to this fact. See his article, Zaikin D.P. Problems of creation and operation of the hereditary fund. // Bulletin of Moscow University. Series 11. Law. No.4, 2018. Pp.75-76. // Заикин Д.П. Проблемы создания и деятельности наследственного фонда.// Вестник Московского университета. Серия 11. Право.№4, 2018. С.75-76.

[339] See more, Shchennikova L.V. Inheritance Foundation as a Novel of Russian Civil Law. // Inheritance Law. 2017. No.4. P.4.// Щенникова Л.В. Наследственный фонд как новелла российского гражданского права // Наследственное право. 2017. №4. С.4.

an organizational and legal form of non-profit unitary legal entities is also controversial. Failure to meet the criteria for a general foundation indicates that such a legal entity performing such a task as managing the estate to distribute these assets or any part of it by the Conditions may be another type of non-profit organization. Numerous exceptions from the rules governing general foundations indicate that the independent style of a non-profit organization and, in this case, the name “foundation” is nothing more than a tribute to tradition. It was probably more logical to single out the inheritance foundation provisions in a separate subparagraph 1.1. paragraph 7 of Chapter 4 "Legal entities" of the RCC would contain general rules for the inheritance foundation. Moreover it would have probably been more suitable to adopt a separate law on the inheritance foundation. It should also be mentioned here that introducing a new legal entity into the RCC did not entail adopting appropriate amendments to the Act on Non-Commercial Organizations which is intended to concretize the provisions of the RCC on this type of non-profit organization.

iii) The ownership and assets of the inheritance foundation.

Specific problems are discovered when transferring an estate to an inheritance foundation, since, unlike the classical acceptance of an inheritance, the heir, if he has not refused to accept the hereditary, is considered to have obtained the estate (after performing actions prescribed by law and having indicated the intention to take the estate). After performing specific activities it becomes the owner of this inheritance. Further steps of legal registration of ownership, such as state registration of ownership of the real estate, a record of ownership of uncertified securities accounts are necessary but are not cause of ownership rights[340]. That is due to the effect of the main mentioned rule of universal succession which operates from the moment the heir agrees to accept the inheritance. Concerning the acceptance of the inheritance or otherwise the transfer of ownership of the

[340] There are different points of view on this issue, since the moment of consent to accept the inheritance is also identified with the moment of registration actions, and not with the moment of transfer of direct possession.

inherited property to the inheritance foundation, it should be noted that there is no direct connection between the creation of the inheritance foundation as a subject of law (from the moment of its state registration) and the assignment of the inheritance foundation to the inherited estate. Of course, there is a notary's obligation to issue a Certificate of inheritance to the foundation based on which the inheritance foundation must take action to register ownership of such property if necessary. However it is impossible to completely exclude a situation in which the created inheritance foundation may exist without the inherited estate. In the presence of disputes about the property, inheritance foundation may not receive it at all which will call into question its very existence as a legal entity. This can happen when challenging the transfer of property to an inheritance foundation on various grounds, some of which will be discussed below. The most effective way to overcome this problem could be found in German law. If a foundation is recognized as legally capable only after the death of the founder, as for the estate of the founder of the foundation the foundation is considered to have been formed before his passing based on §84 “Anerkennungnach Tod des Stifters” Untertitel 2 Kapitel 2 Titel 2 Buch 1 Bürgerliche Gesetzbuch. This approach is very close to the rules for transferring ownership to ordinary heirs by law or by will contained in Article 1153 RCC. It is logical to propose introducing a similar rule regarding the transfer of ownership of the inheritance when the establishment of the inheritance foundation will be assumed to be the owner of the estate.

Another problem is the precise definition of the inherited estate in factual and legal aspects. On the one hand, the testator must indicate in the will the exact list or other description of the inherited estate. According to common rule the period for accepting the estate is six months (it can be reduced by testator or without testator’s orders extended following Article 1155 RCC[341]). During the time ownership can change substantially. That may relate to the quantitative and

[341] Part 2 of paragraph 3 of Article 123.20-1 RCC empowers the testator with the right to independently determine the period for issuing a certificate of the right to inheritance on which the period for accepting the estate depends. However the exceeding six-month deadline for accepting the estate cannot be changed.

qualitative composition of the inherited estate. There should probably be a rule on the transfer of property at the time of such transfer, not counting its change, natural or due to any objective circumstances. The second aspect of that issue is legal problems in the transfer of inherited property to an inheritance foundation - if their transfer depends on many occasions, for example, on the availability of special permits or the consent of third parties. The standard of the most typical case is related to the transfer of inheritance containing shares of a limited liability company as the most common organizational form of legal entities. Articles 93, 1176 of the RCC, and Articles 21, 23 of the Act on Limited Liability Companies stipulate that the transfer of a share in the authorized capital is transferred to the heir unless otherwise provided by the company Charter. However the Charter may contain the rest of the company participants' consent for such a transfer of the share, which does not exclude the possibility of the inheritance foundation not receiving such approval[342]. That can lead to the absence of a reason for the establishment of an inheritance foundation. Of course in case of refusal to transfer a share in the company's authorized capital, it entails the company's obligation to redeem this share at the market price. Receiving money in exchange for participation in the company may not satisfy the interest of the inheritance foundation as well as violate the will of the testator which will lead to the inability of the inheritance foundation to carry out its activities, mostly if the strategy of the inheritance foundation was built around the ownership of shares in the company. Following paragraph 7 of Article 123.20-1. RCC it should lead to the foundation's termination due to the presence of circumstances for which the inheritance foundation is not responsible. In my opinion, in this case the rule on the transfer of the share to the inherited foundation like direct heir within the inheritance as a

[342] For example, the similar problems exist in some European legislation. See more in details about: German issue – J.von Staudinger. Kommentar zum Bürgerlichen Gesetzbuch mit Einführungsgesetz und Nebengesetzen. Erbrecht: §§2197-2228: (Testament 2) von Wolfgang Reimann. Berlin: Otto Schmidt/De Gruyter; Revised Auflage, 2016. 518p. Units 145, 162-166, 177-181 and others; and French issue - Prat S. Les pactes d'actionnaires relatives au transfert de valeurs mobilieres. Paris: Litec, 1992. 361p. P.39.

universal succession could be mitigated, recognizing the unconditional right to transfer share regardless of the objections of other participants of the company[343].

3.3. Inheritance foundation's activities.

i) The establishment of the inheritance foundation.

It should be reminded that the procedure for establishing an inheritance foundation has no analogs among ordinary legal entities, when, after the death of the founder, a new subject of law established by his/her will - the inheritance foundation –comes to existence. This situation's uniqueness lies in the fact that no unitary legal entity under Russian civil law loses contact with its founder. He/she retains the powers of a particular participant since he/she can form governing bodies, exercise absolute control over legal entity's activities, approve its reports, etc. The inheritance foundation exists in the absence of the founder. It is managed only by individuals who should have enjoyed the testator's trust or meet individual requirements outlined in the inheritance foundation's will or documents. The absence of the founder in the process of establishing and operating the inheritance foundation is an unavoidable problem due to the need to broadcast specific interpretations of his/her will by third parties, since the beneficiaries, among whom there may be heirs, are not allowed to operate the inheritance foundation due to the direct prohibition of the RCC.

Based on notarization of the will, the Decision, approval of its Charter, and after the death of the citizen, the notary is obliged to send to the authorized state body an application for state registration of the inheritance foundation within the prescribed time frame after the opening of the inheritance file. In detecting incorrectly prepared documents or any inaccuracies in them the registering authority is obliged

[343] That point of view is already being discussed concerning individuals inheriting shares in companies or cooperatives. See Rybachuk E.Y. Inheritance of property rights related to entrepreneurial activity. Abstract of the dissertation of Candidate of Legal Sciences. Moscow, 2013. 24p. P.9.// Рыбачук Е.Ю. Наследование имущественных прав, связанных с предпринимательской деятельностью. Автореферат диссертации канд.юрид.наук. Москва, 2013. 24р. С.9.

to refuse or suspend the registration of the foundation until the appropriate changes are made. The nature of the changes should probably be uncritical and not affecting the testator's will to establish the inheritance foundation. However the current legislation lacks rules that can assess this situation and propose ways to resolve it, i.e., the exact reasons for the refusal or ways to overcome such a rejection by finalizing the constituent documents. Probably such cases need to be provided for in the legislation. Otherwise they will not be able to benefit from judicial protection. Interested individuals can only apply to the court to protect a violated right or a legally protected interest, provided in Article 3 of the Civil Procedure Code of the Russian Federation. In the absence of a person's subjective right or legally protected interest the court refuses to accept the said person's claim following Article 135 of the Civil Procedure Code[344].

Nevertheless it will be difficult to present evidence of some people's interest in registering the inheritance foundation since it is unclear who should defend the interests of the inheritance foundation, beneficiaries, and other people involved. Based on the rules of the RCC about the inheritance foundation it is impossible to name authorized people who can defend the interests of an unregistered inheritance foundation. They cannot be notary, heirs, executor, registration authority. The most suitable person is the future sole executive body which is also interested in creating an inheritance foundation. But this person will not have the official status of the governing body until establishing the inheritance foundation. Probably it is necessary to clarify the current legislation in this part by specifying the obligation of a notary or the rights of beneficiaries to appeal against the decision of the registration authority to refuse state registration of the inheritance foundation within specially designated procedural periods.

[344] The presence of such a right for the plaintiff is critically important in any legal system. See more an overview of theories of subjective law on a claim in the German procedural science, Davtyan A.G. German Civil Procedure Law. Moscow:Gorodets-izdat, 2000. 320p. Pp.137-142.//Давтян А.Г. Гражданское процессуальное право Германии. М.:Городец-издат, 2000. 320с. С.137-142.

The following clarification of the law should concern the content of the will. As known to organize the inheritance foundation the testator must decide to establish an inheritance foundation. The current legislation does not provide for a strict form for such a Decision. A will containing a Decision can be made in a freeway. Clause 4 of Article 50.1 of the RCC provides for the presence of the following information in the Decision:

- information indicating the establishment of an inheritance foundation after the death of a citizen;

- approval by the citizen of the Charter of the inheritance foundation;

- the Conditions of managing of the inheritance foundation;

- on the size, procedure, methods, and timing of the formation of the estate of the inheritance foundation;

- people appointed to the governing bodies of the foundation or on the procedure for determining such people.

Similar information is also indicated in the Charter of the inheritance foundation.

As seen, for establishing an inheritance foundation the RCC indicates several documents: the will, the Decision, the Charter, and the Conditions. It might be assumed that these are separate papers since a systematic interpretation of the RCC's relevant provisions gives the basis for such a conclusion. Simultaneously all listed documents are constituent parts of the will, since only the will contains the Decision as an expression of the testator’s will, not as a separate paper to be sent to the registering authority. Subparagraph "c" of Article 12 of the Federal Act "On State Registration of Legal Entities and Individual Entrepreneurs"[345] dated 08.08.2001 No. 129-FZ (hereinafter the Act on Registration of Legal Entities) provides that during state registration of a created legal entity, a constituent

[345] "Collection of legislation of the Russian Federation", 13.08.2001, No. 33 (part 1), article 3431. // «Собрание законодательства РФ», 13.08.2001, №33 (часть 1), ст.3431.

document of a legal entity is submitted to the registering authority. Clause 2 of Article 123.20-1 of the RCC and subparagraph "b" of Article 12 of the said Act on the Registration of Legal Entities provide for the notary's duty to send to the registration authority the Decision and the Charter approved during his lifetime by the testator. From this it could be concluded that the Decision has the status of a constituent paper. According to part 1 of Article 52 of the RCC a legal entity can act based on 1) the Charter or 2) the Charter and the Articles of association, or 3) only the Articles of association. A comparison of these provisions concludes that the inheritance foundation acts are based on the Charter and the Decision. In my opinion, giving the status of a constituent document to the Decision is justified in case of different content of these papers and the consolidation of this provision in the law. Subsequently that will allow avoiding disputes regarding the priority of any of these papers.

Specific questions arise when registering an inheritance foundation following the Act on the Registration of Legal Entities, in which, according to subparagraph "a" of paragraph 1 of Article 12, during state registration of a future legal entity, an application for state registration signed by the applicant is submitted to the registering authority, to which the applicant (in this case a notary) confirms that the submitted constituent documents comply with the requirements for constituent documents of a legal entity of this standard form. Since the inheritance foundation is a legal entity, its activities will also be governed by § 1 of Chapter 4 of the RCC. According to paragraph 2 of Article 48 of the RCC, a legal entity must be registered in the Unified State Register of Legal Entities in one of the organizational and legal forms provided by civil law. *Numerus clausus* of such types of legal entities in which non-profit organizations can be established is provided in paragraph 3 of Article 50 of the RCC. That means that other organizational forms absent in this list cannot be registered in the specified state register. For avoiding problems associated with the registration of the inheritance

foundation, the specified Article should be supplemented by including the inheritance foundation in the list of legal entities.

ii) The system of the governing bodies of the inheritance foundation.

Further it should be noted the features of the management of the inheritance foundation in connection with the possible difficulties that the governing bodies might face. The formation procedure is determined exclusively by the testator in the documents of the inheritance foundation. The formation of governing bodies is a multiple point since, in case of impossibility to form governing bodies the inheritance foundation cannot be created.

As stated earlier the estate is managed by a sole or collegial executive body. The mechanism for controlling the inheritance foundation is not disclosed to third parties, except for beneficiaries, participants in governing bodies and officials in cases established by law. The formation of such bodies is carried out by a notary submitting documents on the inheritance foundation registration indicates such people in the following part 2 of paragraph 4 of Article 50, part 1 of paragraph 3 of Article 123.20-2. of the RCC. If the person specified in the Decision refuses to become a member of its governing bodies and it is impossible to form these ones, the notary is not entitled to send an application to the authorized state body for the establishment of an inheritance foundation by part 3 of paragraph 3 of Article 123.20-2 of the RCC. At the same time none of the people participating in the establishment of the inheritance foundation or having an interest in its creation is given the right to make proposals on the candidacies for governing bodies in any other way and their inclusion in the composition of such bodies. Only the testator has this right, but by the time the inheritance foundation is established he/she is no longer there. A situation is created that cannot be overcome, taking into account the existing legal norms, if the testator left a list of names of people who should be part of the foundation’s management bodies. It would be reasonable to change the legislation in such a way as to grant the right to a notary or beneficiaries to form the governing bodies of the inheritance foundation for any period (now the term of

validity of the governing bodies is not provided for by law either). If the testator indicated the conditions according to which candidates for the formation of governing bodies should be selected in the will, then this circumstance does not facilitate the task of creating governing bodies since there are also many unclear points. Should it be a list of requirements for candidates or a choice of several people or other conditions, for example, announcing a competition for participation in the selection, etc.? At the moment this depends on the completeness of the conditions contained in the documents of the inheritance foundation. It would be logical to provide in the law a list of specific requirements under which a notary, for example, with the consent of interested parties, could choose people who agree to enter the executive and other management bodies. In this case interested parties could influence forming the foundation's governing bodies, having a direct interest in its management's effectiveness.

Concerning the competence, powers, duties, and responsibility of the inheritance foundation's governing bodies, it should be stated an absolute "blind spot" in the law. Apart from the Conditions, in respect of which the law also does not describe the details, there is no other regulation. That seems to be a particular field for possible abuse by the governing bodies since there is no clear framework for limiting their powers and the scope of responsibility assigned to them. It is probably difficult to expect such "micro-regulation" in the field of corporate governance from the law, which is found in the Acts on Joint-Stock Companies, Limited Liability Companies, for example, on the procedure for concluding transactions by governing bodies with the approval of higher authorities, responsibilities for the reasonable conduct of business, liability for damage caused companies as a result of unqualified actions, etc. It seems it was necessary to draw an analogy between these laws and provide for similar provisions about the inheritance foundation's governing bodies, since the foundation's activities, as it turned out, maybe of entrepreneurial nature.

iii) The annulment of the inheritance foundation.

The situation causes specific questions and, later on, difficulties in applying the non-creation of the inheritance foundation which cannot be strictly legally called annulment (liquidation).

According to paragraphs 3 and 4 of Article 123.20-2 of the RCC, after the testator's death, the notary calls upon people who must enter the inheritance foundation's management bodies. These people must confirm their consent to enter the governing bodies. That must be done within one year from the day the need to form these inheritance foundation bodies arises. In my opinion, this period is a restrictive one since in its violation there is no possibility in the legislation for its restoration[346]. Thus the inheritance foundation is subject to liquidation in this case. However in the absence of people's consent to participate in the governing bodies, the inheritance foundation cannot be registered.

Non-existent legal entity cannot be annulled since this procedure is provided only for legal entities as acting subjects of law following Article 61 of the RCC. Here the violation of the standard technique is seen. In this case it could be discussing only failure to establish an inheritance foundation as a legal entity but this should not entail any liquidation procedures that are relatively long-term and costly and will look absurd with an uncreated legal entity. The law should provide for the possibility of a different way of forming governing bodies as it is indicated above if it is impossible to return to the original state of inheritance relations with an alternative option for accepting the inheritance. An essential point will be the safety and functioning of the inherited property when the notary determines possible ways of transferring the estate. That legal conflict can be eliminated by introducing detailed rules on additional measures to preserve the inherited estate and its management before moving to heirs and/or other people indicated by the

[346] That means the end of this term terminates the ability of formation governing bodies and it's similar to term of execution of subjective right. See more about legal term classification in the book Civil law: textbook: 3 vol. Vol.1. / N.N.Agafonov, S.V.Artemenkov, V.V.Bezbakh and others; Editor-in-chief V.P.Mozolin. 2nd ed., Rev. and add. Moscow: Prospect, 2016. 816p. Pp.377-379.// Гражданское право: учебник: в 3т. Т.1. / Н.Н.Агафонов, С.В.Артеменков, В.В.Безбах и др.; отв.ред.В.П.Мозолин. 2-е изд., перераб. и доп. Москва: Проспект, 2016. 816с. С.377-379.

testator. One of these measures could be to commit additional rules to an executor like possible and common in German law. If mandated by the testator, the executor is enabled to bring into line and complete the inheritance foundation rules and appoint the members of the governing bodies[347].

iv) The management of the inheritance foundation.

As known an inheritance foundation is a tool for managing the estate for the benefit of interested parties. The founder by death cannot take part in the management of the inheritance foundation. Beneficiaries and other interested people, under the law, are deprived of the opportunity to manage the operational activities of the foundation directly. Only the sole executive body (CEO) has a right to act on behalf of the inheritance foundation: to conclude transactions, interact with authorities, legal entities, individuals, enter into negotiations and conduct correspondence. That is the only representative of the foundation who can dispose of the estate. Consequently special requirements should be placed on those participating in the management bodies' competence and professionalism. Currently the law does not establish such requirements. Of course they can be set by the testator in Conditions (taking into account all the previous wishes to be reflected in these Conditions and the absence of the law, a very voluminous document should be obtained, amounting to hundreds of pages, which is hardly possible in current circumstances). It seems more logical to establish such requirements in the law by analogy with the conditions set for people who are members of financial companies' management bodies: banks, investment, insurance companies, pension foundations, etc. Increased requirements may include the level of education, work, or management experience in such and similar organizations, the absence of incriminating facts in the biography, etc. The purpose of introducing such restrictions should be to increase the level of

[347] See more, J.von Staudinger. Kommentar zum Bürgerlichen Gesetzbuch mit Einführungsgesetz und Nebengesetzen. Erbrecht: §§2197-2228: (Testament 2) von Wolfgang Reimann. Berlin: Otto Schmidt/De Gruyter; Revised Auflage, 2016. 518p. P.235, unit 238 and others. See also https://www.juris.de/r3/document. Last access 27.08.2020.

professional property management transferred to the inheritance foundation, preservation, and growth. For example, Article 10.1 of the Federal Act "On the Securities Market"[348] dated 22.04.1996. No. 39-FZ establishes certain restrictions on people who may be heads of financial companies operating in the securities market. The Central Bank of the Russian Federation as a mega-regulator of the financial market provides in its documents the qualification requirements for the heads of financial institutions, heads of individual departments of such organizations, based on Article 57.1. Federal Act "On the Central Bank of the Russian Federation"[349] dated 10.07.2002. No. 86-FZ.

On the other hand, it would be possible to repeat European colleagues' path and entrust the inheritance foundation's management to specialized management companies that have an appropriate license. A positive fact in this is special supervision over the companies mentioned above over their management quality. These conditions will ensure a high level of culture in managing the estate to achieve this goal. Otherwise there is a danger of abuse by the foundation managers concerning the foundation and, ultimately, the beneficiaries. The discussion of the inheritance foundation's professional management raises the question of the cost of such management services which should depend on the foundation's assets' size. That is also related to the establishment of the minimum amount of inherited property. It is advisable to create an inheritance foundation, which is also absent in the legislation. An alternative option could be an introduction of an analog of the foundation's capital as the minimum size of the authorized capital in companies, which will also guarantee the execution of transactions in which the inheritance foundation participates, especially in the absence of information about the assets and activities of the foundation.

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[348] "Collection of legislation of the Russian Federation", No.17, 22.04.1996, article 1918. // «Собрание законодательства РФ», №17, 22.04.1996, ст.1918.

[349] "Collection of legislation of the Russian Federation", No.28, 15.07.2002, article 2790. // «Собрание законодательства РФ», 15.07.2002, №28, ст.2790.

There are also questions regarding creating an appropriate "legal and economic infrastructure" to operate an inheritance foundations. An example of that is the current legislation, namely the Act on the Securities Market, does not include the inheritance foundation in the list of qualified investors in the securities market. Thus the possibilities of inheritance foundations to invest money and generate corresponding income is narrowed. The inheritance foundation has the right to engage in such activities if there are adequate capital and qualified top management. Therefore such changes should be made to the current legislation as soon as possible.

v) Taxation of the inheritance foundation.

Having studied taxation of inheritance foundations, it should admit that the Russian tax legislation needs to reform in various aspects[350]. The legislation currently provides only tax exemption for transferring an estate to the heir under a will following subparagraph 2 of paragraph 2 of Article 251 of the Tax Code. In other cases significant clarifications and changes in the tax provisions are required in terms of forming an orderly system of tax preferences in the form of an increase in expenses that reduce the taxable base of the inheritance foundation while simultaneously stimulating the social aspect of taxation. It is possible to introduce differentiation of the tax burden of inheritance foundations depending on the inheritance foundation activities, similar to companies' tax regime.

The taxation of payments made to beneficiaries or separate people requires special attention. There is no legal definition of such payments in tax legislation. They cannot be recognized as dividends, and a similar tax regime cannot be applied to them since public law does not apply by analogy. It is worth mentioning that there is a difference between the tax regime of dividends, which are taxed at a rate of 15%, and other payments recognized as income of citizens and having a tax

[350] See more, M.I.Kononchuk. Issues of work of the inheritance foundations in Russia.// Bulletin MGPU, series «Legal sciences». 2019. №3(35). P.80-81. // М.И.Конончук. Проблемные аспекты работы наследственных фондов в России//Вестник МГПУ, серия «Юридические науки». 2019. №3 (35). С.80-81.

rate of 13% (or with certain terms 15% by new Tax law). Thus the legislator must adopt appropriate rules for determining the status of such charges and establish a taxation regime for such income. Now they will be subject to general individual income tax, as shown earlier. Perhaps this is unfair since these payments are deferred from the heirs' inherited estate, and such income is not taxed.

The above review of the proposals concerns only the taxation of estate and beneficiaries. However one should not forget about the state fiscal replenishment since the taxation of the transfer of inherited property, its distribution to beneficiaries, and separate people are not burdensome. Europe and the United States have more onerous tax regimes. Also there is even a deadline for "re-taxing" inheritance in Germany. Thus paragraph 1 of clause 4 of part one of Article 9 of the Inheritance Tax and Gift Tax Act (Erbschaftsteuer- und Schenkungsteuergesetz, ErbStG) dated 17 April 1974 (amended by 26 November 2019)[351] provides for taxation of all estate received by foundations after 30 years from the date of inheritance. There is no such rule in Russian legislation but it can be supported by collecting taxes on the estate and encouraging inheritance foundations to actively manage their ownership.

Ultimately it is evident that changes in inheritance legislation should entail interrelated changes in tax legislation.

3.4. The subjects of the inheritance foundation.

i) Clarification of the legal status of beneficiaries.

Regarding the subjects of the inheritance foundation, it should be noted that all people, except for the inheritance foundation, are well known to legislation from early times since they are frequently in the focus of its attention. As known, new subjects of inheritance law have appeared, whose legal status, the nature of the relationship with the inheritance foundation, and others have not been finally

[351] See https://www.gesetze-im-internet.de/erbstg_1974/BJNR109330974.html. Last access 25.09.2020.

clarified. Such is the figure of the beneficiary of the inheritance foundation, and people equated to it. Some points should be considered that require theoretical discussion and possible clarification of the relevant legal provisions in this field.

In my opinion, the law's disadvantage is the limited disposal of the beneficiary's rights concerning the inheritance foundation. The legal nature of such rights has not yet been investigated, and, considering them in more detail, it is possible to admit their duality. Based on the general provisions of civil law the beneficiary's rights are very similar to a company participant's corporate rights. Their main essence is the authority to participate in the company's management, to obtain information about the company, to receive dividends[352]. In this sense the beneficiary's rights are very close in their content to corporate rights, including the beneficiary's right to require an audit of the foundation's activities.

On the other hand, according to the law, the beneficiary's rights are non-negotiable; they are not foreclosed; they are not inherited, which already resembles the properties of personal non-property rights. From the above list of prohibitions, the more inappropriate it seems to be the inability to inherit the beneficiary's rights. To some extent, that can even infringe on the testator's will, for example, to find an inherited estate in one family. The law makes it possible to replace the first beneficiary with others. So, following part 2 of paragraph 3 of Article 123.20-3 RCC in the event of the beneficiary's death new beneficiaries are determined in accordance with the Conditions. In particular, they can be determined by sub-

[352] Corporate law relatively recently became the subject of civil law in RCC in 2012. Their appearance was facilitated by a long discussion of the existence of such rights in scientific community. See for example, Dolinskaya V.V. Joint-Stock law: Textbook / Ed. A.Y. Kabalkin. M.: Jurid.lit., 1997. 352p. Pp.10-17. // Долинская В.В. Акционерное право: Учебник/Отв.ред. А.Ю.Кабалкин. М.: Юрид.лит., 1997. 352с. С.10-17.; Kulik A.A. Corporate rights in the civil law system. Dissertation of the Candidate of Legal sciences. Moscow: GOUVPO "Moscow State Law Academy", 2009. 278p. Pp.16-70. // Кулик А.А. Корпоративные права в системе гражданского права. Диссертация на соис.уч.ст.канд.юр.наук. Москва: ГОУВПО «Московская государственная юридическая академия», 2009. 278с. С.16-70.; Sukhanov E.A. Problems of corporate law’s development. // Problems of reforming the Civil Code of Russia: Selected Works 2008-2013. M.: Statut, 2013. 494p. Pp.147-187.// Суханов Е.А. Проблемы развития корпоративного права. // Проблемы реформирования Гражданского кодекса России: Избранные труды 2008-2013гг. М.:Статут, 2013. 494с. С.147-187.

assignment. The assignment is a well-known institution of inheritance law, the essence of which is the emergence of new heirs to replace the heir who, for whatever reason, did not accept the inheritance following Article 1121 of the RCC. In addition to the Conditions' general indication, the legislator did not establish a mechanism for implementing the procedure for such a sub-appointment. For practical purposes or a possible legal claim it is appropriate to use the analogy of the law on the sub-appointment of the heir, but that must be performed by the testator, naming a specific person or determining the procedure for determining it.. In the absence of the testator it is necessary to decide on the authorized person for such actions and determine the supremacy of the Conditions in this matter or general rules on sub-assignment in inheritance. In my opinion, having provided for such a complicated procedure (coupled with the alleged detailed description of such situations in the Conditions) the legislator infringed the beneficiary's rights to dispose of his/her assets. It would have been much more useful to provide for the possibility of inheritance of such rights, probably with some limitations (for instance not members of the testator's family). The logical development of such a situation can lead to the disappearance of beneficiaries for natural or legal reasons, ultimately leading to the termination of the inheritance foundation due to the disappearance of its activities' purpose. It may be necessary to allow the inheritance of the beneficiary's rights under certain conditions according to the testator's will.

Another power of the beneficiary which also requires clarification is his right to exercise control over the inheritance foundation's activities, including compliance with the Conditions. In violation of terms of that paper which entailed losses for the beneficiary, the latter has the right to demand their compensation if this is provided for by the Charter. These rights must be granted to the beneficiary by law[353]. They clearly expressed interest in receiving certain payments from the inheritance foundation which is the very purpose of its activities. The beneficiary

[353] See Werner O. Die idealistische Familienstiftung (Teil 1)./ ZStV. №6. 2018. P.206.

bears the risk of non-payment of the property owed to him due to possible unskilled or criminal actions of the inheritance foundation's management bodies. By analogy with corporate law, it seems reasonable to consolidate such legal, since this will ensure the protection of the estate interests of the beneficiary.

ii) Creditors of the inheritance foundation.

According to the general rules, the inheritance foundation is fully liable to the testator's creditors since as an heir is the full legal successor of the testator. This rule ensures the protection of the interests of the deceased person's creditors, who will be able to make claims against all heirs who have accepted the inheritance, including the inheritance foundation. The legislator did not introduce immunity for the inheritance foundation from the claims of creditors. That is a difference from similar institutions in foreign law. In my opinion, this is due to two reasons. Firstly, as already mentioned, the rule of universal succession is in effect. In this regard the heir is the testator's full legal successor and accordingly is responsible for his debts within the inherited estate value transferred to him. The general rules of law of obligations enshrine the principle of Roman law "*pacta sunt servanda*" - full and appropriate execution of duties and the inadmissibility of unilateral refusal to fulfill them, established by Articles 309 and 310 of the RCC. Secondly within the limitation period creditors have the right to challenge any transactions on the transfer of the debtor's property to any third party to avoid paying debts or returning property received under civil law transactions. The basis for such contestation of transactions may be the deliberate concealment of property by the debtor, the commission of invalid sham transactions for the alienation of property, the assumption of non-existent obligations, etc. In these cases the approach developed by judicial practice is based on declaring the debtor bankrupt and returning all the alienated property to the bankruptcy estate. Otherwise the inheritance foundation's establishment may become a means of avoiding liability

for the testator's debts[354]. Of course the rule distinguishes the inheritance foundation from its counterparts in foreign law where the inheritance foundation is sometimes an instrument for protecting the testator's assets, possessing an absolute immunity from the testator's claims creditors and the foreclosure of such property. Perhaps this circumstance will also not contribute to the growth of the popularity of the inheritance foundation. However due to political, legal, and ethical considerations the existing provisions should not undergo essential changes in this regard. For protecting the rights of creditors and presenting claims for the return of debts it may be worth limiting the right of the inheritance foundation to perform a specific type of transactions with the foundation's ownership or a particular value until all issues regarding the fulfillment of obligations to the testator's creditors are settled.

iii) The heirs with a compulsory portion.

The novelty of the inheritance foundation's legal regulation consists of the fact that the legislator allowed to deviate from the inviolability principle of an compulsory portion in the inheritance. According to part 1 of paragraph 5 of Article 1149 of the RCC the heir who has a right to a compulsory portion and is the beneficiary of the inheritance foundation loses the right to a compulsory portion. If within the prescribed period, such an heir renounces a beneficiary's status by notifying the notary in charge of the inheritance case, he/she retains the right to compulsory portion. The validity and success of such an innovation raise some concerns[355]. The law does not answer well-grounded questions related to the

[354] This point of view is supported by some scientists. See more, Chistobaeva V.I. Inheritance foundation as a new way to ensure the safety of the testator's property. // XXXIII International Scientific and Practical Conference. M.: Publishing house "Olymp", 2018. 259p. Pp.171-173. // Чистобаева В.И. Наследственный фонд как новый способ обеспечения сохранности имущества наследодателя.// XXXIII Международная научно-практическая конференция. М.:Издательство «Олимп», 2018. 259с. С.171-173.

[355] See more, Ayusheeva I.Z. Features of the civil status of the inheritance fund. // Actual problems of Russian law. 2018. No. 8 (93). Pp.100-108. // Аюшева И.З. Особенности гражданско-правового положения наследственного фонда// Актуальные проблемы российского права. 2018. №8 (93).

compulsory portion in the inheritance of the minor children of the testator and other heirs. According to the law, they have a right to compulsory portion of the estate, which they can receive, regardless of the will's content. By part 2 of paragraph 5 of Article 1149 of the RCC in the event of the heir's refusal of the rights of the beneficiary of the inheritance foundation the court may reduce the size of the compulsory portion of this heir if the value of the assets due to him/her as a result of inheritance vitally exceeds the amount of funds required to maintain a citizen, taking into account his reasonable needs and obligations he/she has to third parties at the date of opening of the inheritance as well as the average amount of expenses and his standard of living before the death of the testator. In this provision, there is a double infringement of the property rights of a minor. Firstly the court has a right to reduce the child's share in receiving inherited foundations compared to what he would be entitled to by law. Secondly when accepting the status of a beneficiary, he/she becomes dependent on the results of the inheritance foundation's activities, which, as it turned out, is mostly entrepreneurial. The latter is an activity associated with specific economic risks and the absence of a stable profit guarantee. Thus the reception by a minor of a beneficiary's status with the simultaneous refusal of the compulsory share puts him/her in the position of a subject that could lose any means to ensure his living. In practice a child's well-being depends on the success of the inheritance foundation management by third parties which is too unreasonable. There are human miscalculations or an existing economic situation, all of that is a shaky basis for ensuring a minor individual (maybe not one). It would be fairer to provide such a particular subject of inheritance law with the minimum maintenance that would be due to him in case of inheritance by law, with the simultaneous right to be the beneficiary of the

C.100-108.; Plastinina N. Inheritance New: What's New? // "Housing Law", 2017, No. 9. Pp.19-20. // Пластинина Н. Наследство New: что нового?// "Жилищное право", 2017, №9. С.19-20.

inheritance foundation with a possible reduction in payments by the amount of the provided maintenance[356].

iv) Some features related to Family law.

The analysis of the relation between the institution of the inheritance foundation and family law indicates that there are no special provisions for regulating the creation of an inheritance foundation and the transfer of inheritance to it and issues of the common ownership of spouses, the rights of the surviving spouse and others on the other side. The RCC's new provisions do not refer to the family legislation. That is also a gap in regulating these relations. The joint marital property regime established by Article 256 of the RCC, Articles 33, 34, 35 of the Family Code of the Russian Federation presupposes mutual agreement of spouses on this ownership's disposal. So, the testator, represented by any of the spouses, is not entitled to transfer to the inheritance foundation property that does not belong to him alone. Otherwise the spouse whose rights have been violated has the right to demand that such transactions be declared invalid following Article 35 of the Family Code. As a result this ownership's return to its previous state, i.e., in joint ownership. Also the spouses own equal shares in a joint property following Article 39 of the Family Code. Therefore the surviving spouse owns half of the joint property, which cannot be indicated in the testator's will and transferred to the estate. The surviving spouse can demand the invalidation of this part of the will and transfer the assets to the inheritance foundation. In this regard, it is possible to propose establishing a minimum value (size) of estate assigned to the inheritance foundation to avoid the procedure for its annulment or bankruptcy due to the estate loss and failure to achieve its goals. That can also be helped by introducing the institution of the family foundation (which will radically distinguish it from the existing inheritance foundation) which will smooth out these contradictions regarding joint property disposal by guaranteeing the surviving spouse's rights.

[356] Modern European Acts are developing in this direction, ensuring a more fair treatment of such heirs, See more details, Mattei U. Basic Principles of Property Law. Quoted from book: У.Маттеи, Е.А.Суханов. Основные положения права собственности. М.: Юристъ, 1999. 384р. Pp.146-172.

v) The estate in foreign jurisdictions.

An interesting issue is transferring the estate to the inheritance foundation, de jure, and de facto located and subject to foreign jurisdictions. There are immense difficulties for implementing any powers concerning this estate by the inheritance foundation, of course, if there is a legal possibility to endow it with such one[357]. The reason is, among other things, the lack of ratification by Russia of several international agreements on such regulation, namely: the Washington Convention providing a Uniform Law on the Form of International Will (on 10/26/1973)[358], the Hague Convention on Conflicts of Laws Relating the Form of Testamentary Dispositions (on 10/05/1961), Convention of 2 October 1973 Concerning the International Administration of the Estates of Deceased Persons (on 10/02/1973)[359], the Hague Convention on the Law Applicable to Trusts and on their Recognition (on 07/01/1985). As far as is known these documents are currently not considered by the authorized state bodies. Besides the existing bilateral agreements of the Russian Federation on the provision of legal assistance with foreign states do not contain fast and comfortable execution or even recognition of notarial acts of the Russian Federation on the territory of other countries. It will also not contribute to the desire of wealthy people to use inheritance foundations under Russian law. Here it is possible to wish the Russian legislator to make every effort to create an international legal infrastructure for domestic inheritance foundations quickly.

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[357] See for example, Inheritance law: an article-by-article commentary to Articles 1110-1185, 1224 of the Civil Code of the Russian Federation. / Ed. E.Y.Petrov. M.:M-Logos, 2018. 656p. Pp.354-355.// Наследственное право: постатейный комментарий к статьям 1110-1185, 1224 Гражданского кодекса Российской Федерации./Отв.ред. Е.Ю.Петров. М.: М-Логос, 2018. 656с. С.354-355.; Barinova A.G. Features of inheritance of real estate // Mariyskiy juridical bulletin, 2016. Vol. No. 2 (17). P.68. // Баринова А.Г. Особенности наследования недвижимого имущества // Марийский юридический вестник, 2016. Т.1. №2 (17). С.68.

[358] https://www.unidroit.org/instruments/international-will. Last access 02.08.2020.

[359] https://www.hcch.net/en/instruments/conventions/full-text/?cid=83. Last access 02.08.2020.

CONCLUSION

In the modern world processes associated with the movement of capital, labor, the expansion of the presence or departure of companies in specific markets are happening very fast. The social and economic development of society is mainly due to flexible legislation that considers the current needs of people. Although legal provisions often do not keep pace with the rapid growth of new relations, the need to respond promptly to new demands of society and business by changing existing legislation and creating new laws is essential.

During the transition period from the socialist structure of the economy to market relations, wealthy Russian owners were widely using foreign jurisdictions to preserve their assets, establishing private (family, testamentary) foundations or trusts in accordance with their legislation and transferring ownership, funds, securities, other financial investments, etc. It should be emphasized that along the way, political and economic issues related to the prestige and ability of the state to adopt legislation that meets modern realities have risen which ultimately affects its financial security. At the same time the backwardness of legislation which became a brake on the development of the national economy, and increased competition with foreign law and jurisdictions pushed Russian authorities to meet the requirements of the time by adopting new regulations that would create a comfortable environment for the preservation and sustainability of a business.

In this sense a notable event is the national inheritance law. As it is noted earlier, the latest inheritance law as a sub-branch of Russian civil law has demonstrated major transformation in a short time. Until recently Russian legislation could not provide a complete set of legal instruments that would fully satisfy the needs of civil circulation within the framework of the adequacy of inheritance law.

An important fact was that these changes showed the legal susceptibility of the principles of inheritance law, free from any ideological burden of the past, and were based on several decisions of the Constitutional Court of the Russian

Federation on cases dealing with inheritance claims[360]. As a result the legal regulation of inheritance relations has been enriched by modern standards of inheritance, expanding the possibilities for the transfer of heritage through various traditional instruments, including an inheritance contract, a joint spouse testament, and an inheritance foundation[361].

Russian Civil Code defined it as a unitary non-profit organization that manages the testator's assets to transfer property, proprietary rights, or part of the profits from its activities to the beneficiaries of the foundation specified by the testator. In this sense the inheritance foundation is similar to another civil law institutions like fiduciary management, legate since the purpose of its creation is the management and/or control over the power of the estate of the testator in the interests of the beneficiaries.

According to legislator's ideas, among the positive aspects, there is an opportunity for wealthy businesspeople to preserve their business after death, providing a comfortable life for heirs and others; a chance to not stop the current activities of companies so that it does not lose control during the period of transferring the inheritance; an opportunity to sponsor grants for science, education, sports, art at the expense of the foundation, etc.[362].

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[360] For example, on the need to comply with the rules on inheritance with the general principles of civil law, see more, Determination of the Constitutional Court of the Russian Federation №262-O, dated 20.12.2001// http://sudbiblioteka.ru/ks/docdelo_ks/konstitut_big_1661.htm. Last access 17.08.2020. See also, Determination of the Constitutional Court of the Russian Federation №316-O, dated 30.09.2004 // Bulletin of the Constitutional Court of the Russian Federation, No. 2, 2005. / Вестник Конституционного Суда РФ, №2, 2005.

[361] See Gushchin V.V., Dobrovinskaya A.V. Inheritance foundation as a way of managing inherited property // Inheritance law. 2018. No.1. Pp.22–25. // Гущин В.В., Добровинская А.В. Наследственный фонд как способ управления наследственным имуществом // Наследственное право. 2018. № 1. С.22-25.

[362] See Kulikov V. "The chiefs - by will" // Rossiyskaya gazeta. Federal issue. 13.05.2019. No.101 (7859).// Куликов В. В начальники – по завещанию. // Российская газета. Федеральный выпуск. 13.05.2019. №101 (7859).

The idea that the presence of inheritance foundations will serve as an impetus for charity development seems to be controversial. Russia cannot yet be characterized as a country devoted to philanthropy. Thus, it climbed two lines up in the 2017 global charity ranking, moving from 126th to 124th place of 139 participating countries. See more in details the official site of the Foundation for Support and

After this legislative novelty business people can legally leave their business on Russian territory, preserving capital, increasing jobs, making tax payments, and developing the national economy. It maybe calls this vision a strategic one since this is how the law protects the prospect of economic well-being. Therefore the appearance of an inheritance foundation in Russian legislation is even called an "anti-offshore measure"[363]. On the other hand, the tactical solution for economic problems is also essential. In practice this means "physical" preservation of a deceased person's business or other assets[364]. There were often cases when a successful business, established by the stern and long-term work of its creator, was sold cheaply or became bankrupt after the death of its owner due to staff unpreparedness, distrust towards top management, inability, unwillingness, or lack of opportunities for the heirs to manage the business[365]. The new institution of inheritance law was also intended to prevent such cases[366]. As seen, the political, legal, and economic reasons played a large role in changing the inheritance legislation and appearance of the inheritance foundation.

As mentioned above the legal regulation of inheritance foundations in Russia had no history and no legal traditions and was created "from scratch". When developing this law, this circumstance suggests that the best foreign samples of legal provisions regulating such institutions were taken into account. Legislations

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Development of Philanthropy "KAF" (Фонд поддержки и развития филантропии «КАФ»). http://www.cafrussia.ru/page/mirovoi_reiting_blagotvoritelnosti_1. Last access 31.07.2020.

[363] See more, Krasheninnikov P.V. The new law will protect the rights of heirs.// Rossiyskaya gazeta. Federal issue. 31.07.2017. No.168 (7334). // Крашенинников П.В. Новый закон защитит права наследников. // Российская газета. Федеральный выпуск. 31.07.2017. №168 (7334).

[364] See Kozlova N.N. Inheritance on demand. // Rossiyskaya gazeta. Federal issue. 31.07.2017. No.168 (7334).// Козлова Н.Н. Наследство до востребования. // Российская газета. Федеральный выпуск № 168 (7334). 31.07.2017.

[365] See more, Inheritance law: article-by-article commentary to articles 1110-1185, 1224 of the Civil Code of the Russian Federation / Ed. E.Y.Petrov. M .:Statut, 2018. 510p. P.247. // Наследственное право: постатейный комментарий к статьям 1110-1185, 1224 Гражданского кодекса Российской Федерации / Отв.ред. Е.Ю.Петров. М.: Статут, 2018. 510с. С.247.; Tarasov Y.A. Hereditary fund - a new category in civil law // News of the South-West State University. 2017. No. 6 (75).). P.195. // Тарасов Ю.А. Наследственный фонд – новая категория в гражданском законодательстве // Известия Юго-Западного государственного университета. 2017. №6 (75). С.195.

[366] Foreign authors also see one of the reasons for the establishment of foundations. See Rott E., Kornau M., Zimmermann R. Testamentsvollstreckung. Wiesbaden: Gabler, 2008. P.82.

of European countries, such as Germany, France, Italy, Liechtenstein, Switzerland, and others, which have a long history and practice of regulating such foundations, were used as examples for the most part[367]. There is no doubt that the institution of the inheritance foundation, the study of which was the subject of my research, brings Russian legislation closer to the developed and effective legal systems globally, given that the Russian legal system traditionally refers to the continental system. It is still impossible to assert unambiguously how successful this borrowing will be as well as how numerous and quick will be the perception of the adopted innovations by the subjects of inheritance relations. As for any change in legislation, it should take some time to assess its relevance together with reliability and usability.

Of course, there are specific concerns about the speedy and full-scale use of inheritance law‘s legislative novelties. As already mentioned, they expanded the toolkit to transfer inheritance and were tested in foreign legal systems[368]. However this does not serve as a guarantee of their "easy" adaptation and may entail both the revision of legislation and changes in the legal thinking of the subjects of hereditary legal relations.

A scientific analysis of the inheritance foundation regulation under Russian law is carried out in previous Chapters of this dissertation. That is a unique legal institution that stands on the border of corporate and inheritance branches of civil law. In this research the legal status of the inheritance foundation as a legal entity was considered during which it was concluded that there are substantial gaps in the legal regulation of the status of the inheritance foundation, especially in its classification as a unitary non-profit organization. As a participant in inheritance

[367] See more, Vronskaya M.V. The ratio of Russian inheritance funds with their foreign legal categories Territory of new opportunities // Bulletin of the Vladivostok State University of Economics and Service. Volume 11, No.4. 2019. Pp.108-119.//Вронская М.В. Соотношение российских наследственных фондов со смежными зарубежными правовыми категориями Территория новых возможностей// Вестник Владивостокского государственного университета экономики и сервиса. Vol.11, №4. 2019. С.108-119.

[368] See more, Niegel J. Purposeful trusts and foundation//Trusts & Trustee, Vol.18, No.6, July 2012. Pp.451-453.

relations it received extremely laconic legal regulation. Even if it is recognized as a forced heir, the inheritance foundation's structure still needs a full theoretical discussion, taking into account its beginning practical use. Indeed new inheritance rules for making a will and the possibility of establishing inheritance foundations provide more opportunities for testators in comparison with former legislation. Thus the inheritance foundation aims to protect the interests of wealthy citizens who want to keep their business prosperous after their death, avoid the fragmentation of the estate, preserve it as an integral object (if it’s possible), and provide the heirs.

As currently presented by civil law, the inheritance foundation takes the place of a direct (immediate) heir, behind whose figure there are indirect heirs, qualified by law as beneficiaries and separate people. On the one hand, indirect heirs could be true heirs (by law or by will, depending on their status concerning the testator and his/her will). On the other hand, they are indirect heirs because some parts of the estate are distributed in their favor in the form of income received by foundation as well as its estate in the event of the termination of the activities of the inheritance foundation. To implement such a scheme of inheritance relations, the legislator deviated from the existed rule of "testator-heir". Consequently it expanded the circle of people entitled to receive inherited estate and/or income from it, which introduced an additional subject of inheritance relations to ensure the testator's purposes in providing estate content to the people indicated by testator.

The emergence of this institution has affected some of the competencies of third-party participants in the inheritance process. So notaries' powers and responsibility have changed where they are assigned a vital role replacing the founder in specific issues of establishing an inheritance foundation. The notary actions have become vastly limited in time, starting from the moment the papers for state registration of the foundation were formed and ending with the transfer of the inherited estate to the established foundation.

As mentioned, the undoubted positive quality of the introduction of inheritance foundation should be a reduction in the process of succession. In reality that means a quick transfer of the business to the heir in a liquid and manageable condition. In this status the inheritance foundation receives estate and management of not just static ownership, but an operating business with a working staff, valid contracts, relations with counterparties, clients, and paying taxes. Therefore it is crucial to ensure a "light" transfer of the business to a new owner while preserving the company's activities and its assets. As a result of which the problem of the so-called "*hereditas iacens*" can be solved in which irreversible consequences can occur with an inheritance during the period for accepting an inheritance.

With all the apparent advantages the innovation of the inheritance foundation requires further improvement. Considering the outlined conflicts and the proposed solutions to the controversial aspects, it should be concluded that the inheritance foundation as a legal structure currently has a large number of shortcomings. With regret, it can be stated that the introduction of this legal structure took place too quickly. It was not preceded by an open public discussion in traditional science. As has been shown, the consequence of this is the emergence of numerous questions and problems of interpretation and the presence of practical difficulties in using the inheritance foundation as a tool for managing the inherited estate. At this stage these circumstances may reveal the inefficiency of the inheritance foundation due to the ambiguity and inconsistency of legal provisions. Judicial practice should also be focused on the correct application of the law on inheritance foundations. However, at present, it will be able to rely only on the general provisions of the legislation on foundations, which does not correspond to the essential characteristics of inheritance foundations, and inheritance legislation, which also has separate rules for foundations. Therefore a profound revision of the legal provisions on inheritance foundations must expand its use because some legislative innovations were not devoid of contradictions and shortcomings. Thus in analyzing the Russian legislation on inheritance foundations, some proposals were produced

regarding the improvement of legislation on inheritance foundations to ensure equal and comfortable conditions for its use compared with other inheritance law instruments. Among others, there are some questions regarding the process of inheritance foundation's establishment and annulment, endowing it with the estate, status of inheritance foundations as professional investors, the structure, powers, and responsibilities of the foundation's management bodies, requirements for the participants in them, protect the rights of beneficiaries, the lack of an inventory list of the estate transferred to the foundation due to contradiction with the provisions of civil legislation on heirs that have a compulsory portion, the rights of the surviving spouse to a part of the estate that can be transferred to the inheritance foundation as well as issues of taxation of the foundation's activities and the testator's estate moved to it, payments to beneficiaries, and others[369].

In this regard it can be assumed that it is necessary to adopt separate legislation on the regulation of hereditary relations with the inheritance foundation's participation. The introduction of a small number of legal provisions in the RCC on inheritance foundations and its participants only made a general beginning to regulate this complex institution. In my opinion, to create a legal framework that covers the maximum amount of regulation on inheritance foundations, people, relations associated with this institution, it is necessary to form full-fledged legislation. Of course the successful long-term experience of foreign foundation legislation should be taken into account.

The updated inheritance mechanism's goal to guarantee citizens the constitutional right to protect private property will be achieved only in this case. In my opinion, the new inheritance system should be practical, consider the needs of society and business, promote the stability of civil circulation, protect property

[369] See more, Martynov Y.A., Fedchun A.V. Some problems of the Russian legislation on the inheritance fund. Scythian. Student Science Issues, No. 1 (29), 2019. Pp.71-75. // Мартынов Ю.А., Федчун А.В. Некоторые проблемы российского законодательства о наследственном фонде. Скиф. Вопросы студенческой науки, №1(29), 2019. С.71-75.

rights and interests of citizens, not create obstacles in the form of new legal instruments and infringement of the rights of participants in inheritance relations.

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„Die Stiftung des letzten Willens (Erbschaftsstiftung)

nach dem modernen russischen Zivilrecht “

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In diesem Papier wird die Erbschaftsstiftung als zivilrechtliche Institution betrachtet. Da es sich bei der Erbschaftsstiftung um eine Neuheit handelt, bedeutet dies, dass fast alle Aspekte im Zusammenhang mit der Gründung, der staatlichen Registrierung, der Übertragung von Eigentum, der Bildung von Leitungsgremien, Zahlungen an Begünstigte und der Besteuerung mit den oben beschriebenen wissenschaftlichen Methoden sorgfältig untersucht werden.

Das Forschungsthema sind die gesetzlichen Bestimmungen über Erbschaftsstiftungen in der Russischen Föderation, die Praxis der Anwendung zivilrechtlicher Bestimmungen, Urteile in diesem Bereich sowie die Ansichten russischer und ausländischer Experten zu diesem Thema. Ziel der Arbeit ist es, die rechtlichen Merkmale der Erbschaftsstiftung im russischen Zivilrecht und Empfehlungen zur Überwindung möglicher rechtlicher Probleme in ihrem erfolgreichen Funktionieren zu untersuchen. Ziel der Arbeit ist es, 1) den rechtlichen Status der Erbschaftsstiftung im System der zivilrechtlichen juristischen Personen zu charakterisieren, die Voraussetzungen für ihre Gründung, Registrierung, Liquidation, Tätigkeit interessierter Kreise, die Rechte und Pflichten der Themen der Erbschaftsstiftung, einschließlich der Leitungsorgane der Stiftung; 2) bei der Prüfung der Besteuerung von Erbschaftsstiftungen, ihrer Teilnehmer und damit zusammenhängender Fragen, 3) bei der Ausarbeitung von Empfehlungen zur Verbesserung der gesetzlichen Regelung für Erbschaftsstiftungen nach ähnlichem ausländischem Recht.

Diese Dissertation besteht aus einer Einleitung, drei Kapiteln, die in Absätze unterteilt sind und aus Unterabschnitten, einer Schlussfolgerung und einer Bibliographie bestehen.

EINFÜHRUNG

Die Einleitung beschreibt die Bedeutung der Vererbung als eine besondere Art von Eigenschaftsbeziehungen. Daher sind Erbschaftsfragen immer kompliziert und eine der wenigen Verbindungen, die in internationalen Gesetzen und Verfassungen von Staaten erwähnt werden. Dann hat die Erbschaft eine umfangreiche gesetzliche Regelung. Die Fragen der Erbschaft gewinnen bei der Übertragung großer Vermögenswerte im industriellen oder finanziellen Bereich eine besondere Bedeutung, da dies viele Themen betrifft, einschließlich des Staates. Eine der bekanntesten Methoden zur Übertragung von Erbschaften in zivilrechtlichen Ländern sind Stiftungen in Ländern des Common Law - Trusts. Sie garantieren die Erhaltung und Funktionsweise des Vermögens nach dem Tod des Erblassers. Diese Vererbungsmethoden sind Werkzeuge für die Verwaltung von großem Kapital, einschließlich gemeinnütziger Aktivitäten.

Bis vor kurzem hat die russische Gesetzgebung solche Institutionen nicht anerkannt. Aus diesem Grund hat sich die russische Zivilgesetzgebung in den Jahren 2017-2019 in Bezug auf die Erbschaftsbeziehungen erheblich geändert. In Bezug auf die Vererbung wurden neue Institutionen eingeführt. Unter ihnen ist dies ein gemeinsamer Wille der Ehegatten, ein Erbvertrag, und Gegenstand dieser Studie ist die Erbschaftsgrundlage. Letzterer ist der Erbe des Willens und wurde geschaffen, um das geerbte Vermögen zu verwalten. Das Anwesen ist auch eine einheitliche gemeinnützige Organisation. Die Regelung des Rechtsstatus erfolgt durch allgemeine Regeln für gemeinnützige Organisationen und die gemeinsame Grundlage sowie durch besondere Regeln für sie und die Erbschaft.

KAPITEL I

Stiftung als juristische Person im Zivilrecht und ähnliche Institute in anderen Gesetzen.

Das erste Kapitel befasst sich mit der Beschreibung und Analyse des rechtlichen Status der Erbschaftsstiftung und der bestehenden Probleme bei ihrer Identifizierung als einheitliche gemeinnützige Organisation. Es wird ein allgemeiner Überblick über die ausländische Gesetzgebung zu privaten Stiftungen im kontinentalen Recht und zum Vertrauen in das Gewohnheitsrecht sowie zu dessen Erscheinen in der Gesetzgebung und Rechtspraxis der Länder des kontinentalen Systems gegeben. Die Geschichte der gesetzlichen Regulierung von gemeinnützigen Organisationen wird beschrieben. Es wird betont, dass die Erbschaftsstiftung besonderen zivilrechtlichen Normen und allgemeinen Regeln zur Regelung des allgemeinen Stiftungskonzepts unterliegt. Darüber hinaus werden die Merkmale verschiedener Arten von Stiftungen verglichen, die in der Zivil- und öffentlichen Gesetzgebung geregelt sind. Der Artikel enthüllt die Besonderheiten der Erbschaftsstiftung als einheitliche gemeinnützige Organisation aufgrund des Bestehens einer bestimmten Gründungsordnung, der Ausstattung mit Eigentum, der Bildung von Leitungsgremien und ihrer Liquidation. Das Vorhandensein spezifischer Ziele für die Errichtung einer Erbschaftsstiftung unterscheidet sie von den allgemeinen Merkmalen des allgemeinen Konzepts von Stiftungen und gemeinnützigen Organisationen.

1.1. Ähnliche Rechtsinstitutionen in ausländischen Gesetzen.

Der Absatz untersucht die historischen Bedingungen für die Entstehung und Entwicklung von Erbschaftsstiftungen und ähnlichen Institutionen sowie den Stand der modernen Gesetzgebung darüber. Der historische Aspekt der Erbschaftsübertragung, der seine Wurzeln in der Antike hatte, wird kurz

beschrieben. Das römische Recht gab dem Erbrecht die Grundbegriffe und wurde teilweise in die europäische Gesetzgebung aufgenommen. Dies wurde speziell mit dem Gesetz der Gerechtigkeit im mittelalterlichen England entwickelt, dessen Statuten und Präzedenzfälle die Entstehung von Trusts und deren völkerrechtliche Anerkennung maßgeblich beeinflussten.

In der europäischen Gesetzgebung haben private Stiftungen mit wenigen Ausnahmen eine lange Geschichte der gesetzlichen Regulierung. Die Gesetze sehen *Inter-Vivos*- und *Mortis-Causa*-Grundlagen vor. Letzteres entsteht nach dem Tod des Erblassers und gilt allgemein als Pflichterben (z. B. in Deutschland). Die Stiftungen werden in der Regel nach der Registrierung zu juristischen Personen und unterliegen den allgemeinen Tätigkeitsgesetzen sowie der Liquidation juristischer Personen. Solche Stiftungen erben Eigentum gemäß allgemeinen Regeln, d. H. Durch universelle Abfolge. Die Befehle des Erblassers verwalten die Fundamente. Sie handeln zugunsten der vom Erblasser ernannten Begünstigten der Stiftung. Meist haben solche Stiftungen im Gegensatz zur russischen Stiftung allgemeine Rechtsfähigkeit. Er hat das Recht, Tätigkeiten auszuüben, von denen seine Besteuerung abhängt. Außerdem können Stiftungen Regierungsbehörden über ihre Maßnahmen Bericht erstatten.

Eine Common Law Institution, ein Trust, hat ähnliche Ziele. Trusts sind derzeit eine der häufigsten großen Erbschaftsübertragungen der Welt. Die Besonderheit des Trusts ist die Aufteilung des Eigentums, die dem Gewohnheitsrecht innewohnt. Es gibt viele Arten von Vertrauensstellungen. Die Dissertation enthält eine kurze Beschreibung eines testamentarischen Trusts nach US-amerikanischem Recht, das Verfahren zu seiner Gründung, die Anforderungen an einen Testator, die Erstellung und Aufrechterhaltung eines Testaments sowie die Besteuerung des Trusts.

Die meisten europäischen Gesetze erkennen Trusts nicht als Eigentümer der Immobilie an. Die Rechtsprechung der europäischen Länder zur Anwendung von Trusts folgt dem Weg der Berücksichtigung des vertraglichen Charakters von Trusts (Frankreich, Schweiz). Zusätzlich zur nationalen Gesetzgebung wurde versucht, zivil- und gewohnheitsrechtliche Bestimmungen in verschiedenen internationalen Dokumenten zu verallgemeinern. Diese Richtung ist jedoch noch nicht weit verbreitet. Dies gilt für die geringe Anzahl von Ländern, die dem Haager Übereinkommen von 1985 über Trusts beitreten, und für die Beendigung der Diskussionen über das EU-Grundgesetz. Diese Umstände spiegeln sich in keiner Weise in der flexiblen nationalen Stiftungsgesetzgebung wider, die sich in der

Zunahme der Zahl der in den letzten Jahren in europäischen Ländern gegründeten privaten Stiftungen und der Größe der von ihnen verwalteten Erbschaft zeigt.

1.2. Die Erbschaftsstiftungen im russischen System gemeinnütziger juristischer Personen.

In diesem Absatz wird die Erbschaftsgrundlage im System nichtkommerzieller juristischer Personen nach russischem Recht untersucht. Die Geschichte der Gesetzgebung zu gemeinnützigen Organisationen wird beschrieben, die etwa 25 Jahre beträgt. Es wird auch darauf hingewiesen, dass es in der Finanz- und Zivilgesetzgebung Russlands unterschiedliche Konzepte für die Wörter „Stiftung“ und „Fonds“ gibt. Hierbei handelt es sich um völlig unterschiedliche Arten von juristischen Personen, die verschiedenen Rechtsgebieten untergeordnet sind. Dies sind staatliche Organisationen, die in bestimmten Bereichen der Wirtschaft besondere Befugnisse ausüben.

Nach dem russischen Zivilgesetzbuch (RCC) ist das generische Konzept einer Stiftung eine allgemeine Grundlage. Es ist eine einheitliche gemeinnützige Organisation ohne Mitgliedschaft. Bürger oder juristische Personen können die Stiftung auf der Grundlage freiwilliger Eigentumsbeiträge gründen. Er verfolgt gemeinnützige, kulturelle, pädagogische oder andere soziale, sozial vorteilhafte Ziele. Nach verschiedenen Gesetzen sind Stiftungen allgemein, öffentlich und gemeinnützig. Es gibt einige Unterschiede zwischen ihnen in der Reihenfolge der Gründung, Liquidation und der Bildung ihrer Leitungsgremien.

Die Stiftung wird erst nach staatlicher Registrierung zur juristischen Person. Die Stiftung verfügt über eine außerordentliche Rechtsfähigkeit; Es kann keine Geschäfte als Hauptgeschäft abwickeln. Die Stiftung handelt nur, um ihre Ziele zu erreichen. Die Verwaltung der Stiftung erfolgt gemäß der vom Gründer genehmigten Charta. Die Stiftung kann nur durch ein Gerichtsverfahren liquidiert werden. Die Stiftungsbesteuerung unterscheidet sich nicht von Unternehmen. Die Regelung der Stiftung gilt für die Erbschaftsstiftung in dem Teil, der ihren Regeln nicht widerspricht. Stiftungen sind erforderlich, um Berichte zu veröffentlichen.

1.3. Merkmale der Erbschaftsstiftung wie eine besondere Art von nichtkommerziellen juristischen Personen.

In diesem Absatz werden die Unterschiede im rechtlichen Status der Erbschaftsstiftung als einheitliche gemeinnützige Organisation von ähnlichen juristischen Personen beschrieben. Zum Beispiel hat eine Erbschaftsstiftung ein bestimmtes Verfahren für die Gründung und Liquidation, die Ausstattung mit

Eigentum, die Zahlung von Einnahmen aus den Aktivitäten der Stiftung und andere. Als allgemeine Stiftung verfügt die Erbschaftsstiftung über eine außerordentliche Rechtsfähigkeit. Der Zweck der Erbschaftsstiftung besteht darin, den Nachlass des Erblassers zu erhalten und diesen zu erhöhen, dh Einkommen zu generieren. Die Stiftung wird gegründet und arbeitet auf der Grundlage eines Testaments, einer Entscheidung über ihre Gründung (Entscheidung), der Charta der Stiftung (Charta) und der Bedingungen für die Verwaltung der Stiftung (Bedingungen). Die Stiftung kann nur in einem Gerichtsverfahren aus allgemeinen und besonderen Gründen aufgehoben werden.

Besonderes Augenmerk wird auf die Charakterisierung der Erbschaftsstiftung als gemeinnützige Organisation sowie auf die Analyse der Haupttätigkeit der Erbschaftsstiftung gelegt. Die Tätigkeit der Erbschaftsstiftung weist mehr Anzeichen einer unternehmerischen Tätigkeit auf, die nicht den Bestimmungen des Gesetzes über ihren sekundären Charakter entspricht. Die Rechtsfähigkeit der Erbschaftsstiftung muss als allgemein anerkannt werden wie in Unternehmen (ein Beispiel ist ein deutsches Recht). Basierend auf dieser Analyse wurde der Schluss gezogen, dass der Name und andere Vererbungsstiftungsmerkmale ihn von anderen Stiftungen unterscheiden. Daher ist es notwendig, die Definition und Merkmale der Erbschaftsgrundlage im Gesetz zu präzisieren. Am Ende des Absatzes wird eine rechtliche Beschreibung einer Erbschaftsstiftung gegeben, bei der es sich um einen einzigartigen unabhängigen Typ einer einheitlichen gemeinnützigen Organisation handelt, die nach dem Willen des Erblassers gegründet wurde und das Recht hat, unternehmerische Tätigkeiten als Haupttyp auszuüben seine Tätigkeit zur Erreichung persönlicher Ziele - Eigentumsunterstützung der vom Erblasser angeklagten Personen sowie zur Erreichung nützlicher sozialer Zwecke, wenn dies vom Erblasser angegeben wird.

KAPITEL II

Erbschaftsstiftung und ihre Teilnehmer an Vererbungsbeziehungen.

Das zweite Kapitel befasst sich mit der Rolle der Erbschaftsstiftung im Prozess der Erbschaftsbeziehungen. Es beschreibt auch das Verfahren für die Gründung, die Beschreibung der Personen, die an der Gründung und Registrierung der Erbschaftsstiftung beteiligt sind, deren Ausstattung mit Eigentum und die Aufhebung der Erbschaftsstiftung. Der rechtliche Status der Teilnehmer an der Erbschaftsstiftung wird ebenfalls analysiert. Die Formen der Besteuerung der Erbschaftsstiftung sowie Fragen der öffentlichen und privaten Kontrolle über ihre Aktivitäten werden beschrieben.

2.1. Erbschaftsstiftung als erzwungener Erbe.

Der Absatz beschreibt das vorherrschende Konzept der Erbschaftsbeziehungen in der Rechtstheorie. Die Erbschaft geht auf den Erben über, der auf einer universellen Nachfolge beruht, die im kontinentalen Rechtssystem angenommen wurde. Es wird der Schluss gezogen, dass die Vererbungsstiftung ein erzwungener Erbe ist, was eine Neuheit des geltenden Rechts darstellt. Daher fungiert die Inheritance Foundation als vollständiger Rechtsnachfolger des Erblassers und kann den ihr durch Willen übertragenen Erbgut nicht ablehnen.

2.2. Die Teilnehmer und Entitäten der Vererbung, die der Erbschaftsstiftung zugeordnet sind.

In diesem Absatz wird der rechtliche Status der Teilnehmer an der Erbschaftsstiftung untersucht. Somit ist der Erblasser als Gründer der Erbschaftsstiftung eine rechtlich fähige Person, die freiwillig und ausschließlich im eigenen Interesse handelt, um über ihr Eigentum zu verfügen. Sein Wille ist die wesentliche Grundlage für das Erbe. Gemäß Artikel 1118 Absatz 2 des RCC kann nur ein voll fähiger Bürger ein Erblasser sein. Personen und juristische Personen (außer Unternehmen) können Erben oder Nutznießer sein. Der Erblasser bestimmt die Begünstigten der Stiftung und trennt Personen, auf die das Eigentum der Stiftung übertragen werden soll, oder legt das Verfahren für ihre Bestimmung fest. Die Begünstigten haben Eigentums-, Informations- und Kontrollrechte. Die Begünstigten haben das Recht, eine Entschädigung für Verluste zu verlangen, die durch die Maßnahmen der Stiftungsverwaltungsorgane verursacht wurden. Das Gesetz enthält jedoch kein Verfahren zur Bestimmung solcher Verluste und zur Methode ihrer Einziehung. Obligatorische Erben haben das Recht, eine solche Erbschaft zu erhalten oder Begünstigter der Stiftung zu werden. Jedes Thema der Erbschaftsbeziehungen hat bestimmte gesetzliche Rechte und Pflichten. Wenn sie verletzt werden, kann ein Subjekt seine Befugnisse vor Gericht verlieren. Vor der Übertragung des Nachlasses an die Erbschaftsstiftung kann der Notar den Nachlass gemäß den gesetzlichen Bestimmungen schützen.

2.3. Das Verfahren der Erbschaftsstiftung zur Gründung und Aufhebung.

In diesem Abschnitt werden allgemeine Probleme behandelt, die alle Phasen des Lebenszyklus der Vererbungsstiftung abdecken. Die Gründung der Stiftung erfolgt nach der Eröffnung der Erbschaft ausschließlich auf der Grundlage eines notariell beglaubigten Testaments. Ein Testament ist ein Dokument einer bestimmten Form mit verbindlichen Bedingungen, die sich gesetzlich darin widerspiegeln müssen. Die staatliche Registrierung einer Nachlassstiftung unterscheidet sich von der

Registrierung anderer juristischer Personen dadurch, dass ein Notar sie in Abwesenheit des Gründers durchführt.

Es wird darauf hingewiesen, dass ein Notar einen enormen Umfang an Aufgaben und Befugnissen hat, deren Umsetzung zur Bestätigung des Testaments des Erblassers führt, die staatliche Registrierung der Erbschaftsstiftung sicherstellt und deren Nachlass an sie überträgt. In mehreren gesetzlich festgelegten Notfällen können im Gesetz genannte Beamte einige Funktionen ausüben. Unter Verstoß gegen die festgelegten Verpflichtungen zur Gründung einer Erbschaftsstiftung können interessierte Personen die Handlungen des Notars anfechten. Der Erblasser hat das Recht, die Ausführung des Testaments dem im Testament angegebenen Testamentsvollstrecker (Testamentsvollstrecker) anzuvertrauen. Einzelpersonen und juristische Personen können Testamentsvollstrecker sein. Der Testamentsvollstrecker übt seine Befugnisse bis zur Übertragung des Erbguts auf den Erben aus.

Die Erbschaftsgrundlage wird auf der Grundlage des letzten Willens des Erblassers errichtet, der in einem notariellen Testament zum Ausdruck kommt. Ein wesentlicher Bestandteil des Testaments sind die Dokumente der Erbschaftsstiftung, wie die Entscheidung über ihre Gründung, die Charta, die ihr Haupttitel ist, und die Bedingungen. Die Charta enthält allgemeine Bestimmungen für die Aktivitäten der Erbschaftsstiftung, einschließlich der Postanschrift, des Systems der Leitungsgremien und der Zuständigkeit. Die Bedingungen müssen die Regeln für die Identifizierung von Personen enthalten, wenn dies vom Erblasser nicht angegeben wird, das Verfahren, die Größe und den Zeitpunkt der Übertragung des Stiftungsvermögens an sie sowie deren Verteilung nach Aufhebung der Erbschaftsstiftung. Die Charta und die Bedingungen können nach Gründung der Erbschaftsstiftung nur in gesetzlich vorgesehenen Fällen geändert werden.

Nach der Gründung der Erbschaftsstiftung stellt der Notar der Stiftung die Erbschaftsbescheinigung aus. Auf der Grundlage dieses Dokuments wird die Stiftung Eigentümer des Nachlasses. In gesetzlich festgelegten Fällen unterliegt die Übertragung des Eigentums an die Erbschaftsstiftung einer staatlichen Registrierung wie der Übertragung von Immobilien oder einer technischen Registrierung wie der Übertragung eines Fahrzeugs. Die Erbschaft umfasst alle Dinge, die dem Erblasser am Tag der Eröffnung der Erbschaft gehörten, Eigentumsrechte und Pflichten, sonstiges Eigentum, das an den Erben übergehen könnte.

Die Erbschaftsstiftung in der Russischen Föderation kann aufgrund eines Urteils aufgehoben werden. Die Liquidation einer Stiftung kann auf der Grundlage allgemeiner und besonderer gesetzlicher Bedingungen erfolgen. Besondere Voraussetzungen für die Aufhebung der Stiftung sind der Ablauf des Gründungszeitraums der Stiftung, das Eintreten der in den Bedingungen festgelegten Umstände oder die Unmöglichkeit, die Leitungsgremien der Stiftung gemäß Artikel 123.20-1 zu bilden. RCC. Die Erbschaftsstiftung bestimmt den Weg des Eigentums nach der Aufhebung der Stiftung, wenn die Bedingungen dies nicht vorsehen. In Ermangelung oder Unmöglichkeit, solche Personen zu identifizieren, ist das Eigentum an der Erbschaftsstiftung gescheitert.

2.4. Das System der Erbschaftsstiftung der Leitungsgremien.

Das System der Leitungsgremien der Erbschaftsstiftung wird gemäß den testamentarischen Anordnungen des Erblassers gebildet. Das Gesetz sieht die Schaffung eines einstufigen Systems mit Anwesenheit von Exekutivorganen vor (individuell und / oder kollegial in verschiedenen Kombinationen). Der Gründer kann die Gestaltung einer vollwertigen Unternehmensführung der Stiftung in Form eines zweistufigen oder dreistufigen Managementsystems wie der Führung eines Unternehmens vorsehen.

Wenn das Oberste Kollegialorgan der Erbschaftsstiftung gebildet wird, kann es Begünstigte umfassen. Er wählt das alleinige Exekutivorgan. Der Erblasser bestimmt die Zuständigkeit und Befugnisse des höchsten Kollegialorgans sowie anderer Leitungsgremien der Stiftung. Die Bedingungen können die Schaffung eines Kuratoriums vorsehen. Letztere müssen Kontroll- und Aufsichtsfunktionen über die Aktivitäten der Stiftung und ihrer Beamten ausüben. Die Exekutivorgane der Erbschaftsstiftung führen die derzeitige Verwaltung der Stiftung durch. Der Erblasser kann die Zustimmung der höheren Leitungsgremien der Stiftung zur Ausführung einzelner Transaktionen durch die Exekutivorgane der Erbschaftsstiftung erteilen. Der Erblasser muss auch die Anforderungen an die Mitglieder der Leitungsgremien in den Gründungsdokumenten beschreiben oder bestimmte Personen dafür angeben. Die Teilnahme an den Leitungsgremien der Erbschaftsstiftung unterliegt bestimmten Beschränkungen. Beispielsweise ist es dem Begünstigten untersagt, Mitglied von Exekutivorganen zu sein. Die Corporate-Governance-Regeln, die Anforderungen an Kandidaten sowie die Kompetenz und Verantwortung der Leitungsgremien müssen in den Gründungsdokumenten nach dem Gesetz beschrieben werden.

2.5. Besteuerung der Erbschaftsstiftung.

Dieser Absatz beschreibt das Steuerregime der Stiftung in verschiedenen Aspekten: Besteuerung des Eingangs von Erbgütern von der Erbschaftsstiftung, Besteuerung der Stiftungsaktivitäten und Besteuerung von Zahlungen an Begünstigte.

Die Übertragung des Nachlasses an die Erbschaftsstiftung ist Erbgut und nicht steuerpflichtig. In Bezug auf die Besteuerung der Tätigkeit der Erbschaftsstiftung wird darauf hingewiesen, dass sie sich derzeit nicht von der Art und Höhe der von anderen gemeinnützigen Organisationen gezahlten Steuern unterscheidet. Für die Nachlassstiftung gibt es keine besonderen steuerlichen Merkmale. Das Steuergesetz sieht zwei Steuerregelungen vor: allgemeine und vereinfachte. Die Erbschaftsstiftung kann unter den gesetzlich festgelegten Bedingungen eine davon auswählen. Die Besteuerung von Zahlungen der Erbschaftsstiftung an Begünstigte enthält ebenfalls keine besonderen Regeln und erfolgt in üblicher Weise. Das ist eine Lücke in der gesetzlichen Regelung und muss geschlossen werden. Es ist auch notwendig, ein Gesetz über das Steuersystem zu verabschieden, um den Nachlass bei der Aufhebung der Erbschaftsstiftung, die derzeit nicht vorhanden ist, an den Begünstigten zu übertragen. Bei der Festlegung einer solchen Regel ist zu berücksichtigen, dass dies der Eingang der Erben bei den Erben ist, der nun nicht mehr besteuert wird.

2.6. Die Kontrolle über die Tätigkeit der Erbschaftsstiftung.

In diesem Absatz wird die Möglichkeit einer staatlichen (öffentlichen), Prüfung und internen (Unternehmens-) Kontrolle über die Aktivitäten der Stiftung erörtert. Die staatliche Kontrolle kann im Rahmen der Überwachung der Einhaltung des Gesetzes in der Tätigkeit der Stiftung in Bezug auf verschiedene Aspekte ihrer Tätigkeit erfolgen. Die zentralen staatlichen Aufsichts- und Registrierungsstellen sind das Justizministerium und seine territorialen Zweige, die Kontrollfunktionen haben. Jährlich ist die Erbschaftsstiftung verpflichtet, dieser Behörde über ihre Aktivitäten Bericht zu erstatten. Nach dem Gesetz sind solche Berichte im Gegensatz zu anderen Arten von Stiftungen nicht publikationspflichtig.

Eine Prüfung der Tätigkeit der Nachlassstiftung ist fakultativ. Sie kann auf der Grundlage des Testaments des Erblassers oder auf Antrag des Begünstigten durchgeführt werden. Die zuständigen Leitungsgremien der Stiftung können eine interne Kontrolle (Prüfung) über die Durchführung der Gründung von Gesetzen und Unternehmensregeln gemäß der Satzung der Stiftung durchführen. Der Gründer der Erbschaftsstiftung oder der Leitungsgremien der Stiftung kann nach dem festgelegten Verfahren bei Bedarf andere Organe der Unternehmenskontrolle einrichten.

KAPITEL III

Offene Fragen: Überlegungen *de lege lata* und *de lege ferenda*.

Das Kapitel fasst die Analyse des rechtlichen Status der Erbschaftsstiftung in der russischen Zivilgesetzgebung zusammen. Es wurden Vorschläge zur Verbesserung der gesetzlichen Bestimmungen über Erbschaftsstiftungen gemacht, beispielsweise in Bezug auf viele Aspekte des Status und der Aktivitäten der Stiftung. Sie sind in drei Gruppen unterteilt.

Die erste Gruppe befasst sich mit dem rechtlichen Status der Erbschaftsstiftung und Fragen im Zusammenhang mit der Klärung der Erbschaftsstiftung als erzwungener Erbe einerseits und als eine Art gemeinnützige Organisation, einschließlich der Merkmale der Zwecke ihrer Gründung. auf der anderen Seite. Eine Verbesserung der Gründung, Funktionsweise und Aufhebung der Stiftung, einschließlich der staatlichen Registrierung, der Übertragung des Erbguts, der Besonderheiten bei der Bildung der Leitungsgremien der Stiftung und des Vorhandenseins von Anforderungen an ihre Teilnehmer, wird vorgeschlagen.

Die zweite Gruppe befasst sich mit Fragen im Zusammenhang mit den Aktivitäten der Erbschaftsstiftung, der Erweiterung ihrer Fähigkeiten zur Erreichung gesetzlicher Ziele, der Ausübung einer angemessenen Kontrolle über die Aktivitäten der Stiftung, der Klärung der Einzelheiten ihrer Besteuerung sowie ihrer Zahlungen an Begünstigte und getrennte Personen.

Die dritte Gruppe von Fragen befasst sich mit der Klärung des rechtlichen Status der fachlichen Zusammensetzung der Erbschaftsstiftung und beschreibt die Rechte einiger Rechte, die nicht mit der Gründung oder Tätigkeit der Stiftung verbunden sind, aber Forderungen an den Erblasser oder Nachlass haben, die auf die Erbschaft übertragen wurden Stiftung, wie die Gläubiger des Erblassers, Erben mit einem obligatorischen Anteil. Dazu gehört auch die Berücksichtigung kontroverser Fragen der Regulierung der Miteigentumsrechte von Ehepartnern bei der Gründung einer Erbschaftsstiftung. Das Gesetz enthält auch noch keine besonderen Regeln zu diesem Gegenstand.

SCHLUSSFOLGERUNG

Das nationale Erbrecht als Teilbereich des Zivilrechts hat sich in den letzten Jahren erheblich verändert. Infolgedessen hat die gesetzliche Regelung der Erbschaftsbeziehungen moderne Erbschaftsstandards erlangt. Sie erweitern die Möglichkeiten der Erbschaftsübertragung durch verschiedene Rechtsinstrumente, von denen eines die Erbschaftsgrundlage ist. RCC definierte es als eine

gemeinnützige Organisation, die der Erbe und Verwalter des erhaltenen Eigentums ist, um es an die vom Erblasser angegebenen Personen zu übertragen.

Das Auftreten dieser gesetzgeberischen Neuheit trägt teilweise strategisch zur Lösung staatlicher Probleme in der Wirtschaft bei. Andererseits stellt es taktisch den Übergang und die Kontrollierbarkeit großer Vermögenswerte (Vermögen) unter der Kontrolle von Personen sicher, die vom Erblasser autorisiert wurden. Potenziell ermöglicht es die Erbschaftsstiftung, die Entwicklung von Wissenschaft und Kunst zu unterstützen oder wohltätige Zwecke zu erfüllen, sofern die Personen, an die sie vergeben wird, genau angeben.

Bei einer eingehenden Prüfung dieser Erbschaftsinstitution stellte sich heraus, dass sie einige rechtliche Beschränkungen und Mängel aufweist, die die Möglichkeit ihrer praktischen Verwendung einschränken. Bei der Analyse der russischen Gesetzgebung über Erbschaftsstiftungen sind daher einige Vorschläge zur Verbesserung der Gesetzgebung über Erbschaftsstiftungen entstanden, um im Vergleich zu anderen Erbinstrumenten gleiche und komfortable Nutzungsbedingungen für diese zu gewährleisten. Vielleicht liegt dies daran, dass die Regulierung der Erbschaftsstiftungen in Russland keine historischen und rechtlichen Traditionen hatte. Bei der Ausarbeitung dieses Gesetzes wurden daher die europäischen Erfahrungen mit der Regulierung von Stiftungen berücksichtigt, insbesondere Deutschland, Liechtenstein, die Schweiz und andere Länder mit einer langen Geschichte der Regulierung von Stiftungen.

Die Entstehung dieser Institution des Erbrechts brachte logische Veränderungen in den Erbbeziehungen mit sich. Dies ist die Entstehung neuer Themen (Begünstigte, getrennte Personen), eine Änderung des Status (erzwungener Erbe) usw. und eine Erhöhung der Kompetenz der Notare.

Bei allen offensichtlichen Vorteilen muss die Innovation der Erbschaftsstiftung weiter verbessert werden. Die Verabschiedung des Gesetzes über Erbschaftsstiftungen und seiner Teilnehmer schuf nur einen allgemeinen Anfang für die Regulierung dieser komplexen Institution. Während die Entstehung der Erbschaftsstiftung begrüßt wird, die nach den Grundsätzen des kontinentalen Systems geschaffen wurde, sollte beachtet werden, dass für die erfolgreiche Anwendung der Erbschaftsstiftungsinstitution die Verabschiedung detaillierterer gesonderter Rechtsvorschriften erforderlich ist.