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Russia: Overviews of the Judicial Practice of the Supreme Court of the Russian Federation during the First Half of 2021

August 2021

During the first half of 2021 the Presidium of the Supreme Court of the Russian Federation approved two Overviews of Judicial Practice, No. 1 and 2. The overviews contain a number of important viewpoints that the directors and legal departments of companies should take into account.

1. Deregistration of a company from the Unified State Register of Legal Entities

The Supreme Court clarified that a decision on the impending deregistration of a legal entity from the Unified State Register of Legal Entities may only be adopted once the activity of the entity has actually ceased. The deregistration from the Unified State Register of Legal Entities of a company, whose procedural conduct during a court dispute did not attest to the termination of its activity, could result in the violation of the guarantees established by law for creditors whose interests are naturally affected by the impending deregistration, in the process depriving them of the opportunity to file claims against the deregistered entity.

2. Secondary liability of the director

Article 9 of the Bankruptcy Law establishes the obligation of the director to file a petition for the bankruptcy of the company if it meets the indicia of insolvency. In actual practice, however, disputes have arisen and continue to arise regarding the specific moment when the director should establish that the company has become insolvent, in particular, whether the existence of debts to one or two creditors attests to the inability of the company to service its obligations.

The Supreme Court cited the need to differentiate between instances of an entity's insolvency and the failure to pay a debt to a certain creditor. The latter instance does not serve as grounds for the director of the creditor to file a bankruptcy petition as it does not attest per se to the inability of the entity to satisfy the claims of all its creditors in full. Accordingly, when assessing the financial position of the company, the director should assess the overall financial position of the company and based on the results of such an assessment decide whether a petition should be submitted to a court for the bankruptcy of the company.

3. Burden of proof in court proceedings

The Supreme Court confirmed once again the view that it was inadmissible to vest the burden of proof on one of the parties in a case, *de facto* releasing the other party from the need to submit any possible and thereby placing it in a preferential position, unless otherwise expressly established by the law.

Based on the example of a dispute further to a claim for the recovery of losses, the court stated that it was inadmissible to vest the claimant with the burden of submitting additional evidence of the existence of losses and their size. In particular, it was inadmissible for a court to require the claimant to file a motion for the scheduling of an expert examination in the event of the passive conduct of the respondent in the case, in particular, the failure of the latter to submit evidence rebutting the position of the claimant.

In the example presented here, the procedural risk should be vested with the respondent for the failure to defend its legal position in the court proceedings, and should not be transferred to the claimant in the form of the obligation to submit additional evidence in the case.

We hope that you will find this information useful. The full texts of the Overviews can be found on the official website of the Supreme Court of the Russian Federation:

http://вс.рф/documents/practice/29857/, http://вс.рф/documents/practice/30181/.

Kind regards

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