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Digest

February 2025

Russian Corporate Law
Q4 2024

Русская версия

In this newsletter we have prepared a brief overview of the most important draft laws affecting Russian corporate law. We also cover the most interesting court decisions in this area for Q4 2024.

Draft laws

1. A bill plans to make it possible to exclude the exercise by LLC participants of the right of first refusal to purchase the participation interests of other participants (draft law No. 788656-8 dated 5 December 2024, draft law No. 788669-8 dated 5 December 2024).

2. A bill plans to extend the suspension of the prohibition against conducting a number of general meetings remotely until 28 February 2025 (draft law No. 722148-8).

3. Under a bill, provisions concerning the possibility of holding sessions of the general meeting of shareholders of a joint-stock company remotely without specifying the place of the meeting and the possibility of being present at this place, and holding sessions of the general meeting of participants of a limited liability company remotely, may be included in the charter of a joint-stock company or limited liability company prior to 1 March 2025, but these provisions will only take effect from 1 March 2025 (draft law No. 722148-8).

4. A bill plans to allow limited liability companies and joint-stock companies to have as their sole participant (shareholder) another company that in turn also consists of a single person (draft law No. 797057-8).

Case law

1. Chief executive officers are not entitled to set their own remuneration. This lies within the competence of the general meeting or the board of directors

(Judgment No. 303-ЭС24-7037 of the Judicial Panel on Economic Disputes of the Supreme Court of the Russian Federation dated 4 October 2024 in case No. A51-16740/2020)

2. After liquidation of a legal entity, its identified property must be distributed according to the procedure established by law. Direct debit is not permitted

(Judgment No. 307-ЭС24-9563 of the Supreme Court of the Russian Federation dated 1 October 2024)

3. A major transaction may be declared invalid if there is a possibility that harm will be caused in future

The alienation of a business that is ready to launch but which has not yet begun to operate (i.e. the company’s activity will not change materially as a result of its alienation) leads to the appearance of a qualitative criterion for the majority of the transaction, and accordingly may be a major transaction, even if the value of the transaction does not exceed 25% of the company’s assets.

(Judgment No. 308-ЭС24-3124 of the Judicial Panel on Economic Disputes of the Supreme Court of the Russian Federation dated 6 September 2024 in case No. A53-16963/2022)

4. An interested-party transaction may be declared invalid if a party is a *de facto* affiliate

Affiliation between parties may be proven even if there are no formal legal ties between them (*de facto* affiliation), for example when corporate ties are complex, opaque, and difficult to identify, or if persons have been deliberately involved in the transaction that are not technically part of the corporate structure but which are controlled by one of the participants in a conflict.

Based on case law established at the level of the Supreme Court of the Russian Federation, evidence of this kind of affiliation may include, for example, the conclusion of transactions and their subsequent performance on terms that are not available to ordinary (independent) economic entities or which are materially different from market terms. In the situations in question, the court may order that the party for which there is sufficient evidence of *de facto* affiliation must disclose reasonable economic reasons for performing a transaction or reasons for its behaviour in the process of implementing a concluded agreement (Judgments of the Judicial Panel on Economic Disputes No. 305-ЭС22-29647 dated 16 June 2023, No. 310-ЭС20-7837 dated 28 September 2020, No. 308-ЭС17-6757(2,3) dated 6 August 2018, No. 301-ЭС17-22652(3) dated 28 May 2018, No. 306-ЭС16-20056(6) dated 26 May 2017, No. 308-ЭС16-1475 dated 15 June 2016, and others).

(Judgment No. 307-ЭС23-29560 of the Judicial Panel on Economic Disputes of the Supreme Court of the Russian Federation dated 6 September 2024 in case No. А56-33796/2022)

5. The exclusion from an LLC of a participant with an interest of less than 50% is a permitted means of resolving a corporate conflict

Specifically, such conditions include the prevention of adverse socio-economic consequences (for example, a loss of jobs, disruption of the operations of a municipality’s principal employer, the emergence of overdue debt to counter parties) and ensuring that a company’s operations continue after the exclusion of a participant.

(Judgment No. 305-ЭС23-30144 of the Supreme Court of the Russian Federation dated 3 September 2024)

6. A right of claim does not terminate with the liquidation of a legal entity

For the purposes of establishing the procedure for distributing the identified property of a liquidated legal entity, there is a significant objective criterion – the existence of the corresponding property, including rights of claim against third parties (accounts receivable).

(Judgment No. 305-ЭС24-6717 of the Judicial Panel on Economic Disputes of the Supreme Court of the Russian Federation dated 22 August 2024 in case No. A41-92218/2022)

7. If the decisions of a company's general meeting of participants concerning the alienation of participation interests are challenged, then this is *de facto* evidence of the invalidity of the transaction alienating the participation interests belonging to the petitioners

For this type of corporate claim, including for the restoration of corporate control, the general three-year term of the statute of limitations (in the absence of special terms) is reckoned from the time when the party petitioning for relief learned or should have learned of the breach of its rights and who was the appropriate respondent in a claim for the protection of its rights (Judgments of the Judicial Panel on Economic Disputes No. 308-ЭС20-15462 dated 2 February 2021; No. 307-ЭС20-209 dated 3 September 2020; and No. 308-ЭС16-15069 dated 7 March 2017), but not the statute of limitation provided for challenging decisions of a company's general meeting of participants.

(Judgment No. 305-ЭС24-9873 of the Judicial Panel on Economic Disputes of the Supreme Court of the Russian Federation dated 18 November 2024 in case No. A40-238905/2020)

Kind regards,

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Imprint
This publication is issued by Beiten Burkhardt Rechtsanwaltsgesellschaft mbH
Ganghoferstrasse 33, 80339 Munich, Germany
Registered under HR B 155350 at the Regional Court Munich / VAT Reg. No.: DE811218811
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