

RUSSIAN DESK

Clarifications on corporate financing provided to a company shortly before its insolvency

On 29 January 2020, the Supreme Court of RF adopted an Overview of court practice in the area of corporate financing. The overview sets out the consequences for shareholders of legal entities as well as for other controlling and affiliated parties that provide financing to their company during a financial crisis. This financing can take place not only in the form of a loan agreement but through other contractual structures (lease, contract for work, sale and purchase).

The Overview provides a significant number of explanations, which will be useful in contractual and court work. We recommend it for study by company directors and employees of legal departments, who should inform themselves primarily about the following topics:

- bankruptcy of legal entities;
- financing in a financial crisis;
- ranking of claims during insolvency;
- controlling (affiliated) entities.

Of particular relevance in the Overview is the recording of claims of entities that control or are affiliated with the debtor. The view expressed there can be summarised as follows. The financing of the debtor by a controlling (affiliated) entity in a period of financial crisis means in future that the resulting recourse claims (for the repayment of funds) will only be satisfied after the claims of other insolvency creditors and creditors with current claims. A controlling (affiliated) entity should bear greater risk caused by possible insolvency of the debtor. Claims related to the corporate financing are therefore only to be satisfied after all claims of other insolvency creditors of the debtor have been settled in full.

This shall be illustrated by several examples:

- Provision of a loan by a controlling (affiliated) entity to a troubled company (debtor) constitutes a type of corporate financing. Claims arising as a result are not to be included in the third rank of the register of creditors' claims.
- Settlement of a third-party claim against the company (debtor) by a shareholder or a controlling (affiliated) entity is considered corporate financing through the release of the initial debtor (company) from its obligations towards the third party. In this case the controlling (affiliated) entity's recourse claim cannot be included in the third rank of the register of creditors' claims.
- The status of a claim as a corporate financing cannot be re-classified in the event this claim is transferred to a formally independent third party. The third party's claim is also satisfied only after the claim of the debtor's other creditors.

The Supreme Court has also provided explanations on the distribution of the burden of proof, and other issues relating to the examination of claims by controlling (affiliated) entities. We would be pleased to answer any questions you may have on this topic.



Falk Tischendorf

Attorney-at-law | Partner
Head of Moscow office
BEITEN BURKHARDT Moscow
E-mail: Falk.Tischendorf@bblaw.com



Natalia Bogdanova

Lawyer | LL.M. | Ph.D. | Associate
BEITEN BURKHARDT Moscow
E-mail: Natalia.Bogdanova@bblaw.com



Alexander Bezborodov

Attorney-at-law | LL.M. | Partner
BEITEN BURKHARDT Moscow
E-mail: Alexander.Bezborodov@bblaw.com

Imprint

This publication is issued by
BEITEN BURKHARDT
Rechtsanwaltsgesellschaft mbH
Ganghoferstrasse 33 | D-80339 Munich
Registered under HR B 155350 at the Regional Court Munich/
VAT Reg. No.: DE811218811

For more information see:
<https://www.beiten-burkhardt.com/en/imprint>

EDITOR IN CHARGE

Alexander Bezborodov
Natalia Bogdanova

© BEITEN BURKHARDT Rechtsanwaltsgesellschaft mbH.
All rights reserved 2020.

PLEASE NOTE

This publication cannot replace consultation with a trained legal professional. If you no longer wish to receive this newsletter, you can unsubscribe at any time by e-mail (please send an e-mail with the heading "Unsubscribe" to newsletter@bblaw.com) or any other declaration made to BEITEN BURKHARDT.

YOUR CONTACTS

MOSCOW

Turchaninov Per. 6/2 | 119034 Moscow
Falk Tischendorf
Tel.: +7 495 2329635 | Fax: +7 495 2329633
Falk.Tischendorf@bblaw.com

ST. PETERSBURG

Marata Str. 47-49 | Lit. A | Office 402 | 191002 St. Petersburg
Natalia Wilke
Tel.: +7 812 4496000 | Fax: +7 812 4496001
Natalia.Wilke@bblaw.com