ACTUAL PRACTICE IN RESOLVING CORPORATE DISPUTES IN GRATA INTERNATIONAL COUNTRIES

GRATA INTERNATIONAL

Content

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CORPORATE DISPUTES IN BELARUS

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In recent years, the number of disputes related to shareholders relations (corporate disputes) has increased. It can be due various reasons: capital accumulation and funds-sharing conflicts between the shareholders, bringing business to insolvency, the desire to sell the business during financial crises or heirs entry into business. Sometimes the reason for corporate disputes is the lack of proper legal execution of agreements between the partners. Some disputes are resolved out of court with professional lawyers and mediators. Other disputes end up in the courts. Often "offended" shareholders appeal to the law enforcement authorities.

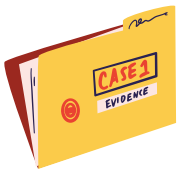
> According to the Bank of Court Decisions pravo.by, 107 cases related to the shareholding in legal entities were resolved in 2022, which is 1.3% of the total number of cases resolved in the Belarusian economic courts.

Corporate disputes are heard only in the economic courts of Belarus (Article 47 of the Economic Procedural Code of Belarus (EPC). Disputes related to the shareholding in the Belarusian legal entity must be resolved under the legislation of Belarus (the law of the place of incorporation – lex societatis). Corporate disputes are resolved according to the rules of claim proceedings. Generally, a case is resolved by a first-instance court within 2 months.

The most common measures to secure the corporate claims according to the existing practice and Belarusian legislation (Articles 113-120 of the EPC) are:

- seizure of stocks (shares in the charter capital of a company) owned by a shareholder (stockholder) **(Order of Economic Court of Minsk of January 30, 2021, in case No. 155Из2185);**
- prohibition for stockholders (shareholders) to operate with stocks (shares in the charter capital of a company) **(Order of Economic Court of Mogilev region of August 19, 2011, in case No. 255-10/2011);**
- prohibition for a company to consider a certain matter at a General Meeting of Shareholders (GMS) (e.g. election of a CEO and pre-term termination of his powers **(Order of Economic Court of Minsk of January 29, 2007);**
- invalidation of state registration of amendments to the Statutes **(Order of Economic Court of Minsk of September 17, 2021, in case No. 155ЭИП213667);**
- other measures under Article 116 of the EPC.

However, those measures cannot limit the rights of the management bodies of a company to perform their powers (part 6, Article 115 of the EPC). It means that the court will refuse to prohibit the GMS and decide on matters within its competence if a party claims such measures.



In this article, we invite you to have a look at the highlights of Belarusian case law on certain categories of corporate disputes.

OBTAINING DOCUMENTS AND INFORMATION ON THE COMPANY

A company shareholders may obtain information on its activities, and a company must provide such information upon the shareholder's request (Article 64 of the Civil Code, Article 13 of the Law On business entities).

In the request, the shareholder shall specify the list and types of documents containing the requested information, taking into account their availability in the company. The request for information and documents is usually made at the stage of a corporate conflict and is a way to put pressure on other shareholders or to find out the real financial situation of the company.

For this category of cases the following practice has been developed:

The court refuses to satisfy the claim of a company shareholder to force the company to submit documents if the shareholder had already accessed them before the claim was filed

(Resolution of the Board on Economic Disputes of the Supreme Court of the Republic of Belarus of January 20, 2021, in case No. 19-20/2020/492A/12K);

The company's Statute must specify the order and scope of information to be provided to a shareholder. Articles 63 and 64 of the Law On business entities establishes a general list of documents that a shareholder can access, but the company may extend this list in the Statute. If additional regulation is introduced with a resolution of the GMS (without amending the Statute), such decision is invalid.

(Resolution of the Board on Economic Disputes of the Supreme Court of the Republic of Belarus of August 14, 2019, in case No. 9-2/2019/105A/946K, Resolution of the Board on Economic Disputes of the Supreme Court of the Republic of Belarus of October 8, 2019, in case No. 53-11/2019/298A/1146K);

A shareholder has the right to access documents containing employees' personal data, if they are related to the documents shareholder is entitled to request according to the company's Statute

(Resolution of the Board on Economic Disputes of the Supreme Court of the Republic of Belarus of June 28, 2022, in case No. 152ЭИП211041);

A shareholder's request to provide the documents on the company is not an abuse of rights. The court does not accept the company's justification of the use of such information by the shareholder against the company

(Resolution of the Board on Economic Disputes of the Supreme Court of the Republic of Belarus of February 1, 2023, in case No. 155ЭИП223874);

A shareholder has no obligation to specify the reasons for implementation of his (her) right to obtain information or justify his (her) interest in the requested documents of the company

(Paragraph 16 of the Resolution of the Plenum of the High Economic Court of the Republic of Belarus of October 31, 2011 No. 20, Resolution of the Board on Economic Disputes of the Supreme Court of the Republic of Belarus of December 28, 2022, in case № 155ЭИП223945).

Economic court decisions on obtaining information are extremely difficult to enforce. The practice is there are various "tricks" used by companies. The only leverage on the company in such enforcement proceedings is the threat of administrative liability under part 3 of Article 25.9 of the Code of Administrative Offences.

If it is not possible to enforce the provision of documents, the enforcement document is returned to the shareholder (claimant) (Article 53 of the Law on Enforcement Proceedings).

WITHDRAWAL OF A SHAREHOLDER FROM A COMPANY. SETTLEMENTS WITH FORMER SHAREHOLDERS

In the course of doing business together, shareholders in a company are sometimes faced with conflicts of interest or with the unwillingness of some shareholders to fulfil their obligations under the law or the Statute in good faith.

> As a general rule, shareholders could withdraw from the company at any time and receive the actual value of their shares.

The Law On business entities regulates the procedure for the shareholder's withdrawal from the company and the procedure and time limits for the payout of the real value of the share to the shareholder. At the same time, the Statute may establish the procedure (methodology) for calculating the real value of the share and reduce the time limit for its payout to the shareholder upon withdrawal.

Please note: under the Edict of the President of the Republic of Belarus of March 14, 2022 No. 93, since March 2022 the withdrawal of a shareholder who is a resident of a foreign state that performs unfriendly actions against Belarusian legal entities and (or) natural persons is prohibited. The list of legal entities for which this restriction is imposed is approved by Resolution No. 436 of the Government of the Republic of Belarus of July 1, 2022.

The analysis of the current court practice on the mentioned category of disputes allows us to make the following conclusions:

The shareholder's withdrawal from a company is valid from the moment of expiry of the term for receipt of postal correspondence, even if the application has not been actually handed over to the company

(Resolution of the Minsk Regional Economic Court of September 22, 2022, Resolution of the Board on Economic Disputes of the Supreme Court of the Republic of Belarus of May 15, 2022, in case No. 155ЭИП22208);

The settlement with the withdrawing shareholder must be carried out in accordance with the accounting data of the company as of the date of the shareholder's application for withdrawal. Further amendments to the accounting data are not relevant

Resolution of the Board on Economic Disputes of the Supreme Court of the Republic of Belarus of May 31, 2022, in case No. 155ЭИП 214256);

In case the company refuses to amend its incorporation documents due to a shareholder's withdrawal from the company, the court may force the company to take actions to amend its incorporation documents and apply for state registration of shareholder list changes

(Resolution of the Minsk Economic Court of September 12, 2022, in case No. 155ЭИП222846, Resolution of the Minsk Regional Economic Court of May 16, 2022);

Transfer of assets as payment of the real value of a share is not an obligation but a right of the company upon agreement between the withdrawn shareholder and the other shareholders

(Resolution of the Board on Economic Disputes of the Supreme Court of the Republic of Belarus of November 15, 2022, on case № 152ЭИП2222);

Applying for withdrawal is a unilateral deal aimed at termination of the obligatory relations with the company. Invalidation of such deal entails the refund of paid out value of the share

(Resolution of the Brest Regional Economic Court of January 15, 2019, in case No 141-8/2018);

If there were no claims against the withdrawn shareholder for violation of the procedure and time limits for contributing to the authorized capital of the company until the shareholder applied for withdrawal, the company couldn't refer to the failure of that shareholder to contribute to the statutory fund of the company

(Resolution of the Board on Economic Disputes of the Supreme Court of the Republic of Belarus of December 29, 2021, in case No. 154ЭИП21468).

CONTESTATION OF DECISIONS OF THE GENERAL MEETING OF SHAREHOLDERS

The company shareholders have the rights set out in Article 64 of the Civil Code, Article 13 of the Law On business entities and the company's Statute one of them being the right to participate in the company management, which can be exercised through participation in the GMS.

The GMS decision made with a breach of the law or the Statute and violating the rights and (or) lawful interests of a company shareholder (former shareholder) may be contested in court by a stockholder (former stockholder) of a joint stock company (OJSC or CJSC) within 3 months, and by a shareholder (former shareholder) of LLC or ALC within 2 months from the day when they found out or should have found out about such decision (part 7, Article 45 of the Law On business entities).

As a result of reviewing such cases the economic courts of Belarus reach the following conclusions:

Failure to notify a shareholder about GMS and its agenda is a material breach of the shareholders' rights to participate in the company management which leads to the invalidation of the GMS results.

(Resolution of the Board on Economic Disputes of the Supreme Court of the Republic of Belarus of January 13, 2021, in case No. 42-26/2020/750A/1288K);

A shareholder is entitled to contest the GMS decision even if it has been executed, on condition that the executed decision violates or may violate the rights or lawful interests of the company shareholder

(Resolution of the Board on Economic Disputes of the Supreme Court of the Republic of Belarus of March 24, 2016, in case No. 411-6/2015/10A/307K);

The initiation of extraordinary GMS without applying to the company's executive body (director) beforehand is a material violation of the procedure for the GMS convening

(Resolution of the Board on Economic Disputes of the Supreme Court of the Republic of Belarus of July 14, 2020, in case No. 43-20/2020/291A/532K);

The economic court does not take into account the arguments of violations of the legislation and the Statute in GMS convening and holding if the limitation period has been applied

(Resolution of the Gomel Regional Economic Court of February 4, 2016, in case No. 149-7/2015/5).

THE CASE ANALYSIS SHOWS THAT REFERRING A CORPORATE DISPUTE TO COURT DOES NOT BRING THE EFFECT EXPECTED BY THE CONFLICT PARTIES FROM A COURT DECISION AND IS NOT A CONFLICT SOLUTION.

THEREFORE, WE RECOMMEND:

founding a company discuss all the details of its future activities with your partners, including "uncomfortable situations" and ways out of conflicts, and fix them in a corporate agreement (or in written through correspondence or a single document, if your partner is not ready to conclude a corporate agreement);

treat the drafting of the company's Statute and local regulations thoughtfully - these documents should fully reflect all of your key concerns, such as how to dispose of shares (stocks) and withdraw from the company, how to obtain company documents, and how to distribute profits;

make sure your business will still be able to operate in case of a corporate conflict (it can be affected, for example, by blocking decision-making by the GMS); in such situations, we recommend having alternatives (e.g., the possibility of transferring part of the powers to the Board of Directors);

use pre-trial forms of conflict resolution such as mediation or negotiation for corporate conflicts - they might be really effective.

CYPRUS LEGAL SYSTEM

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The Cyprus legal system applies within the Republic of Cyprus, which although extensively codified, it is still heavily based on English common law applying the fundamental principle of precedents.

The legal system of Cyprus has an established hierarchy of legal rules and norms whereby certain legal rules are hierarchically superior to others.

> Until the accession of Cyprus to the European Union in 2004 the Cyprus Constitution was the hierarchically highest norm of the legal system.

Today, according to Article 1(a) of the Constitution EU law is supreme to any national law and even to the Constitution of Cyprus.

The Constitution is therefore the second highest hierarchical norm of the legal system, followed by international law obligations, ordinary laws follow, secondary legislation and finally administrative or implementing acts.

Laws passed by the Cyprus Parliament must therefore be in compliance with the European Union, the Cyprus Constitution and International Law.

AVAILABLE DISPUTE RESOLUTION PROCEDURES IN CYPRUS

Dispute Resolution in Cyprus is based on the following 3 main procedures:

Mediation, which a voluntary and confidential process where an impartial third party, known as a mediator, assists the disputing parties in reaching a settlement.

Litigation. In Cyprus, litigation is exercised on the basis of the Cyprus court system which is consisted of District Courts, Assize Courts, and the Supreme Court. Civil cases are generally initiated in District Courts, while serious criminal cases are heard in Assize Courts. Appeals from the lower courts are made to the Supreme Court.

Arbitration, being a formal process where the parties refer their dispute to one or more independent arbitrators who make a binding decision.

A. MEDIATION

The process of mediation is initiated by an agreement to mediate which, according to the Law, must incorporate certain components and procedural rules. Mediation applies in the form of a contract and between the parties an out-of-court agreement, or as part of court procedure as an attempt to facilitate the end -result and for the parties to reach a settlement.

> The Courts have a supervisory role in Mediation procedures and may grant a stay of judicial proceedings if necessary, but quite importantly, parties cannot be compelled to mediate or denied the ability of using mediation as an alternative dispute resolution method.

The Parties may freely jointly choose the mediator who shall coordinate the process, whilst securing at the same time a very beneficial aspect of mediation which is confidentiality. The relevant Cyprus Mediation law provides two exceptions to the privilege of confidentiality:

- when there are overriding public policy concerns or
- when disclosure of information is necessary as to enforce the agreement. These exceptions are treated strictly and confidentiality cannot be curtailed for any other reasons.

Enforcement of the mediation settlement, can be bade following an application of either party on the condition of consent from the other side, or of the consent given during the mediation process settlement. Following such application the Court will issue a declaration of the enforceability of the mediation settlement, having the same binding effect on the parties like a judgment or order.

B. LITIGATION

Litigation is the most common and traditional method of dispute resolution in Cyprus and it refers to the dispute resolution procedures before the Cyprus courts.

Being a British colony until 1960, Cyprus is a common law jurisdiction and the Cypriot legal system is based on adversarial model, whilst Litigation are based on the English legal system.

Courts apply the fundamental principle of precedents, and such Superior Courts' decisions bind the first instance Courts.

In the absence of relevant Cyprus legislation, English common law and equity are applicable, and English authorities are quite often used as guidance for the Courts in various areas of interpretation.

In Cyprus, various litigation remedies are available to parties involved in legal disputes. These remedies aim to protect and enforce legal rights, resolve conflicts, and provide appropriate relief, such as damages, injunctions, specific performance, declarations, rectification and rescission and receivership.

CYPRUS COURTS

The courts are divided into six types:

1. District Courts (civil actions)
2. Assize Courts (criminal cases)
3. Family Courts
4. Rent Control Tribunals
5. Industrial Dispute Tribunals
6. Military Court

All are presided over by the Supreme Court which (amongst other duties) acts as an appellant court to hear the appeals from lower courts in civil and criminal matters. The Supreme Court has unlimited jurisdiction and its decisions as an appellant court and its decisions are final, unless overturned by the European Court of Human Rights or the European Court of Justice.

CYPRUS COURTS INJUNCTIONS WITH WORLDWIDE APPLICATION

A major function of the Cypriot Courts is the issuance of interim injunctions such as freezing injunctions to freeze property and money in Cyprus and abroad. Since Cyprus is an international services center, its Courts have issued over the years many injunctions in order to freeze assets, obtain or protect information, and generally to protect the claimants until the case is finally adjudicated. Such injunctions may be issued without notice (ex parte) even the same day the court application is deposited due to reasons of urgency, and would then be set returnable for service to the appellant party, which then would have the right to object it.

With regards to recognizing a judgment issued in Cyprus in another EU country, in accordance with the Brussels Regulation Recast (1215/12) any judgment obtained in a European Country is recognizable and enforceable without any special procedure required as if it was a judgment issued by the Court where recognition and enforcement is sought. The same process is followed for judgments obtained in third countries with which Cyprus has a treaty signed for the facilitation of the judicial processes such as the CIS countries.

As to service of documents if this is within the EU, then the EU Regulation 1393/07 as well as the Brussels Regulation Recast 1215/12 apply. In the event of non-EU countries the procedural may e different ant such would depend on the depends on the wording of the agreements for facilitation of judicial procedures, signed between Cyprus and the other country.

PROVISION OF SECURITY

The applicant seeking an interim injunction of above nature must provide security with the court in the form of an undertaking, bank guarantee or cash, as per the particular instructions of the Court.

TYPES OF INTERIM INJUNCTIONS:

NORWICH PHARMACAL - DISCLOSURE ORDERS

Norwich Pharmacal injunctions, also known as disclosure orders or discovery orders, are legal remedies used to compel a third party to disclose information or documents related to a wrongdoing or potential legal claim. The term "Norwich Pharmacal" comes from a landmark UK court case, Norwich Pharmacal Co. v. Commissioners of Customs and Excise, which established the principle of this type of injunction. In Cyprus, Norwich Pharmacal injunctions are recognized and can be sought in appropriate circumstances. They allow an applicant (usually the claimant) to obtain information from a third party who is not directly involved in the dispute but has become "mixed up" in the wrongdoing or has relevant information. The purpose of such injunctions is to enable the claimant to identify potential wrongdoers or gather evidence to support their legal claim.

GAGGING ORDERS

These are typical prohibition injunctions, with the issuance of which the Court orders to restrict the dissemination of specific information. In Cyprus, Courts have the power to issue injunctions to prevent the publication or disclosure of certain details, especially when it is deemed necessary to protect the interests of justice, individuals' privacy, or national security. It is deemed necessary to protect the interests of justice, individuals' privacy, or national security.

ANCILLARY DISCLOSURE ORDERS

Commonly issued together with a freezing order a disclosure order as an ancillary remedy to ensure the effectiveness and compliance of the respondent with the freezing order.

ANTON PILLER ORDERS

An Anton Piller order, also known as a search order, is a powerful legal tool that allows a plaintiff or claimant to obtain an order from the Court to search the defendant's premises and seize relevant evidence without prior notice. The purpose of an Anton Piller order is to prevent the destruction, concealment, or removal of evidence that may be crucial to a legal claim.

The name "Anton Piller" comes from a landmark UK court case, Anton Piller KG v. Manufacturing Processes Ltd., where the concept of this type of order was established. Since then, similar provisions have been recognized and utilized in other jurisdictions, including Cyprus.

RECEIVERSHIP ORDERS

A receivership order is a legal remedy that allows a creditor or a court-appointed receiver to take control of a debtor's assets or a specific property to satisfy a debt or facilitate the orderly realization of assets for the benefit of creditors. The purpose of a receivership is to recover outstanding debts, manage assets, and distribute proceeds to creditors in accordance with the law.

ANTI-SUIT INJUNCTIONS

Such injunctions may be issued taking the form of anti-suit injunctions to prevent the respondent from bringing or continuing proceedings in a court or tribunal outside Cyprus.

C. ARBITRATION

Arbitration in Cyprus refers to the process of resolving disputes through arbitration procedures in the Republic of Cyprus. Arbitration is an alternative dispute resolution method that allows parties to resolve their conflicts outside of traditional court litigation.

The legal framework for arbitration in Cyprus is primarily governed by the International Commercial Arbitration Law of 1987, which is based on the UNCITRAL Model Law. This law applies to both domestic and international arbitration conducted in Cyprus. In addition to this law, there are also provisions for arbitration in the Cyprus Civil Procedure Rules and other relevant legislation.

Key features of arbitration in Cyprus include:

ARBITRAL INSTITUTIONS: Cyprus has several institutions that facilitate arbitration, such as the Cyprus Arbitration and Mediation Centre (CAMC) and the Cyprus Chamber of Commerce and Industry (CCCI). These institutions provide administrative support, appoint arbitrators, and assist in the conduct of arbitrations.

Before the commencement of arbitration proceedings the Parties must have a valid arbitration agreement to submit their dispute to arbitration. The agreement may be in the form of a separate contract or an arbitration clause within a contract, and it must be in writing.

As a vital part of the arbitration agreement, is the appointment of arbitrators. The parties have the freedom to choose arbitrators, subject to any agreed qualifications or requirements. If the parties fail to appoint arbitrators, the Court can step in and make the appointments.

The arbitration proceedings are conducted in accordance with the agreed rules or procedures. The arbitrators have the power to decide on procedural matters, including the admissibility of evidence, examination of witnesses, and submission of arguments.

Once the arbitration proceedings are concluded, the arbitrators issue an arbitral award. The award is binding on the parties and can be enforced by the courts. The award can only be challenged on limited grounds provided by the law which refer mainly to the mistaken appointment of the arbitrators and their impartiality. The essence of the arbitrator award itself, and the reasons behind an arbitration decision cannot be challenged or overruled by the Supreme Court.

The Cypriot courts play a supportive role in arbitration proceedings. They can assist with interim measures, such as granting injunctions or securing assets. Additionally, the courts can assist in the enforcement or setting aside of arbitral awards.

Cyprus has positioned itself as an arbitration-friendly jurisdiction and has made efforts to promote itself as a regional arbitration hub. It has adopted modern arbitration laws and provides a favorable legal framework for arbitration proceedings. The country's strategic location, strong legal system, and experienced professionals in the field contribute to its attractiveness as a venue for arbitration.

Domestic arbitration in Cyprus is governed by the Arbitration Law (Cap. 4), which provides for the applicable procedure and powers of arbitrators. the maintenance or sale of goods that are the subject matter of the arbitration.

Cyprus has ratified the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention) through Law 84/79. Therefore, arbitral awards issued in Cyprus can be registered and enforced in other states signatory to the New York Convention, and vice versa.

International Arbitration is governed by Law 101/1987, which is modelled after the UNCITRAL Model Law of 1985.Law 101/87 provides for the procedure to be followed, the duties and powers of the arbitrators and the circumstances in which assistance from the national courts can be required, unless these are agreed by the parties. The national courts can issue interim orders in aid of arbitration irrespective of the seat of arbitration which may be abroad.

RECENT REFORMS IN CYPRUS PROVISION OF JUSTICE SYSTEM

The justice reform in Cyprus is currently focusing on speeding up the adjudication of backlogged cases and simplifying procedures.

- The House of Representative has recently progressed with the passing of three bills regarding the judicial reform in Cyprus, aiming to separate the Supreme Court into two Supreme Courts i.e. one Supreme Constitutional Court and one Supreme Court as provided for in the 1960 Constitution before the 1964 legislation was enacted.

It is important to mention current efforts focus mainly on measures to speed up the adjudication of backlogged cases, as well as on the implementation of the new Civil Procedure Rules, which will come into force in September 2023, aiming to simplify court procedures.

PRACTICAL ASPECTS OF RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS IN THE PEOPLE'S REPUBLIC OF CHINA

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China's large-scale infrastructure projects within the framework of the Belt and Road Initiative (known within China as the One Belt One Road), cooperation in key sectors, participation in the Shanghai Cooperation Organization, and other factors contribute to the further development of trade and economic relations between the countries of the Commonwealth of Independent States and China, making the issue of recognition and enforcement of foreign arbitral awards in China even more relevant.

THE LEGAL FRAMEWORK FOR THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

In 1987, China acceded to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (hereinafter – the New York Convention).

When acceding to the New York Convention, China made two reservations.

1 One of them is that the New York Convention only applies to the recognition and enforcement of arbitral awards made in the territory of another contracting state. This is known as the "reciprocity reservation".

2 Another so-called "commercial reservation" stipulates that the New York Convention should only apply to those legal relationships that are considered commercial under the national law of the PRC.

In this article, we will not review the list of necessary documents for recognition and enforcement of foreign arbitral awards in the PRC, since the national legislation of the PRC, which regulates the recognition and enforcement of foreign arbitral awards, complies with the New York Convention subject to the above-indicated two reservations.

Article 290 of the Civil Procedure Code of the PRC provides that in cases where an arbitral award of a foreign arbitral institution needs to be recognized and enforced by Chinese courts, the parties concerned must directly apply to the People's Court at the place of residence of the defendant or the location of the defendant's property. The court will consider this issue in accordance with the international treaties, i.e., the New York Convention, bilateral international agreements, and the principle of reciprocity.

In order to implement the provisions of the New York Convention, the Supreme People's Court of the PRC issued the Notice of Enforcement of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards in 1987, which clarifies the rules applicable to the New York Convention, including jurisdiction, terms for filing applications, standards of appeal for recognition and enforcement, etc.

TO FURTHER CLARIFY THE RULES ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS, IN 1995, THE SUPREME PEOPLE'S COURT ISSUED THE NOTICE TO THE PEOPLE'S COURT DEALING WITH FOREIGN ARBITRATION, WHICH WAS FURTHER REVISED IN 2008 (THE NOTICE 2008).

The Notice 2008 clarifies the circumstances under which Chinese courts may refuse to recognize or enforce foreign arbitral awards. In addition, the Notice 2008 also strengthens the supervision of the People's Courts over the recognition and enforcement of foreign arbitral awards by establishing an internal reporting system.

Under this reporting system, when the People's Court is inclined to refuse recognition or enforcement of a foreign arbitral award, it must submit a report to the superior People's Court of appellate instance (People's High Court) for further consideration.

If the People's High Court is also of the opinion that the recognition should be refused, the case must be referred to the Supreme People's Court of the PRC for the final consideration and resolution before the application for recognition can be refused.

THUS, THE PEOPLE'S COURT HAS A RIGHT ONLY TO RECOGNIZE A FOREIGN ARBITRAL AWARD, WHILE THE REFUSAL TO RECOGNIZE A FOREIGN ARBITRAL AWARD CAN ONLY BE MADE BY THE SUPREME PEOPLE'S COURT OF THE PRC.

On December 31, 2021, the Supreme People's Court of the PRC has published a summary of the Supreme Court Symposium with clarifications on the implementation of the New York Convention. [1] The key clarifications in 2021 address the following issues:

- Failure to engage in "negotiations prior to arbitration" is not a procedural violation under Article V(1)(d) of the New York Convention.

- If a Chinese court has already ruled that the arbitration agreement between the parties is not concluded, void, invalid, or the statute of limitation has expired, and recognition and enforcement of the arbitral award would be contrary to the decision of the Chinese court that has entered into force, the Chinese court must refuse to recognize such an arbitral award as it violates a public order, as provided for in Article 5(2)(b) of the New York Convention.

[1] http://cicc.court.gov.cn/html/1/218/62/409/2172.html Supreme Court Symposium with clarifications on the implementation of the New York Convention

It should be noted that the summary of the symposium only confirms the previous practice of the Chinese People's Courts.

In the 2018 case, the basis for the refusal of the Chinese court was that the court had upheld the invalidity of the arbitration clause.

Since China's accession to the New York Convention, Chinese courts have only twice (in 2008 and 2018) refused to recognize and enforce foreign arbitral awards on grounds that are contrary to the public order. [2]

The opinions of the Chinese courts in the 2018 and the 2008 cases can be summarized as follows.

In the 2018 case, the concerned parties applied for arbitration in a foreign state, even when the Chinese court had already declared the invalidity of the arbitration agreement.

Accordingly, the Chinese court ruled that the arbitral award violated China's public order.

> In the 2008 case, the Chinese court ruled that the arbitral award contained decisions on issues that were not submitted for consideration in arbitration and, thus, simultaneously violated China's public order.

THE PRACTICE OF RECOGNITION OF FOREIGN ARBITRAL AWARDS IN CHINA

Based on the research of the database of court decisions, from 2001 to 2022, there were 243 cases related to the recognition and enforcement of foreign arbitral awards, of which only 43 cases resulted in the refusal of recognition and enforcement.

The information on the percentage of successful recognition cases varies in different sources. This is due to the fact that in the relevant calculations, most often the subject of the analysis are the cases in which civil proceedings have been initiated, while some calculations also take into account the cases in which civil proceedings have not been initiated, and applications for recognition have been returned or withdrawn.

As such, according to the research by the China Justice Observer (CJO) in 2018-2019,

87.5%

of applications for recognition and enforcement of foreign arbitral awards were successfully recognized and enforced. [3]

[2] https://zh-tw.chinajusticeobserver.com/a/china-refuses-to-recognize-a-foreign-arbitral-award-on-the-grounds-of- public-policy-for-the-2nd-time
[3] https://www.cjoglobal.com/index.php/2021/12/10/can-foreign-arbitral-awards-be-enforced-in-china/

In 2019, Chinese courts considered a total of 30 cases on the recognition and enforcement of foreign arbitral awards. Chinese courts recognized and enforced foreign arbitral awards in whole or in part in 21 cases; in three cases, the Chinese courts refused recognition, and in the remaining six cases, there was a dispute over jurisdiction, or the applications were withdrawn by the applicants.

In other words, a total of 24 cases were considered on the merits, 21 of which concerned the recognition and enforcement of arbitral awards, which led CJO to conclude that the success rate of recognition of foreign arbitral awards is 87.5%.

According to other sources, from 2005 to 2015, 68% of cases were recognized, while from 2015 to 2017, the average recognition rate was 75.3%, and from 2018 to 2022, 66.7% of cases were recognized. [4]

These calculations took into account all cases, including those withdrawn or not accepted for consideration on the merits, in which the civil proceedings were not initiated.

THE STATE FEES

The state fee for the application for recognition of a foreign arbitral award is 500 Chinese yuan (approximately US$ 71).

The court fees for enforcement proceedings are calculated based on the amount subject to enforcement. In particular, the fee rates for each enforcement proceeding are as follows:

- from 50 yuan to 500 yuan for non-property disputes;
- 50 yuan if an enforcement includes the amount that does not exceed 10,000 yuan;
- 1.5% of the amount exceeding 10,000 yuan but less than 500,000 yuan;
- 1% of the amount exceeding 500,000 yuan but less than 5 million yuan;
- 0.5% of the amount exceeding 5 million yuan but less than 10 million yuan;
- 0.1% of any amount exceeding 10 million yuan.

[4] 浅析外国仲裁裁决在中国的承认和执行, 张毅 朱安然, 金诚同达律师事务所 http://www.cqlsw.net/business/theory/20221111839919.html

When planning expenses, it is also necessary to take into account the fees of Chinese lawyers, since foreign lawyers are not entitled to represent interests of the clients in Chinese People's Courts. Only citizens of the PRC can be licensed lawyers.

According to the World Bank's Doing Business 2020 report, the legal fees of Chinese lawyers averages to

7.6%

of the claim amount. [5]

Until 2018, the Chinese government set the state-regulated fees of the lawyers. While the government is no longer restricting legal fees, in practice, the fees of Chinese lawyers generally do not differ from the approximate costs indicated in the report of the World Bank.

According to the latest fee charging standard issued by the Beijing Municipal Government in 2016, Chinese lawyers can determine contingent fees proportional to the claim amount for each stage of the litigation, and the calculation method is also progressive.

According to the progressive formula of the government of Beijing:

For a case with a claim amount of US$ 1 million, the court fees for each stage amount to US$ 44,000, and the total court fees for two stages amount to approximately 8.8%.

For a case with a claim amount of US$ 2 million, the court fees for each stage amount to US$ 74,000, and the total court fees for two stages amount to 7.4%.

This standard also correlates with the statistics of the World Bank.

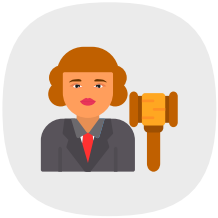
TERMS OF CONSIDERATION

Applications for recognition and enforcement of an arbitral award must be filed within two years from the date of execution provided in the arbitral award. [6] If the arbitral award does not specify the term for execution, the two-year period is calculated from the date the arbitral award comes into effect.

According to the PRC legislation, if the court approves the application for recognition, the court must make such a decision within a period of two to six months from the date of acceptance of the application. [7] In special circumstances, an extension of the above terms shall be approved by the Chairman of the People's Court, and such terms may be extended for additional six months. [8]

However, if the court rejects the application for recognition of the foreign arbitral award, the court rejecting the application must report the refusal to the superior People's Court in accordance with the requirements of the above Notice 2008. If the People's High Court takes the position that the application for recognition should be granted, the court will directly return its conclusion to the People's Court of first instance. If the People's High Court agrees with the refusal of the People's Court to satisfy the application, it must report about the refusal the Supreme People's Court of the PRC. Only after the Supreme People's Court of the PRC agrees to reject the application for recognition, the People's Court of first instance can issue a decision to reject the foreign arbitral award.

Thus, the terms for consideration of applications for recognition, in cases where it is a question of a refusal on recognition of the foreign arbitral award, in practice, can range from one to two years.



In 42 analyzed court decisions, the average term for consideration of recognition was 356 days, with a maximum consideration period of 1727 days and the minimum period of 41 days. [9]

[5] https://openknowledge.worldbank.org/bitstream/handle/10986/32436/9781464814402.pdf
[6] Article 290 of the Civil Procedure Law of the People's Republic of China
[7] Law on arbitration of the PRC 1994
[8] 中国国际经济贸易仲裁委员会 http://www.cietac.org/index.php?m=Article&a=show&id=256
[9] https://zh-cn.chinajusticeobserver.com/a/time-and-expenses-recognition-and-enforcement-of-foreign-arbitral- awards-in-china

Once recognized, the enforcement of foreign arbitral awards is no different from that of Chinese court judgments. According to the World Bank data, it takes an average of 240 days to enforce a court decision. [10]

REASONS FOR REJECTION OF RECOGNITION

The results of the analysis of cases show that the refusal is mainly due to procedural defects, with the largest number of cases related ineffective arbitration agreements or procedural defects. While as noted above, a less commonly cited ground of refusal is the violation of public policy.

Reasons for refusal of recognition (analyzed period from 1994-2015)	**Ground of refusal**	**Amount**	**%**
Invalidity of arbitration agreement	New York Convention Article 5(1)(a)	8	23.53 %
Composition of arbitration body or the arbitration procedure was not in accordance with agreement of parties or law of the country of arbitration	New York Convention Article 5(1)(d)	8	23.53 %
The party against whom the decision was made was not properly notified of the appointment of an arbitrator or of the arbitration proceeding, or was otherwise unable to submit an explanation	New York Convention Article 5(1)(b)	6	17.65 %
The duly certified (notarized and legalized), translated, original arbitration award is not submitted	New York Convention Article 4	3	8.82%
The decision is made on a dispute, which is not contemplated by or not falling within the terms of the arbitration agreement or arbitration clause in the agreement, or contains rulings on matters that go beyond the scope of the arbitration agreement or arbitration clause in the agreement	New York Convention Article 5(1)(c)	3	8.82%
No evidence that the defendant or the property belonging to the defendant is located in China	New York Convention Article 1	2	5.88%
Recognition and enforcement of award is contrary to the public order of the country	New York Convention Article 5(2)(b)	1	2.94%
Parties replaced the arbitration clause and preferred to be considered by the People's Court of PRC	New York Convention Articles 1, 2	1	2.94%

[10] https://openknowledge.worldbank.org/bitstream/handle/10986/32436/9781464814402.pdf

FINAL RECOMMENDATIONS

Given the duration of consideration of decisions on recognition, the high cost of the fees of Chinese lawyers, for contract amounts not exceeding 1-2 million US dollars, many cases do not reach the stage of initiating proceedings for recognition of foreign arbitral awards due to the lack of economic feasibility for the party in whose favor the arbitral award was rendered, for example, in the CIS countries.

> Therefore, such decisions of foreign arbitration are not included in the formation of impressively successful statistics on the recognition of foreign arbitral awards in the PRC.

> It is also necessary to take into account the peculiarities of Chinese hieroglyphs, and it is recommended to conclude contracts in at least two languages, one of which is Chinese. In one of the cases from our practice, the court refused to initiate proceedings for the recognition of a foreign arbitral award due to the improper claimant.

Regarding the Chinese Agricultural Holding (hereinafter - the Holding), an arbitral award was made in one of the CIS countries. As it turned out at the stage of recognition and enforcement of the arbitral award, the Holding could not act as a defendant in the case, since it did not enter into any contractual relations with the claimant.

> The Chinese company, which concluded a contract with the claimant and received payment, has the same transliteration of the name as the specified Holding, but consists of different hieroglyphs. Translations of the title deeds and the copy of the extract from the unified state database of the Holding were presented to conclude the transaction. However, the deal was concluded by a fraudulent company created specifically for these purposes with an identical name.

This example demonstrates that in China it is very important to take into account its linguistic peculiarities. Due to the writing system based on hieroglyphs, there can be thousands of different companies with identical phonetic names. For instance, the Chinese name of Volkswagen Group is Dazhong (Da Zhong), wherein the sound "Da" can be expressed by 77 different hieroglyphs (大，打，达，搭，答，哒，沓，瘩，塔，耷，鞑，炟，耸，撬), and the sound "Zhong" by 84 different hieroglyphs (中，种，重，终，众，肿，忠，衷，種，忪，汝，盅，毁，踵). Thus, the name of the company can be expressed in countless combinations, and each of these combinations, based on legitimate grounds in the transliteration of title deeds and contracts, will be the same.

In this regard, even at the stage of concluding a contract, including the Chinese version of the contract, it is recommended to consider the potential costs of recognition and enforcement of a foreign arbitration award and the subsequent economic feasibility of taking appropriate measures for recognition and enforcement. It is recommended to consider Chinese arbitration commissions, whose decisions do not require recognition. The panel of arbitrators in the PRC arbitration commissions includes a significant number of professional arbitrators, both Chinese and foreign, who are fluent in Chinese, English and Russian languages.

RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS AND FOREIGN ARBITRAL AWARDS IN MOLDOVA

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The purpose of each arbitration court, the same as the purpose of judicial instances, is dispute resolution with the adoption of a valid and performable decision. Deducting that every state is independent and sovereign, we can't impose a foreign law on a state, in order to perform or enforce on its territory foreign judicial decisions. Although, this fact is really possible when the states conclude or adhere to a convention that regulates these situations, and then where international private law provides this possibility. In the Republic of Moldova, the procedure of recognition and enforcement of foreign judgments and foreign arbitral awards is provided by the Civil Procedure Code starting with Article 467.

I. Recognition and enforcement of foreign judgments

According to the Moldovan legislation, the judgment of a foreign court means the judgment issued by a common law court or a specialized court on the territory of a foreign state for example on the territory of Ukraine. The judgments issued by foreign courts shall be recognized and enforced in the Republic of Moldova if it is stipulated by international treaties to which the Republic of Moldova is a party or under the principle of reciprocity in regard to the effects of foreign judgments.

Further, we will analyse the recognition and enforcement of a foreign judgment and a foreign arbitral award based on a case study.

A legal entity from Ukraine (or can be another state, for example, Germany, Kazakhstan, Italy etc.) paid in advance 40,000 $ to buy 10,000 bottles of wine from a Moldovan winery. The Moldovan wine producer has not fulfilled its contractual obligation to deliver the wine within the established deadline. The court or the arbitration tribunal from Ukraine decided that the Moldovan wine producer must return the entire amount of money plus 4,000 $ for court costs. The Moldovan wine producer refuses to voluntarily execute the decision of the Ukrainian court or arbitration tribunal.

Therefore, the Ukrainian legal entity must come to Moldova to request the recognition and enforcement of the Ukrainian judgment or arbitral award. According to the Moldovan legislation, the judgment issued by the Ukrainian court or arbitration tribunal may be submitted for enforcement in the Republic of Moldova within 3 years of entry into force of the judgment in accordance with the law of the issuing state.

APPLICATION FOR RECOGNITION OF A FOREIGN JUDGMENT

The judgment from Ukraine (hereinafter the foreign judgment) has not been executed voluntarily by the Moldovan winery (hereinafter debtor). Therefore, the judgment from Ukraine may be enforced on the territory of the Republic of Moldova, at the request of the Ukrainian legal entity (hereinafter creditor) based on the approval of the court in the district where the judgment must be enforced. If the debtor does not have his/her domicile or headquarters in the Republic of Moldova, or if the domicile is not known, the judgments shall be enforced at the location of his property.

CONTENT OF THE APPLICATION FOR RECOGNITION AND ENFORCEMENT OF THE FOREIGN JUDGMENT

In the application for recognition of the foreign judgment the Ukrainian legal entity must indicate:

the name of the creditor, as well as his representative if the application is filed by a representative, the domicile (residence) or the headquarters;

the name of the debtor, the domicile (residence) or the headquarters;

request for the approval to enforce the judgment, the term from which the execution of the judgment is requested;

in order to properly and rapidly solve the case, the application also includes phone numbers, fax numbers, email addresses and other information.

The application shall enclose the documents specified by the international treaty to which the Republic of Moldova is a party. If the international treaty stipulates no such documents, the creditor must attach the following documents:

- a copy of the foreign judgment from Ukraine whose approval for enforcement is required, duly certified by the issuing court;
- the official document confirming that the foreign judgment becomes final under the law of Ukraine, if the judgment does not entail this fact;
- the document confirming that the party against whom the judgment was issued, I mean the Moldovan winery, although duly summoned, did not participate in the trial;
- the act confirming the previous execution of the judgment on the territory of Ukraine.

The general rule states that the documents listed above from countries that do not have bilateral treaties with the Republic of Moldova are accompanied by authorized and superlegalized Romanian translations. But between the Republic of Moldova and Ukraine, there is a treaty regarding legal assistance and legal relations in civil and criminal matters, concluded in Kyiv on 13.12.1993 (in force from 24.04.1995). According to art. 15 para. 1 of the above treaty "Documents drawn up or legalized by the corresponding body of one of the Contracting Parties, provided with an official seal and the signature of the authorized person, are valid on the territory of another Contracting Party without any other legalization. This refers to copies and translations of documents that are legalized by the appropriate body." Therefore, the Ukrainian court decision only needs a certified translation in the Romanian language and doesn't need apostillation and supralegalization.

EXAMINATION PROCEDURE OF THE APPLICATION

The court shall examine the application on recognition and enforcement of the foreign judgment after summoning the debtor about the place, date and time of the hearing. Failure of the debtor to participate due to unjustified reasons does not preclude examination of the application. The court, examining the application on recognition of the foreign judgment, must immediately inform the Ministry of Justice and, if necessary, the National Bank of Moldova, when it comes to one of its licensed financial institutions, with the transmission of the application and of the attached documents. Participation of the representative of the Ministry of Justice and, if necessary, of the National Bank of Moldova at the hearing of the application on recognition of a foreign judgment is mandatory.

During the trial the court examines the evidence submitted and may request explanations from the creditor and interrogate the debtor regarding the submitted application or request explanations from the Ukrainian court. The Moldovan court may not review the foreign judgment on its merits and amend it.

At the end of the trial the court shall issue a ruling on the enforcement of the foreign judgment or rejecting enforcement. Based on the foreign judgment and the ruling, after both became irrevocable, the court issues a writ of execution that shall be transmitted to the judicial executor appointed by the creditor.

The court may refuse to approve enforcement of the foreign judgment in the following cases:

- the judgment, under the legislation of the issuing state, in our case study Ukraine, has not become irrevocable or is not enforceable;
- the party against whom the judgment was issued, I mean the Moldovan winery, was not given the opportunity to participate in the trial, due to the fact that it was not duly notified of the place, date and time of the hearing;
- examination of the case falls within the exclusive jurisdiction of the courts of the Republic of Moldova;
- there is a judgment of the Moldovan court issued in the dispute between the same parties, regarding the same object and having the same grounds or the case is pending in the procedure of the Moldovan court;
- the enforcement of the judgment could cause harm to the sovereignty or would threaten the security of the Republic of Moldova or would be contrary to the Moldovan public order;
- the deadline for submission the judgment for enforcement has expired;
- the foreign judgment is the result of a fraud committed under the proceedings abroad;

The ruling may be challenged to a higher court.

II. Recognition and enforcement of foreign arbitral awards

According to the Moldovan legislation, an arbitral award is considered as being foreign if:

- it is pronounced on the territory of a foreign state; or
- it is issued on the territory of the Republic of Moldova, but the law applied to the arbitration procedure belongs to a foreign state.

A foreign arbitral award may be recognized and enforced in the Republic of Moldova if it is issued in accordance with an arbitration agreement on the territory of a foreign State which is party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, adopted in New York on 10 June 1958, as well as a foreign arbitral award whose recognition and enforcement are regulated either by the international treaty to which the Republic of Moldova is a party or on the basis of the principle of reciprocity regarding the effects of the foreign arbitral award. According to the Moldovan legislation, the foreign arbitral award from Ukraine may be submitted for forced execution in the Republic of Moldova within 3 years from the date of its finality.

REQUEST FOR RECOGNITION AND ENFORCEMENT OF THE FOREIGN ARBITRATION AWARD

The request for recognition and enforcement of the foreign arbitral award must be submitted by the legal entity from Ukraine to the court of appeal in whose district is located the domicile/residence or headquarters of the party against whom the foreign arbitral award is invoked, the Moldovan winery, and if the debtor does not have the domicile/residence or headquarters in the Republic of Moldova or his domicile/residence or headquarters are not known - the court of appeal where his assets are located.

The legal entity from Ukraine must indicate in the request for recognition and enforcement of the foreign arbitral award the following things:

- the name of the creditor, or his representative if the request is submitted by a lawyer, the domicile (residence) or the headquarters;
- the name of the debtor, the domicile (residence) or the headquarters;
- the date on which the foreign arbitral award became enforceable for the parties, if this does not result from the text of the judgment;
- for the fair and prompt settlement of the case, the creditor should indicate the telephone numbers, fax, e-mail, and other relevant data.

The creditor must attach to the request for recognition and enforcement of the foreign arbitral award the following documents:

- the original of the arbitral award or a legalized copy;
- the original of the arbitration agreement or a legalized copy.

As I mentioned before, the Ukrainian arbitral award only needs to be translated into Romanian and doesn't need apostillation and supralegalization. The request for recognition and enforcement of the foreign arbitral award is subject to state tax under the Moldovan law.

EXAMINATION PROCEDURE OF THE REQUEST

The request for recognition and enforcement of the foreign arbitral award shall be examined in public session, with the notification of the parties regarding the place, date and time of the examination. If the debtor does not come to the trial for unfounded reasons, this does not prevent the examination of the application. The court must inform without delay the Ministry of Justice and and as the case may be the National Bank of Moldova, in case a financial institution licensed by it is targeted, about the case in process of examination. The presence of the representative of the Ministry of Justice and the National Bank of Moldova at the court hearing is mandatory.

During the trial the court examines the presented evidence and may request explanations from the creditor and interrogate the debtor regarding the submitted application or request explanations from the issuing foreign arbitration tribunal I mean the arbitration tribunal from Ukraine. At the end of the trial the court pronounces a decision that approves the forced execution of the foreign arbitration award or the court can refuse to authorize the forced execution of the foreign arbitration award. On the basis of the foreign arbitration award and the decision of Moldovan court that approves the forced execution, an executory title is issued, which is sent to the bailiff appointed by the creditor. The court decision can be appealed to the Supreme Court of Justice of the Republic of Moldova.

The Moldovan court may refuse to recognize and enforce the foreign arbitral award in the following cases:

1. one of the parties to the arbitration agreement did not have full capacity to exercise or the arbitration agreement is not valid according to the law to which the parties have subordinated it or, in the absence of its establishment, according to the law of the country where the award was issued;
2. the party against whom the award is issued was not properly informed about the appointment of the arbitrator or about the arbitration procedure or, for other reasons, was not able to present its means of defense;
3. the judgment has been pronounced on a dispute which is not provided by the arbitration agreement or the judgment contains provisions on matters that exceed the limits of the arbitration agreement;
4. the arbitration tribunal or the arbitration procedure was not consistent with the agreement of the parties or in the absence thereof did not comply with the law of the country where the arbitration took place;
5. the arbitral award has not become binding for the parties or has been abolished or its execution has been suspended by the court or by a competent authority of the country in which or according to the law of which it was pronounced.

The court may also refuse to recognize and approve the enforcement of the foreign arbitral award in the following cases:

- the object of the dispute cannot be resolved by arbitration according to the law of the Republic of Moldova; or
- the recognition or approval of the enforcement of the arbitral award is contrary to the Moldovan public order.

To sum up, GRATA International Moldova has many successful cases regarding the recognition and enforcement of foreign judgments and foreign arbitral awards in the Republic of Moldova.

ENFORCEMENT OF FOREIGN JUDGMENT AND FOREIGN ARBITRAL AWARDS FOR MONGOLIA

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FEATURES AND LEGAL REGULATION OF ENFORCEMENT OF FOREIGN JUDGMENT AND FOREIGN ARBITRAL AWARDS

According to Article 116 of the Law on the Enforcement of Court Judgment, regulations for enforcing judgments of foreign courts, international courts, and arbitration awards in the territory of Mongolia shall be determined under this Law and international treaty in which Mongolia is Party to, and according to article 6.2 of this law, civil judgment enforcement operations shall be conducted on the basis of the decision of foreign courts, international courts or arbitration awards if stipulated in the international agreements of Mongolia.

RECOGNITION AND ENFORCEMENT OF ARBITRAL AWARDS AND FOREIGN JUDGMENT

PARTIES TO CIVIL JUDGMENT EXECUTION:

The debtor and creditor shall be referred collectively to as the Parties of the judgment enforcement process.

The creditor is a private citizen or a legal entity whose legal rights are deemed violated and therefore included in execution documents for restoration and protection of those violated rights.

The debtor is a private citizen or a legal entity who is deemed to have violated the legal rights of the creditor and not fulfilled relevant duties and therefore included in the execution document.

Successors, representatives of the Parties, translators, interpreters, third-party witnesses, and experts may participate in civil judgment enforcement proceedings.

PERIOD TO COMMENCE CIVIL JUDGMENT ENFORCEMENT PROCESS:

Unless otherwise stipulated in the international treaty of Mongolia, a foreign court, international court, or arbitral award shall not initiate a civil judgment enforcement procedure if 3 years have passed since the judgment came into force.

If the creditor is found to have exceeded the above-mentioned period due to reasonable and respectful grounds, the creditor may lodge a request for restoration of the period to court, and the court may restore the period within 3 years after the set period is exceeded. In case that exceeded period is restored, the related person shall address to court within 6 months after the restoration decision is made, requesting the issuance of an execution order.

INITIATING CIVIL JUDGMENT ENFORCEMENT OPERATION:

The Senior bailiff shall open a civil execution file within 3 days after receipt of the Execution document, issue an order to initiate civil judgment execution and assign operations to the bailiff responsible for the relevant district. After receiving an order to initiate civil execution process, the bailiff shall undertake measures to validate the enforcement of civil judgment.

Execution documents shall include execution orders, issued on the judgment of a court of foreign, international court, and arbitration awards in case of international treaties that Mongolia is Party to and judgment on reimbursement of execution costs.

MEASURES TO VALIDATE ENFORCEMENT OF CIVIL JUDGMENT:

Measures to validate enforcement of civil judgment refer to measures that the bailiff undertakes in compliance with rules and regulations set forth in the law in order to create conditions for enforcement of obligations in the execution document or debtor's obligation stated in the execution document within the stipulated period, in full scale.

In the event that the Parties to civil judgment execution disagree with measures undertaken and judgment made by the bailiff, complaint may be lodged to senior bailiff within 7 days after the undertaken measure, if not aware of the measure, within 7 days after implementation about the measure.

The Senior bailiff shall resolve the complaint within 14 days and issue an order. In case the creditor disagrees with the order, he/she shall lodge a complaint addressed to Chief Enforcement Officer within 7 days and to the court within 14 days after receipt of the order of the Chief Enforcement Officer. The measures to ensure the execution of foreign civil judgment include the following activities:

- Summon parties of civil judgment enforcement operations (representatives) and other persons and representatives of legal entities;
- Obtain necessary document, reference and certificate necessary for enforcement of obligation stated in the execution document from parties of civil judgment enforcement operations (representatives), other persons and legal entities;
- Receive property declaration from the debtor and other persons and add it to the debtor's register;
- Inspect the financial and other documents of the debtor related to the operations of the debtor;
- Assign certain duties to the Parties of civil judgment enforcement operations (representatives), other persons and legal entities in order to ensure compliance with obligations stated in execution document and send notification on it;
- Assign certain duties to Parties of civil judgment enforcement operations (representatives), other persons and legal entities in order to ensure compliance with obligations stated in execution document and send notification on it;
- In cases aside from evicting debtor, enter and search in the accommodation of the debtor or person possessing and using debtor's property, with consent from the Senior bailiff;

- Inspect body, case and other properties of the debtor to enforce the demand in the execution document, seal/freeze, collateralize, seize and sell these items, and assign safeguarding and storage of the seized property;
- In cases aside from evicting debtor, enter and search in the accommodation of the debtor or person possessing and using debtor's property, with consent from the senior bailiff;
- Search debtor and his/her property;
- Address to state registration authority for property of the debtor and its title registration, get reference and certificate;
- Review and resolve complaints lodged by the Parties to civil judgment enforcement process;
- Take deductions from debtor's bank account and savings account, freeze outgoing payment from bank account, impose restrictions on rights to open and possess accounts in bank and other legitimate legal entities or monitor incoming and outgoing transactions of the accounts;
- Suspend rights/title of debtor, which is registered in the state registration;
- Restraining of the right of the debtor to travel abroad in accordance with the Law on the Enforcement of Court judgment;
- Transfer of immovable property to the management of the Creditor;
- Transfer unsold property to the creditor for the due payment and evict for this purpose; and
- Other rights specified in law.

TERMINATING THE ENFORCED JUDGMENT:

In case that the enforced judgment becomes void, property paid to the creditor according to that judgment shall be returned or paid to the debtor, if it is impossible, value of the property shall be set as of the period of return and creditor shall transfer the said amount to the debtor. In case that undertaken civil judgment enforcement process became void due to void execution document, expenses for judgment enforcement process shall be paid from the state budget.

ABOUT ARBITRATION AWARDS

- In accordance with article 48 of the Law of Mongolia on Arbitration, an arbitration award, irrespective of the country in which it was made shall be recognized as binding and, upon application in writing to the competent court, the award shall be enforced subject to the provisions of Article 48 and 49 of this Law, and the basic arbitration award in accordance with the procedures set forth in the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitration Awards.

- The Party relying on the award or applying for its enforcement shall attach the original award or a duly certified copy thereof. If the award is not made in a Mongolian language, the court may request the Party to provide a Mongolian translation.

GROUNDS FOR REFUSING RECOGNITION OR ENFORCEMENT OF AN ARBITRATION AWARD:

According to the Law of Mongolia on Arbitration, recognition or enforcement of an arbitration award, irrespective of the country in which it was made, may be refused only:

At the request of the Party against whom it is invoked, if that Party furnished to the competent court where recognition or enforcement is sought proof that:

- A Party to the arbitration agreement was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made;
- A Party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitration proceedings or was otherwise unable to present the case;
- The award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced;
- The composition of the arbitration tribunal or the arbitration procedure was not in accordance with the agreement of the Parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; and
- The award has not yet become binding on the Parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made.

The court determined the following situation:

- The subject matter of the dispute is not capable of arbitration jurisdiction under the law of Mongolia.
- The recognition of enforcement of the award would be contrary to the common interests of Mongolia.

SHAREHOLDERS' DISPUTE IN UAE

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Disaccord between the shareholders of a company typically entails differences in opinion, conflicting interests, or disputes over the management, assignment of shares, control, or direction of the company including disagreements over strategic decisions, financial matters, profit distribution, breach of fiduciary duties, or violation of shareholder rights.

At the outset, we must understand that in most jurisdictions globally, a limited liability company is the preferred type of business setup as it distinguishes the identity of the company from its shareholders. In UAE too the most favored form of business is an LLC as protecting personal assets from litigation is paramount for entrepreneurs. The Shareholders in a Limited Liability Company are distinct from the Company and the company is a separate legal person in the eyes of law.

THE SHAREHOLDERS OF AN LLC ARE AFFORDED RIGHTS UNDER A WELL-ESTABLISHED LEGAL FRAMEWORK PRIMARILY GOVERNED BY THE FEDERAL DECREE-LAW NO. (32) OF 2021 ISSUED ON 20/09/2021 ON COMMERCIAL COMPANIES AND THE "FEDERAL LAW NO 1 OF 1987 CONCERNING CIVIL TRANSACTIONS LAW IN THE UAE" .

The most striking part of the jurisdiction of UAE in relation to the powers and obligations of the Shareholders is that the Shareholders in a company are different from Shareholders acting as managers in the company. The roles of a shareholder and a manager in a company are distinct and can be held by different individuals or entities. A shareholder is an equity or a stockholder, that owns shares or equity in a company. Shareholders typically invest capital in the company in exchange for ownership. They have certain rights, such as voting rights in general meetings, entitlement to dividends, and the right to receive a portion of the company's assets upon liquidation.

On the other hand, a manager, also referred to as a director or executive, is an individual appointed to manage and oversee the operations of a company. Managers have the responsibility of making strategic decisions, implementing policies, and ensuring the company operates efficiently. They are typically involved in day-to-day management, supervising employees, financial planning, and executing the company's business objectives. Further, there could be Shareholders appointed as Managers in the Company. Managers may or may not be shareholders in the company.

Article 83 of the Federal Decree-Law No. 32 of 2021 mandates that the management of a Limited Liability Company shall be undertaken by one or more managers as determined by the partners in the Memorandum of Association. The Managers may be appointed in the Memorandum of Association of the Company or under an independent contract by the General Assembly of Shareholders. If there is more than one manager, the partners may appoint a board of managers. Such a board shall have the powers and functions set out in the Memorandum of Association.

Shareholders acting as managers are vested with the full powers of a manager. They are authorized under the law to exercise full powers to manage the Company and his acts shall be binding on the Company. This can be read under Article 83(2) of Federal Decree-Law no. (32) of 2021.

Our article will focus on the disputes between Shareholders and disputes between Shareholders who are uniquely investors and managers with a special focus on pre-emptive measures to be taken.

It is important to understand the roles and responsibilities of shareholders and directors within the company structure.

Some of the main causes for shareholder dispute is the transparency in the allocation of profits and dividends, diverging opinions on the management of the company in relation to investments, operations, and most commonly the removal of managers who are shareholders too in the business.

At GRATA Dubai Office, one of the ongoing cases of shareholders' dispute can be relevant for discussion.

The shareholders formed a mainland LLC with the demarcation of powers under the Memorandum of Association wherein one of the Shareholders was appointed as a manager bestowed with powers of single-handedly operating bank accounts, to represent the company before the official and unofficial authorities, obtaining licenses including other powers along with managing the company day-to-day affairs.

In this case, a person was employed in the company (an LLC) and over the years because of the effectiveness in handling all of the company affairs and manoeuvres was promoted as a Shareholder in the company with a 50% equity and was added as a manager of the company. The Commercial License reflected the two shareholders' names with each having 50% Shares in the company and simultaneously reflecting the employee-turned Manager as a Shareholder cum manager.

The dispute arose between the shareholders when the Shareholder who is not a manager issued a Power of Attorney to a third party. The third party apparently acting as a Shareholder vide the powers granted under the Power of Attorney raised questions on the transparency of the activities undertaken by the manager cum shareholder, alleged negligent handling of a business's affairs, resulting in financial losses, operational inefficiencies. This dispute has many realms out of which the initial concern was the operation of the bank accounts wherein one of the shareholders had imposed debit restrictions on the company's bank accounts. Grata Dubai, at the request of the aggrieved shareholder, intervened in this matter and successfully resolved the issue with the concerned bank.

It is recommended that the shareholders in order to avoid dispute and hassle must delegate or appoint unanimously the authorized person from among the shareholder to operate the bank's accounts in the Memorandum of Association. The Shareholders prior to delegating such powers must be wary of the repercussion of authorizing such individuals. To compress, the advice is to define the powers in the MOA or through Board Resolution passed during the general assembly meetings as the banks are bound to comply with the MOA unless any other written agreement exists. Further to other areas of a dispute under this matter are allegations of breach of fiduciary duties by manager cum shareholders, such as self-dealing, misappropriation of funds, or unfair prejudice.

The main reason for the disputes is often the motive by the shareholder and their POA holder to create for their own benefit a parallel competing business with the mala fide intentions of enticing existing clients/businesses of the companies for their own personal benefits. One more common reason behind the disputes is the failure of a manager to adhere to the rules of law and corporate governance requirements, i.e. failure to call for AGMs, prepare and maintain proper books of accounts signed by the shareholders, prepare and implement internal policies...etc.

Other common disputes we noticed in the market are when the shareholder cum manager acts singly under full absolute powers, creating a conflict of interests situation which can be seen in areas of corrupted procurements, side commissions on the sale, hiring relatives and friends, or disposing of company's assets in a unilateral decision.

In UAE, dispute resolution between the shareholders typically involves negotiation to arrive at an amicable settlement. If there is a deadlock there may be options of business split or share sale.

In case of alleged mismanagement, or discrepancies in the day-to-day activities, the first step to legal proceedings is the appointment of an expert. The aggrieved party may reach out to the court requesting the appointment of an expert. The courts in UAE maintain a list of experts registered with the court who have expertise in various fields. The court analyzes the dispute and accordingly appoints an expert for a fee who has expertise in the subject matter of the dispute. The expert's duties may include but are not limited to, visiting the commercial premises, inspecting books of account, analyzing the dispute, raising queries from both parties and requesting documents based on which the expert prepares an independent report.

The court takes into consideration the expert report and it's the judge's discretion to critically analyze the credibility of the expert report based on the rules.

A preemptive measure to avoid such disputes is to have a shareholders' agreement outlining the duties and powers of the shareholders with a clear dispute resolution process. However, not all 50/50 shareholders have such an agreement.

We recommend reaching out to our GRATA Dubai office directly for consulting with a legal professional who can provide you with the most up-to-date and accurate information regarding court procedures, reports, or documents in UAE in relation to resolving the shareholder's dispute.

SHAREHOLDER DISPUTES IN RUSSIA

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Shareholder disputes in Russia, as elsewhere in the world, are among the most sensitive and disruptive in their implications for business. A corporation based on agreement and trust between partners often lives and grows through the common efforts of its shareholders. In situations where disputes arise that cannot be resolved amicably, therefore, the overall business inevitably suffers and often suffers irreparably.

> When representing one of the parties to a corporate conflict, we lawyers at GRATA International always educate our clients about the variety of situations and practices that the conflicting parties create in an attempt to prevail over their vis a vi.

Since shareholder disputes are usually disputes between people who know each other and the business itself, the disputes escalates from two to three to several dozen separate contests, conducted simultaneously in different courts over the course of several years.

Such legal turbulence inevitably involves the company itself, which begins to be affected by the conflict through problems with the sustainability of economic relations or with obtaining external funding.

> However, despite the complexity of this category of cases, we at GRATA International believe that any person in need of qualified protection should receive it at a level that is appropriate for that particular person.

Representing our clients in various shareholder disputes, we use all the tools contained in Russian substantive and procedural law.

The starting point of any consultation is the question of the scope of rights held by the shareholder:

- What is the number of shares a shareholder has?
- What kind of resolutions a shareholder may block?
- May a shareholder withdraw from the company?
- Do the other shareholders have the right of pre-emption of the shares?
- Is the consent of the shareholders required for the alienation?
- Do the corporate documents have a pre-determined procedure for resolving such a situation?
- How votes are allocated at the general meeting?

Many other issues that make it possible to understand the power and perspective of a shareholder in a corporate conflict.

First, it is important to pay attention to the legal form of the company, depending on it the approach to resolving corporate conflicts and actions in the corporate conflict will differ.

It is equally important to study the corporate documents of the company, the shareholders agreement (SHA), if any, the articles of association and other documents to understand what additional rights are available and what can be done in a particular situation.

By understanding your rights and liabilities, the competence of the company's executive bodies and the liabilities of the company and other shareholders, you can build a clear line of conduct and calculate the possible risks.

Here are some of the most popular strategies in this article. See if you can find your case among them.

DISPUTES OVER SHAREHOLDERS RESOLUTIONS MADE BY SHAREHOLDERS.

Disputes arising from a shareholder's disagreement with a company resolution can be included in this capacious category. The range of violations we observe in companies is quite broad. Breach of the procedure for convening and holding the meeting, breach of a shareholder's right to review the materials drafted for the meeting and breach of the rights of a minority shareholder who voted against a resolution to approve a major transaction.

The strategy of representation in the mentioned disputes depends on such factual circumstances of the case as the size of the shareholder's stake, the merits of the issue put to a vote and the consequences for the company's business.

On the one hand, courts in the Russian Federation tend to delve into and assess how a dissenting shareholder's vote may have influenced the final corporate resolution and, on the other hand, take the corporate rights of shareholders to supreme governance in the company very seriously.

A notable example of the abuse of a general meeting is the use of a power of attorney for correspondence.

Receiving correspondence by power of attorney is an innocuous move for many business people but it carries a number of risks that they take in convenient ways to arrange their private lives.

A former shareholder of a company who had found out that he had ceased to be a shareholder of the company some time ago approached us. The investigation of the circumstances of the case revealed that without the client's knowledge several meetings had been held consecutively at short notice resulting in reorganisation of the company (with complete loss of corporate control of the client who did not take part in the meeting and conversion of his shares in ZAO into nil shares in LLC), establishment of a subsidiary company, transfer of all liquid assets to the subsidiary company and launch of liquidation procedure of the parent company.

Not everyone is aware that when legal action is properly taken, applicable law permits such unfavorable developments for the company owner. In particular, repeat meetings in public limited companies provide for a reduced quorum for the adoption of resolutions - sufficient to leave the owner without a significant portion of its assets. In this particular case, notification of meetings to the shareholder was done through a person acting under a power of attorney - through a courier who picked up the correspondence without informing the trustee. It took years of court hearings and a fierce adversarial process to regain corporate control for our client, return real estate to the company and contest the pledge of the property. The final stage was the expulsion of the wrongdoer from the company.

DISPUTES ARISING IN RELATION TO SHAREHOLDER ACCESS TO INFORMATION ON COMPANY OPERATIONS.

Disputes regarding shareholders' access to information on the company's operations are quite common. Russian corporate law obliges a company to provide shareholders with access to information on the company's business operations at their request. Not infrequently, it is only by gaining access to such information that shareholders can learn about transactions that are detrimental to the company. Accordingly, management and majority shareholders are motivated to withhold such information. As a rule, courts satisfy shareholders' requests for documents and information. However, depending on the legal form of the company, the approach may differ. Whereas in an LLC a shareholder is entitled to obtain any documents, in joint-stock companies the scope of documents requested depends on the shareholding in the company's authorized capital.

DISPUTES OVER TRANSACTIONS MADE BY THE COMPANY.

Frequently a director of a company acts in the interests of one of the shareholders or for the shareholder himself to be a director. Over time, this can lead to the company making a transaction that is not in the interests of the business. Issuing or obtaining a loan, disposing of a large asset, or purchasing raw materials from a company that is associated with the CEO. The applicable corporate law critically perceives such business activity. A shareholder who learns of such a transaction has the right to assert a claim to return the parties to their original position and to recover the damages caused to the company. In extreme situations, where the company has suffered substantial damage, the question of expulsion of the shareholder from the company may be raised. Depending on the circumstances of the case, the court may side with the aggrieved party and award the excluded shareholder compensation for the loss of shares.

DISPUTES ARISING BETWEEN THE CURRENT SHAREHOLDERS AND THE HEIRS OF COMPANY OWNERS.

Frequently a protracted litigation occurs after the death of a shareholder. The arrival of a new shareholder is perceived differently by the current shareholders and is governed differently by the articles of association of the companies. In some cases, the heir does not want to become a shareholder but wants fair compensation for his share. In other cases, on the contrary, the heir sees for himself the prospect and benefit of becoming a full shareholder. For effective advice in both situations, knowledge of the enforcement of certain provisions of the articles of association in this respect is essential. Some contain a blanket prohibition on third parties entering the share capital of companies; others contain a pre-emptive right for "old" shareholders to buy out the heir's share. If heirs are prohibited from becoming shareholders, the company shall pay the actual (market) value of the shares to the heirs. In the latter case, disputes may arise over the actual (market) value of such shares, and indeed over the value of the entire company.

AS AN EXAMPLE, A CASE CAN BE GIVEN TO ILLUSTRATE BOTH THE REJECTION BY SHAREHOLDERS OF AN HEIR AS A NEW SHAREHOLDER AND AN ATTEMPT TO WITHDRAW THE MAIN ASSETS FROM THE COMPANY.

For example, GRATA lawyers received a request from a minority shareholder who had inherited after the death of his spouse and became a shareholder with a 26% share in the share capital. According to our advice, the shareholder asked the company for information and documents about the company's operations. However, in response, management and the majority shareholders attempted to recover in court damages from the heir allegedly caused to the company by the deceased shareholder. Moreover, the majority shareholders took the company to court to exclude the new successor shareholder from the company. GRATA succeeded in obtaining the dismissal of these claims.

GRATA lawyers also succeeded in obtaining the proper documentation. After receiving the information and documents, we realised immediately what had happened: all of the main real estate was transferred to the subsidiary at book value, i.e. actually at a significantly undervalued amount.

Because of this major transaction, the company lost the entire production base required for its core business activities and the new minority shareholder was prevented from making any future managerial resolutions in respect of the transferred assets.

The cadastral value of the transferred assets was examined and a value was engaged to quickly arrive at a market value of the expropriated real estate. A claim to declare the transaction null and void was prepared and filed with the Arbitration Court.

Furthermore, in the course of the court proceedings, GRATA's lawyers received information that a general meeting of the shareholders was planned, the agenda of which included an item concerning the increase of the share capital of the subsidiary by including a new shareholder and diluting the share of the parent company to a non-controlling interest.

In this way, the management and majority shareholders not only withdrew all assets into the subsidiary but also attempted to sell the controlling interest of the subsidiary to a third party.

The case was heard by the courts of three instances, the minority shareholder's claims to invalidate the transaction were satisfied and the real estate was returned to the company.

CONCILIATION PRACTICE IN DISPUTE RESOLUTION.

Having spent thousands of hours in courtrooms, hundreds of hours at the negotiation table, GRATA International litigators know that in most cases, the best solution is not a court decision, but an agreement reached amicably. Our team includes professional negotiators with the necessary experience and special theoretical training. Their impartial participation in the negotiations, the absence of a toxic relationship with any of the parties, contribute to the trust and willingness of both parties to mediate.

In conclusion, we would like to give some advice.

1 Keep an eye on what the company's governing bodies and other shareholders are doing. In case a shareholder finds himself trapped in a company with no way out and no buyers for the shares could be found (which is generally not surprising, it is rather difficult to sell shares in conditions of corporate conflict, at least the price will be significantly lower than the market value), time is in any case in favor of the minority shareholder, one should wait for active actions and mistakes from the other party to the conflict. The legislator provides quite a number of tools, which enable protection of rights even in such situation. It is only necessary to use these tools correctly and in due time.

2 It is important to know everything there is to know and to get all the information on the company, on the resolutions taken and meetings held and to keep track of any changes.

3 It is also crucial to constantly check e-mail addresses, mailboxes and leave instructions in case any letters are delivered to the official postal addresses.

4 Keeping up to date with all the information and reacting quickly to the actions of the company's governing bodies will help ensure that corporate rights will be protected in a proper and timely manner.

5 In addition, shareholders agreement can save a significant amount of effort and money, and make corporate life or the outcome of a conflict as predictable as possible. Under Russian law, these are non-public contracts between shareholders which contain the rules of the corporate game and the liability for their violation. A well-drafted agreement is a scenario that not only resolves a problem, but also often prevents shareholders from behaving unlawfully. Imagine a situation where shareholders have granted each other share options in the event of a breach of contract, the commission or omission of a particular act, voting, etc. Such or similar corporate inoculations should, in our view, be given to the vast majority of companies in Russia.

RESOLUTIONS OF THE SHAREHOLDER DISPUTES UNDER TURKISH LEGISLATION

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As per the Turkish Commercial Code ("TCC"), there are 2 primary types of Companies. These are, Joint Stock Company "Anonim Şirket" and Limited Liability Companies "Limited Şirket". There are also 2 other Company types which, in practice, are not commonly seen or established. These are Collective Companies "Kollektif Şirket" and Commandite Companies "Komandit Şirket". In practice, Joint Stock Companies and Limited Liability Companies are established whereas Collective and Commandite Companies are not often established.

THE TCC ESTABLISHED THE RIGHTS AND OBLIGATIONS OF THE SHAREHOLDERS FOR ANY COMPANY TYPE. THE METHODOLOGY OF THE LAW IS TO EXPLAIN THE RULES FOR THE JOINT STOCK COMPANIES AND STATE THE DIFFERENCES FOR LIMITED LIABILITY COMPANIES WHERE APPLICABLE. THUS, THE SCOPE OF THIS WILL BE PRIMARILY FOCUSED ON THE SHAREHOLDER DISPUTES ARISING WITHIN THE JOINT STOCK COMPANIES.

1 SHAREHOLDERS' RIGHTS AND POTENTIAL DISPUTES

The rights and obligations of a shareholder are regulated by the TCC. As per the articles mentioned therein, the shareholders have certain rights towards each other and towards the Company. In addition, the shareholders who have at least 10% shareholdings in a Company have special rights as they are considered a "minority".

Shareholders who constitute at least 10% of the Company's capital, or 5% for public companies, are defined as a minority in the TCC. Apart from the TCC, it is also possible to grant rights to minorities through the articles of association of the Company or other agreements between shareholders, in other words, not all rights of the minority are included in the Law. The share ratios of the shareholders to be referred to as minority may be decreased, but not increased, by the articles of association.

A. The Right to Vote and Attend to the General Assembly ("GA")

All shareholders have the right to attend to the GA of the Company. The Company is obligated to provide timely notices for any GA meetings. If the Company does not adhere to the notice requirements, the GA resolutions may be annulled by the Court.

Furthermore, all shareholders have the right to cast their vote on the GA agenda items. Each share in a Company will correspond to at least one vote. However, certain shares may be allocated with more votes if they are designated as "favored shares". Provision of such shares are regulated by the TCC and are subject to strict conditions.

In practice, the disputes relevant with this right arise from either lack of proper notices, or physical prevention of attending to the GA. In case of lack of proper notices, the shareholder who could not attend to the hearing (or chose to strategically not attend to the hearing) may file a petition before the Court to have the meeting and the decisions therein annulled.

Another problem arises when the Company does not ever hold GA's. As per the TCC, the ability to call for a GA meeting is provided to the Board of Directors ("BoD"). Aside from certain circumstantial exceptions, no one else can decide on holding a GA meeting. The exceptions to this rule are as follows. (i) The minority may request from the BoD to call for a GA, and if the BoD does not call for a GA meeting without proper reasoning, the minority may request the Court so that they may call for a GA meeting instead, (ii) a single shareholder may request from the Court after demanding the BoD to call for a GA, if the term of the BoD has expired but no GA has been called yet, so that they may call for a GA meeting instead, (iii) the liquidation officer who acts in place of the BoD may call for a GA meeting.

B. The Right to Obtain Information

Another right of each shareholder is to obtain information on Company's operations. As per the TCC, this right is used within the GA, meaning that the shareholder cannot force the Company to provide information on the operations outside the GA. In accordance with the TCC, the Company should provide the financial tables and budget before any ordinary GA where the financial tables will be approved.

In practice, the financial tables and budget do not fully reflect the actual operations of the Company. For example, details and terms of the signed contracts, lease agreements, credit lines or any other agreement is not fully reflected in these documents. In addition, the BoD may intentionally or negligently omit certain important information in the operational report that they issue for the shareholders.

In such cases, the shareholder must file a petition before the Court and request that their questions that they have asked in the GA meeting to be responded accordingly. By a decision rendered by the Court, the shareholder can then physically review the relevant documents of the Company.

C. The Right to Request a Private Audit

All shareholders may request a private audit to be conducted in the Company, so that they may understand the actual operations and details conducted by the Company. This right may only be invoked after using the right to obtain information via the decision of the Court. Requests to use this right before invoking right to obtain information are refused by the Court as per the TCC.

D. The Right to Dividends

All shareholders have the right to dividend. This right is a monetary right arising from the shareholding. However, distribution of dividends is not mandatory, except for once in at least 5 years. Decisions on dividend distribution is taken by the GA, and if the GA does not decide on distributing any dividend for 5 continuous years, the requesting shareholder may request the Court to annul the decision indicating so.

However, if the Company may justify that they have a valid reason for not distributing any dividends, the request of the shareholder may be refused. For example, a Company may decide to invest in certain assets or commodities relevant with their area of operations and the net profits of the Company may be directed towards these investments, instead of being distributed as dividend.ondence.

E. The Right of First Refusal

If a Company raises its capital and issues new shares as a result, all the shareholders have the right of first refusal pro rata with the number of shares they already own, and the number of new shares issued.

An issue that arises tangential to this right is the case of dilution. In certain cases, a majority shareholder who has the shareholding percentage to increase the Company capital by their own vote may decide to increase capital without proper justification knowing that the other shareholders cannot use their right of first refusal simply because they lack financial capability, so that their shareholding can be diluted. This is especially important as such dilution may reduce a shareholders' shareholding percentage to the point where they lose their rights and status as the minority. In these cases, the decision to increase the capital may be annulled by the Court upon application of the shareholder.

F. Disputes Arising from the Ownership of the Shares

Having indicated the rights arising from the shareholding, the very essence of "owning" a share must also be discussed. As per the TCC, validity of a share transfer is subject to different conditions based on the Company's type. For Joint Stock Companies, share transfer can be made via a simple written contract, and would be valid upon registration to the shareholders' ledger of the Company. For Limited Liability Companies, the share transfer is subject to a notary's approval, and a registration before Commercial Registry is mandatory.

In either case, an action of the BoD is necessary. As per the TCC, a Company's shareholders' ledger is held by the BoD. If the BoD refuses to register the shareholder to the ledger for any reason or does not apply to the Commercial Registry to register the share transfer; the shareholder must apply to the Court to have themselves registered as the rightful owner of the shares.

In such an event, if any GA meetings are held after the date of acquisition of the shares and the actual date of registration can be annulled as the shareholder's composition will not be correct. In other words, such late registration as a shareholder, caused by the unjust actions of the Company will have a retroactive applicability.

2 LEGAL REMEDIES AGAINST OBSTRUCTION OF A SHAREHOLDERS' RIGHTS

As indicated in the previous section, obstruction of a shareholders' rights arising from their shareholding generally arise from the decisions taken or not taken in the GA, or not having GA meetings held at all. In any case, a shareholder can apply to the Court to have the GA meeting annulled in its entirety, or have certain decisions annulled. To be able to apply to the Court, the shareholder must indicate their request in the GA meeting, and once refused, must annotate their express objections to the GA meeting minutes. In case where they are not allowed to annotate their objections, they must at least indicate their objections, when they are provided with the attendance sheet as much as they could, and if all else fails, must issue a document with willing witnesses indicating that they were not allowed to annotate their objections.

A. Application to the Court for Convening a GA or Adding an Item to the Agenda

In the event of the request of the minority regarding the call for meeting or placing an item on the agenda is rejected by the BoD or if the request is not responded positively within 7 (seven) business days, the minority has the right to request the commercial court of first instance in the place where the Company headquarters is located to call the GA for a meeting. The court examines the request and, if it finds the reasons for convening the meeting to be justified, appoints a trustee to call the meeting and to organize its agenda.

B. Application to the Court in Case the Right to Obtain and Examine Information is Violated

As explained above; each shareholder has the right to obtain information from the BoD regarding the affairs of the Company. In this context, the shareholder whose request for information is rejected by the BoD has the right to apply to the commercial court of first instance where the Company headquarters is located within 10 (ten) days from the date of rejection or within a reasonable period of time if there is no rejection decision.

C. Application to the Court for the Appointment of a Private Auditor

If the GA approves the shareholders' request for the appointment of a private auditor, the Company or each shareholder may, within 30 (thirty) days, request the appointment of a private auditor to the Company from the commercial court of first instance where the Company headquarters is located.

If the GA rejects the private audit request, the shareholders who constitute at least one tenth of the capital, or the shareholders whose shares have a total nominal value of at least one million Turkish liras, have the right to request the appointment of a private auditor from the commercial court of first instance where the Company headquarters is located within 3 (three) months.

3 FILING A LAWSUIT FOR DISSOLUTION OF THE COMPANY

Pursuant to Article 531 of the TCC, minority shareholders are entitled to request the dissolution of the Company from the commercial court of first instance where the Company headquarters is located.

However, in order to exercise this right, there must be a justified reason. The term "justified reason" is not defined within the scope of the legislation, therefore the meaning and the scope of it shall be evaluated by the doctrine through judicial decisions and the final authority to decide whether the reasons asserted are justified reason or not shall be the Court.

The generally accepted situation is that a lawsuit could be filed to dissolve a Company if the Company is on the verge of bankruptcy, if the capital is lost or the capital is uncovered, if the Company cannot make a profit for many years, or even if it makes a profit, the profit is not distributed to the shareholders in the operating periods in a continuous manner or is distributed incompletely, if the Company becomes unable to fulfill its business and purpose, if the BoD and the GA or other decision-making bodies of the Company cease to function as a result of deadlocks arising from disputes between shareholders, etc.. A lawsuit may be filed on the grounds of the above-mentioned circumstances or similar circumstances, the Judge will decide whether there is a justified reason and whether the Company should be dissolved under their discretion. Therefore, justified reason may differ for each dispute.

ACCORDING TO THE GENERALLY ACCEPTED VIEW IN THE DOCTRINE, THE REASON FOR TERMINATION, WHICH IS QUALIFIED AS JUSTIFIED REASON, MUST BE OBJECTIVE AND INDEPENDENT FROM THE SHAREHOLDER'S PERSONALITY.

Therefore, the reason subject to the request for dissolution must be such that the continuation of the Company cannot be expected from the shareholder who filed the lawsuit according to the rule of honesty and trust, and it must be to the extent that it may affect other shareholders. In the presence of these conditions, the dissolution of the Company may be decided as a "last resort" without disturbing the balance of interests, taking into account the rights of other shareholders. Therefore, upon application to the court for dissolution, the court is not bound by the request for dissolution.

In addition to dissolution, the court may decide, in line with the request of the minority, to remove the shareholders from the Company by paying the current value of the shares of the shareholders requesting dissolution, or to decide on another solution suitable for the situation.

4 ANNULMENT OF THE GA RESOLUTION PURSUANT TO THE CAPITAL MARKET LAW ("CML")

Considering the shareholding rates of the shareholders represented by the members of the BoD, the BoD is generally elected by the majority shareholders and the capital increase decisions taken by the members of the BoD may affect the interests of the minority shareholders.

- In order to protect the rights of minority shareholders, the CML provides that the members of the BoD or the shareholders whose rights have been violated may file an action for annulment against the decisions taken by the BoD within the framework of the principles set forth in the relevant article, within 30 (thirty) days following the announcement of the decision, at the commercial court where the headquarters of the Company is located, in accordance with the provisions of the TCC regarding the annulment of GA resolutions.

- Pursuant to the relevant law, the Capital Markets Board of the Republic of Turkiye has also been granted the right to file an annulment lawsuit against the decisions of the BoD taken in this regard at the commercial court of first instance where the Company's headquarters is located within 30 (thirty) days from the date of public announcement of these decisions and to request the suspension of the execution of these decisions without collateral.

DISPUTES ARISING FROM JOINT VENTURE AGREEMENTS IN UZBEKISTAN

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In accordance with Uzbek legislation, as stipulated in Article 43 of Civil code, a legal entity acts on the basis of a charter, or a memorandum of association (constituent agreement) and a charter, or only memorandum of association. While charter remains, the document approved by the shareholders regulating general rules for the governance of a company, memorandum of association, after the registration of the company, is considered fulfilled and generally loses its significance. Subsequently, it is used very limitedly, for example, when a notary reveals the grounds for the participants to acquire their shares in the authorized capital of the company.

Uzbek legislation lacks the instruments for defining the operations of the company, rights and obligations of shareholders, commonly known as shareholders agreement.

First steps in introducing shareholders agreement were taken in 2019 by the Order of the President No. 5464 dated April 5, 2019. [1] The Order No. 5464 established that as part of the improvement of civil legislation, it is envisaged to introduce a "corporate agreement", which has the force of a corporate act and is binding on third parties. Later by the Resolution of the President No. PP-415 dated November 8, 2022 [2] Ministry of Justice, Ministry of Finance and State Assets Management Agency were directed to draft laws on determining the rights of participants in business companies and the legal basis for concluding a corporate agreement.

The very concept of corporate agreement is common for Russian Law. The Civil code of the Russian Federation defines corporate agreement as an agreement on the exercise of corporate rights, according to which shareholders undertake to exercise the rights in a certain way or to refrain (refuse) from exercising them, including voting in a certain way at the general meeting of the company's participants, to coordinately carry out other actions to manage the company, to acquire or alienate shares in its authorized capital at a certain price or upon the occurrence of certain circumstances, or refrain from alienating shares (interests) until certain circumstances occur.

Corporate agreement is divided into two main types - an agreement on the exercise of the rights of participants for an LLC and a shareholders agreement for a JSC (hereinafter the term 'shareholders agreement' will be used in a manner applicable for both LLC and JSC).

Despite the absence of a clear designation and regulation of such an instrument as a shareholders agreement in Uzbek legislation, the conclusion of such agreement in practice is widely accepted.

[1] https://lex.uz/ru/docs/4272619
[2] https://lex.uz/ru/docs/6277774

Article 354 of the Civil Code of Republic of Uzbekistan grants the freedom of an agreement for citizens and legal entities. Further the Article states that the parties may conclude an agreement not provided for by law, which determines the possibility of concluding a shareholders agreement. However, another important issue in concluding a shareholders agreement is its subordination to the laws of a particular country.

In accordance with the Article 1189 of the Civil code, the agreement is governed by the law of the country chosen by agreement of the parties, unless otherwise provided by law. By this analogy, it could be argued that a shareholders agreement in Uzbekistan can be governed by the law of any country upon choice of its parties. However, dispositive nature of governing law in shareholders agreements was challenged by several scholars.

On this matter notable will be case precedents in Russian Federation. The trial in the Megafon case is indicative (Resolution of the Federal Antimonopoly Service of the West Siberian District dated March 31, 2006 No. F04-2109 / 2005 (14105-A75-11), F04-2109 / 2005 (15210-A75-11), F04-2109 /2005(15015-A75-11), F04-2109/2005(14744-A75-11), F04-2109/2005(14785-A75-11) in case N A75-3725-G/04-860/2005). In its decision, the court emphasized that "since the regulation of the legal status of national legal entities is the sovereign right of the Russian Federation, the rules of foreign law, including the rules of Swedish law, cannot be applied to these legal relations."

It can be difficult to agree with this position, since if the legal regime of entities was the subject of exclusive sovereign law, then a serious question would arise about the existence of international private law as a whole. However, the courts adhered to the same position in subsequent similar situations (Decision of the Moscow Arbitration Court dated December 26, 2006 in case No. A40-62048 / 06-81-343).

In Uzbekistan, the main arguments for claiming that shareholders agreement can be governed only by the law of Uzbekistan include:

- Article 1191 stating that the law of the country where the legal entity is established shall apply to an agreement on the establishment of a legal entity with foreign participation;
- Article 1175 stating that the law of a legal entity is the law of the country where this legal entity is established; and
- Article 1164 stating that foreign law is not applied in cases where its application would be contrary to the fundamentals of law and order (public order) of the Republic of Uzbekistan. In these cases, the law of the Republic of Uzbekistan applies.

Article 1191 regulates the application of Uzbek legislation to (1) an agreement on the establishment of a legal entity and (2) the entities with foreign participation. On this matter Ministry of Justice has provided that shareholders agreements are not meant by 'an agreement on the establishment of a legal entity,' thus, the Article 1191 is not applicable to shareholders agreements. However, the question of application of foreign law to shareholders agreements for entities without foreign participation remain subject to further discussions.

In accordance with Order No. 5464, shareholders agreement in Uzbek legislation is entitled to have a force of a corporate act. Corporate act, regulating internal relations in a corporate organization, as a rule, is governed by the law of a legal entity. In its turn the law (personal law) of a legal entity, according to Article 1175, is the law of the country where this legal entity is established, in the current case, Uzbek law. The said Article is a unilateral imperative norm, which, as a general rule, excludes the possibility of applying other criteria for determining the personal law of a legal entity. Hence, one may argue that shareholders agreement can be governed only by Uzbek law.

However, due to the fact that shareholders agreements are not defined and regulations of them is not established by Uzbek legislation, it can be argued that the law of a legal entity is not applicable to shareholders agreement. Further, it should be noted that Articles 354 and 1189 guarantee the freedom of an agreement and governing law.

The same course of discussion can be applied to the argument on public order. First, from the point of view of logic, a causal relationship between the conclusion of a shareholders agreement under foreign law and a violation of public order is not obvious. For example in Russian Federation, in its information letter No. 156 dated February 26, 2013, the Presidium of the Supreme Arbitration Court of the Russian Federation emphasized that the fact of using foreign law does not violate the public order of the state. Secondly, the protection of public order is an ex post control measure, so if certain risks arise when concluding a shareholders agreement, then they must be eliminated or minimized at the time of signing, and not after. Thus, the reference to the protection of public order does not give a precise explanation of the inadmissibility of the application of foreign law.

In conclusion, while the concept of a shareholders agreement is not explicitly defined in Uzbek law, the freedom to enter into agreements not provided for by law is the rights of any individual or an entity granted by the Civil code. The governing law of a shareholders agreement can be chosen by the parties, as stated in Article 1189 of the Civil Code, but the dispositive nature of governing law in shareholders agreements remains a topic of debate among scholars. Ultimately, the lack of clear definition and regulation of shareholders agreements in Uzbek law leaves room for interpretation.

INTERIM MEASURES IN CORPORATE DISPUTES IN UKRAINE

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The execution of any court decision is an integral stage of the justice process and, therefore, must meet the requirements of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms. The ECHR, in its judgment of 19.03.1997 in the case of Hornsby v. Greece, stated that the execution of a judgment rendered by any court should be regarded as an integral part of the trial. At the same time, judicial protection, as well as the activities of the court, cannot be considered effective if court decisions are not enforced or are enforced improperly and without the court's control over their execution.

> In the judgment of the ECHR of 18.05.2004 in the case of Prodan v. Moldova, the Court emphasized that the right to a fair trial guaranteed by the Convention would be an illusion if the legal system of the states that have ratified the Convention allows a final, binding judgment to remain unenforced, causing prejudice to one of the parties.

Thus, the interim measures taken by the court help to guarantee the restoration of the plaintiff's violated rights in case of satisfaction of the claim and enforcement of the court decision, which is fully consistent with the ECHR case law. The economic court should consider the potential risks of non-enforcement of the court decision and guarantee the restoration of the plaintiff's violated rights in case of satisfaction of the claim and enforcement of the court decision.

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The institution of interim measures is one of the mechanisms for ensuring effective legal protection. In other words, interim relief, by its legal nature, is a means of preventing possible violations of property rights or legally protected interests of a legal entity or individual, the purpose of which is to avoid possible future violations of the rights and legally protected interests of the plaintiff, as well as to ensure that the court decision is actually enforced and to avoid any difficulties in enforcement in the event the claim is satisfied.

The main types of interim measures in corporate disputes are prohibition of registration actions; suspension of a resolution of the general meeting of a legal entity with prohibiting the general meeting of shareholders from making decisions; prohibition of alienation of a share in the authorised capital of a company; seizure of a share in the authorised capital of a company; seizure of immovable property; seizure of funds; suspension of the order of the Ministry of Justice.

A prerequisite for securing a corporate claim is the selection of an appropriate interim measure that is relevant to the subject matter of the dispute, which guarantees compliance with the principle of correlation of the type of interim measure with the requirements stated by the claimant, which ultimately allows for a balance of interests of the parties and other participants in the litigation in resolving the dispute, facilitates the actual execution of the court decision in case of satisfaction of the claim and, as a result, ensures adequate protection or restoration of the violated or disputed rights or interests of the claimant (applicant).

For example, in its rulings in cases No. 902/774/20 and No. 902/775/20, the Supreme Court noted that the interim measures taken by the appellate court (seizure of corporate rights of a third party; prohibition for state registrars to perform registration actions in relation to LLC) have no legal connection with the subject matter of the claim (termination of the share purchase agreement, and obligation of the state registrar to amend the register), during the consideration of which the courts will examine the issue of whether there are grounds for termination of the agreement concluded between the plaintiff and the defendant and whether there are grounds for the registrar's obligation to amend the register. The claims do not relate to the direct return of the share in the company's charter capital to the plaintiff.

Interim relief must be consistent with the subject matter and grounds of the claim, and the person claiming the need for interim relief must prove the connection between the failure to take such measures and the difficulty or impossibility of enforcing the court act.

The dispute in case No. 927/481/21 concerned the return to the plaintiff of a share in the company's authorized capital. However, as the commercial court of appeal correctly noted, the local commercial court took measures to secure the claim in respect of land plots that were not in dispute in this case. By partially satisfying the application for interim relief, the commercial court prohibited the LLC and the subjects of state registration of rights from taking actions aimed at alienating real estate and terminating the ownership of agricultural land plots and the right to lease agricultural land plots under land lease agreements concluded with individuals, which indicates that the measures taken are disproportionate to the subject matter of the dispute.

SUCH A METHOD OF SECURING A CLAIM IS NOT DIRECTLY RELATED TO THE DISPUTE UNDER CONSIDERATION AND LEADS TO AN UNJUSTIFIED RESTRICTION OF THE RIGHTS OF THE COMPANY, COMPANY MEMBERS WHO ARE NOT DEFENDANTS, AND LAND PLOT OWNERS.

The Supreme Court rejected the complainant's arguments that the appellate court had violated the procedural law, as the evidence, which, in the plaintiff's opinion, confirms the validity of the assumptions set out in the application for interim relief, does not change the fact that the method of interim relief chosen by the plaintiff is inconsistent with the subject matter of the claim. The Supreme Court noted that the measures taken by the court of first instance to secure the claim did not meet the requirements of procedural law regarding reasonableness, validity, adequacy, and balance of interests of the parties, and therefore the conclusion of the commercial court of appeal that there were no grounds for securing the claim in the manner chosen by the plaintiff was justified.

In its ruling in case No. 927/460/21, the Supreme Court also concluded that the method of interim relief chosen by the plaintiff was inconsistent with the requirements for which it was applied. The court noted that a mere reference in the application to the potential for the defendant to evade the court decision without providing appropriate justification is not a sufficient basis for satisfying the application.

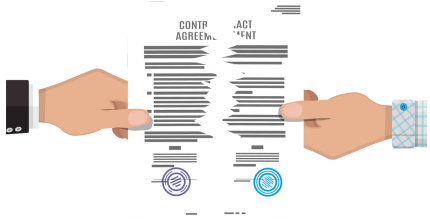
The plaintiff did not provide evidence of the defendant's threat and intention to alienate the disputed share in the LLC's charter capital. The complainant's arguments are based only on assumptions and the defendant's potential ability to alienate such rights, which are not a proper justification for taking appropriate interim measures.

As for the arguments of the plaintiff's cassation appeal that he provided the court of appeal with evidence of the alienation of the LLC's assets, namely the termination of the lease of land plots, which are the defendant's main means of production, and also substantiated the impossibility of submitting such evidence to the court of first instance, but the plaintiff's application was left unanswered by the court of appeal, they cannot be a basis for setting aside the appealed decision of the court of appeal, since they do not change the fact that the method of securing the claim chosen by the plaintiff was not agreed upon.

The justification for the need to secure a claim is to prove the circumstances that are relevant to the decision on securing the claim. The purpose of interim relief is for the court hearing the case to take measures to protect the plaintiff's material and legal interests from possible unfair actions by the defendant to ensure that the plaintiff can actually and effectively enforce the court decision if it is made in the plaintiff's favour, including to prevent potential difficulties in further enforcement of such a decision.

When deciding on interim measures, the commercial court must assess the validity of the applicant's arguments regarding the need to take appropriate measures, taking into account the reasonableness, validity, adequacy, and proportionality of the applicant's claims for interim relief, balancing the interests of the parties and other participants in the proceedings, the existence of a connection between a particular interim measure and the subject matter of the claim, the likelihood of difficulty in enforcing or failing to enforce the commercial court's decision, and other factors.

The existence of factual circumstances, which are confirmed by evidence that give rise to applying a particular type of interim relief, is sufficiently justified to secure a claim. The adequacy of an interim measure applied by a commercial court is determined by its compliance with the requirements for which it is applied.



It should also be investigated whether the failure to apply the requested interim relief will lead to a violation of the requirement for fair and effective protection of the violated rights whether the plaintiff will be able to protect them within the same court proceedings on his claim without new appeals to the court.

Proportionality requires the commercial court to consider the ratio of the negative consequences of taking measures to secure the claim to the negative consequences that may result from the failure to take these measures, considering the right or legitimate interest for which the applicant is applying to the court, and the property consequences of prohibiting the defendant from taking certain actions.

The Supreme Court stated that interim measures may be taken by the court only within the scope of the claim and should not violate the rights of other participants (shareholders) of the legal entity. When deciding whether to take interim measures, commercial courts should consider that such measures should not block the business activities of a legal entity, violate the rights of persons who are not parties to the litigation, or apply restrictions not related to the subject matter of the dispute.

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