

**CHANGE OF PERSON FULFILLING THE FUNCTIONS OF THE GENERAL DIRECTOR
OF A COMPANY CONTROLLED BY AN "UNFRIENDLY" PARTICIPANT**

On 3 April 2024, the Commercial (state arbitrazh) Court of the Kaliningrad Region passed a decision on case No. A21-5127/2023 recognising as invalid a decision of the general meeting of participants of a Russian limited liability company (the "**Company**") to terminate early the powers of the general director ("**GD**") and appoint a new GD. The meeting's decision was challenged by the Company's former general director (the "**Claimant**"), who is also a participant in the Company but did not vote on the issue. The majority Company participant is a legal entity from an "unfriendly" foreign state. The Claimant justified his claim arguing that the Company had breached Russian Presidential Decree No. 618 dated 8 September 2022 "On the special procedure for performing (fulfilling) certain types of transaction (operation) between certain persons" ("**Decree 618**"). On 8 July 2024, the Thirteenth Commercial Court of Appeal upheld the decision of the Commercial Court of the Kaliningrad Region and dismissed the appeal by the majority participant.

In the Claimant's view, the breach of Decree 618 was manifested in no permission having been obtained for the change of GD from the Government Commission for control over foreign investment in the Russian Federation (the "**Government Commission**") which, according to the Thirteenth Commercial Court and the Commercial Court of Appeal, is required because the majority participant in the Company is a company from an "unfriendly" foreign state.

It is worth noting that the courts did not present any explicit legal position or detailed arguments as to why the decision to appoint a new general director required permission from the Government Commission. Nor did they explain how such a decision might be considered a transaction (operation) between a resident and a person representing an "unfriendly" foreign state directly or indirectly entailing establishment, change or termination of rights of possession, use/or disposal of interests in the charter capitals of LLCs and/or other rights making it possible to determine the conditions for managing such LLCs and/or for doing business.

The court decisions merely cite, word for word, individual provisions of Decree 618, Letter from the Ministry of Finance No. 05-06-14PM/99138 dated 13 October 2022 "Official clarifications No. 1 on aspects of applying Russian Presidential Decree No. 618 dated 8 September 2022" ("**Official Clarifications No.1**"), and Russian Presidential Decree No. 737 dated 15 October 2022 "On certain questions of performance (fulfilment) of certain types of transaction (operation)".

Let us note that the obligation to obtain Government Commission permission to change an GD is not envisaged by Decree 618 or Official Clarifications No.1, while the latter indicates, as a case when Government Commission permission is required in connection with appointment of an GD, **only conclusion of an agreement with a commercial organisation or sole trade on transfer of GD powers to a third person**. Moreover, Presidential Decree No. 737, which is also mentioned in the judicial acts, in no way relates to limited liability companies.

The given decision was the first and is so far the only judicial act regarding the need to obtain a Government Commission permission to change the GD in companies with "unfriendly" persons as participants, so it may not, of course, be considered established practice. At the same time, its existence arouses certain concerns. From our point of view, in the absence of any direct indication in legislative acts of the need for Government Commission permission to change a GD, the stand taken by the courts might have an adverse impact on commercial needs, particularly by opening up opportunities for abuse on the part of GD, though the right to termination of their rights by decision of participants/shareholders, including "unfriendly" ones, has so far been deemed unconditional. In view of this, we express the hope that the cassation instance (if the decision is challenged further) will take a different position on this case. We will, anyway, monitor such precedents carefully, as they are of major significance for the development of corporate relations considering establishment of new restrictions in relation to some of their subjects.

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