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Lithuania

Ineffective transactions shall not always be considered as one of the counterparties' unfair competition actions

On 12 December 2018 the Supreme Court of Lithuania (LAT) ruled on interpretation and application of legal norms, regulating actions on unfair competition, derivative claim and the responsibility of the head of the company

The court of cassation ruled that transactions concluded by free will even in cases when they are economically ineffective for one of the legal entities, are not considered to be one of the counterparties' unfair competition actions within the scope of prohibited actions pursuant to Part 1 of Article 15 of the Law on Competition of the Republic of Lithuania.

LAT case law has clarified that prohibited actions under the established regulation of Part 1 of Article 15 of the Law on Competition of the Republic of Lithuania, first of all, are linked to two cumulative conditions: first, such actions shall contradict the fair practice of the economic activity and the good customs, and such actions may undermine the ability of another entity to compete.

LAT noted that the legislator has not specified the minimum number of shares that would allow the company to seek damage compensation from the head of the company and the members of the board in the court, therefore, a shareholder, holding at least one share of the company shall be deemed to have the right to file a derivative action to the head of the company and to the members of the board for damages caused to the company.

In addition, the court of cassation stated in this ruling that, in order to prevent the head from civil liability due to the business decision-making rule, the court shall establish that the head acted fairly with the interests of the company – did not violate the duty of care, i.e. properly investigated the information before concluding the dispute transactions, did not act *ultra vires*, etc., nor violated loyalty obligation.

An obligation for legal entities to identify their ultimate beneficial owners was established according to the Law on the Prevention of Money Laundering and Terrorist Financing of the Republic of Lithuania

The amendment of Law on the Prevention of Money Laundering and Terrorist Financing of the Republic of Lithuania (Law) came into force on 1 January 2019

The Law imposes an obligation for legal persons to identify their ultimate beneficial owners and register information about them in the Information System of the Members of Legal Entities (JADIS). Legal persons will be able to fulfil their obligation to disclose the required information after JADIS adopts the amendments of relevant provisions of its regulations and adapts the Information System for registering of such data.

All legal persons established in the Republic of Lithuania, except for legal persons whose sole shareholder is the state or a municipality, shall obtain accurate information on their beneficial owners.

The beneficial owner is a natural person who ultimately owns or controls the customer and / or the natural person on whose behalf a transaction or activity is being conducted. The Law provides a list of individuals who are considered as final beneficial owners.

Non-compliance with the above-mentioned obligations imposed by the Law will result in a fine in the amount of EUR 500 up to EUR 1,800 for persons, and from EUR 2,000 up to EUR 3,500 for heads of legal entities.

Such offence committed repeatedly will incur a fine in the amount of EUR 1,500 up to EUR 5,200 for persons and a fine of EUR 3,500 up to EUR 5,800 for heads of legal entities.

Draft of amended law, implementing the Directive (EU) 2018/843, will improve legal regulation of money laundering and terrorist financing prevention

The Government approved the draft amendment to the Law on the Prevention of Money Laundering and Terrorist Financing of the Republic of Lithuania (Draft of amended law) on 20 December 2018 and submitted it to the Parliament

The purpose of the Draft of amended law is to amend and supplement the provisions of Law according to the Directive (EU) 2018/843 OF THE European

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Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU (Directive), thus, improving legal regulation of money laundering and terrorist financing prevention.

The Draft of amended law includes the following changes: (i) the list of obliged entities is expanded; (ii) the enhanced customer due diligence procedure is applied to customers from high-risk third countries.

Moreover, the Draft of amended law lays down certain supervisory functions for money laundering and terrorist financing prevention measures for self-regulatory bodies and obligation for the Ministry of Justice of the Republic of Lithuania to provide a list of prominent public functions which shall be updated at least once in 4 years. The Draft of amended law will fully transpose the aforementioned Directive.

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