

By the Judgement of 21 May 2021 No. 20-II the Constitutional Court of the Russian Federation examined constitutionality of provisions of Article 3, item 3¹ of the Federal Law “On Limited Liability Corporations”

According to these provisions excluding a limited liability corporation (OOO) from the unified state Register of legal persons in order established by the federal legislation on state registration of legal persons for inoperative legal persons leads to consequences foreseen by the Civil Code of the Russian Federation for refusal of the main debtor to discharge an obligation; in the present case if non-execution of an obligation of an OOO (including tort obligations) was conditioned by unreasonable or bad faith behavior of persons listed under Article 53¹, items 1-3 of the Civil Code of the Russian Federation upon application of the creditor such persons can be brought to civil subsidiary liability in respect of the debts of this OOO.

The challenged interconnected provisions were recognised as not contradicting the Constitution of the Russian Federation insofar as within the current legal framework they imply that in bringing to subsidiary liability of persons who managed the OOO excluded from unified state Register of legal persons in the order established by law for inoperative legal person in respect of the debts of the OOO before a creditor – natural person who acted outside of entrepreneurial activity in creation of obligations of an OOO before him or her, if at the moment of exclusion of an OOO from the Register the relevant claims of the creditor had been allowed by a court, the challenged provisions shall be applied by courts on the basis of assumption that it was the omission of the OOO management that led to impossibility to fulfil obligations before the claimant (creditor of the OOO), unless it is proved otherwise on the basis of factual circumstances of the case.

The Constitutional Court of the Russian Federation especially noted that its conclusion made in the Judgement as regards the subject of examination cannot *per se* exclude application of the same approach as regards burden of proof in cases where creditor is another entity (not a natural person), which acted outside of entrepreneurial activity in creation of obligations of an OOO before it.