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THE CEE LAW FIRM

Supreme Court of Cassation Decision on Payment of Dividends

On 31 October 2022, the Supreme Court of Cassation, the court of final instance in Bulgaria which also exercises judicial oversight over the accurate and uniform application of the law, issued a decision (“Decision”) related to distribution of profit and the payment of dividends by joint stock companies.

The Decision addresses the possibility for statutory bodies of joint stock companies, such as the general meeting of shareholders and board of directors, to postpone the implementation of a preceding decision of the general meeting of shareholders for the distribution of profit and the payment of dividends.

The payment of dividends by Bulgarian joint stock companies is subject to several conditions which, among others, include:

- dividends may be distributed only after the end of the financial year;
- the general meeting of shareholders should approve the annual financial statement of the company and it should adopt a resolution for profit distribution (either the profit with respect to the last financial year or retained profits for previous financial years). The general meeting of shareholders is the only statutory body of a joint stock company which is entitled to decide on profit distribution.

The Decision dealt with a case where, following the adoption of an initial resolution for distribution of profit with a specific deadline for payment, the general meeting of shareholders adopted a new resolution to postpone the payment and delegated the board of directors of the company to set a new time limit for payment.

The Supreme Court of Cassation analysed the relevant provisions of the Bulgarian Commerce Act and stated that the deadline for payment of dividends is expressly specified by the law, i.e., dividends should be paid within 3 months following a resolution of a general meeting of shareholders on distribution of profit, unless a longer period is defined in the company’s by-laws. The purpose of the law is to fix a maximum deadline for payment in order to safeguard the interests of shareholders.

The Decision further stressed that a different period for payment (exceeding the statutory period of 3 months), including a subsequent extension of the deadline, deferment or rescheduling of the payment, is not a matter within the powers of the general meeting, nor it can be delegated to other statutory bodies such as the board of the directors. Deviation from the “3-month period” rule is valid only if provided for by the company’s by-laws.

It can therefore be concluded that upon adoption of a resolution for payment of dividends, joint stock companies (through their statutory bodies) are not entitled to amend the due date for payment and any potential resolutions in this respect have no legal effect.

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