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**Cost of defend interest as a scale in the judicial costs reasonableness assessment:
legal view of the Supreme Commercial Court of the Russian Federation**

Presidium of the Supreme Commercial Court of the Russian Federation (hereinafter – the Presidium) clarified several controversial issues regarding the judicial costs refund: in the Ruling No. 2598/12 dated July 24, 2012 (hereinafter – the Ruling) it draws attention to the criteria of reasonableness in courts' definition of judicial costs refund.

The Ruling was adopted in relation to the dispute between Perspektivnye tekhnologii LLC (hereinafter – the Company) and Tax inspectorate that the Presidium reviewed in the nadzor procedure.

Winning the process on cancellation of the Tax inspectorate claim on tax, fines and penalties payment the Company under the articles 106, 110, 112 of the Arbitral procedural code of the Russian Federation (APC of the RF) filing the claim to the Arbitral Court of Moscow on judicial costs refund regarding the case to charge the costs from the Tax inspectorate.

The court satisfied the claim of the Company in part noticing herein that full amount of claimed costs is not reasonable as it exceeds the amount of defend interest of the main dispute.

Appellate court and court of cassation upheld the decision.

The Presidium did not satisfy the claim of the Company in full also, but thereby in order to establish the uniformity of the court practice formulated the following legal views.

1. Confirmation of the existing criteria of reasonableness of judicial costs assessment by the courts

Considering the judicial costs reasonable the courts shall take into account factual capacity of provided legal services, i.e.:

- amount of court hearings;
- amount of instances (appealing of the adopted court decisions);
- complexity of the case;
- collection of the huge amount of evidences for the case in relation to the several similar cases being considered with the same representative.

2. Amount of defend interest is not a criteria in assessment of the judicial costs reasonableness by the court

The Ruling notices that equality (or exceeding) of judicial costs amount to the amount of defend interest does not mean the unreason or excess of such costs – the amount of defend interest is not a criteria that shows reasonableness or excess of the judicial costs itself.

Therefore if the judicial costs are equal or exceed the amount of defend interest, it does not mean the unreason or excess of such costs.

3. *Reasonableness of limits of the judicial costs shall be established independent from the judicial costs excess evidences*

As it follows from the paragraph 2 article 110 of the APC of RF the court can on its own initiative charge the judicial costs within reasonable limits.

This obligation is one of the ways to avoid the insufficient increase of the payment for representative's services. That is why as it stated in the Ruling mentioned provision stipulates the necessity for the court to establish the balance between the rights of the parties in the case noticing the obligation for the lose party to provide evidences of the excess of the judicial costs claimed.

Following the legal view of the Presidium the court shall establish the reasonable limits of the claimed judicial costs independent from the evidences regarding their excess provided by the lose party.

Previously in respect to the similar relationships the Presidium relied on the other legal position that are also followed by the arbitral courts of the lower-level instances – in case of absence of the evidences from the lose party the court can on its own initiative charge the costs within reasonable limits only in case if claimed costs is obviously exceed these reasonable limits.

If the party claimed the decrease of judicial costs, it undertakes to provide evidences on excess of such costs including the costs of similar services in the region, and also the information from the statistic authorities on the legal services market prices (see: Decision of the Presidium dated April 25, 2012 No. BAC-2598/12 in respect to the case No. A40-45684/11-99-202).