LEGAL OPINION (hereinafter referred to as the Opinion)
Presented by Horizons Corporate Advisory (www.horizons-advisory.com)

OBJECTIVE: to provide the legal opinion in accordance with Russian Law addressing when Russian Courts may hold a Director of a Russian company personally liable for their actions.

In this case, a Director means the Director of the Board of Directors or the General Director in case the Board of Directors is not formed. A foreigner or a Russian citizen may act as a director.

Governing laws and regulations used for preparation of this Opinion:

- Civil Code of the Russian Federation (Part I) dated 30.11.1994 N 51-FZ (as revised on 29.12.2017) – hereinafter referred to as the CC RF;
- Code of Commercial Procedure of the Russian Federation of 24.07.2002 N 95-FZ (as revised on 28.12.2017) – hereinafter referred to as the CCP RF;
- Federal Law of 08.02.1998 N 14-FZ (as revised on 31.12.2017) *On Limited Liability Companies* (as amended and supplemented from time to time, effective from 01.02.2018) – hereinafter referred to as the LLC Law;
- Federal Law of 26.12.1995 N 208-FZ (as revised on 07.03.2018) *On Joint-Stock Companies* – hereinafter referred to as the JSC Law;
- Federal Law of 26.10.2002 N 127-FZ (as revised on 07.03.2018) *On Insolvency (Bankruptcy)* – hereinafter referred to as the Bankruptcy Law;

The legal position of supreme judicial authorities is stated in the following acts *(binding when the proceedings are held by the federal arbitration court system; interpretations of supreme judicial authorities are to apply in order to observe the uniformity interpretation principle and application of substantive and procedural rules and regulations in accordance with article 13 of the Federal Constitution Law of 28.04.1995 N 1-FKZ (as revised on 15.02.2016) 'About arbitration courts in the Russian Federation':*

- Decree of the Plenum of the Supreme Arbitration Court of the Russian Federation (SAC RF) of 30.07.2013 N 62 'About certain issues related to recovery of losses by the persons being the members of the legal entity bodies';
- Decree of the Plenum of the Supreme Arbitration Court of the Russian Federation of 23.06.2015 N 25 *On application of certain provisions of Section I, Part I of the Civil Code of the Russian Federation*;
- Decree of the Plenum of the Supreme Arbitration Court of the Russian Federation of 21.12.2017 N 53 *On certain issues related to brining the persons controlling the debtor to liability in case of bankruptcy*.

For the purpose of this Opinion the legal terms shall be defined as follows:

General Director shall mean the sole executive body of the limited liability company and the joint-stock company. In the context of the joint-stock company director shall be also called as the sole executive body.

A limited liability company and a joint-stock company are the most commonly used forms of incorporation of legal entities (the most commonly used practice of business activities).

In Joint-stock Companies (as stated in JSC Law):
The sole executive body of the company (director, general director) or the sole executive body of the company (management board, directorate) shall manage the current activity of the company. The executive bodies shall be accountable to the board of directors (supervisory board) and the general meeting of shareholders.

The executive body of the company shall be competent to resolve issues related to management by the current activity of the company except for issues referred to competence of the general meeting of shareholders or the board of directors (supervisory board) of the company.

The sole executive body of the company (director, general director) shall act on behalf of the company without the power of attorney, which includes representation of its interests, transactions on behalf of the company, approval of the staff, issue of orders binding on all employees of the company.

In limited liability companies (as stated in the LLC Law):
The sole executive body of the company (general director, president, etc.) shall be elected by the general meeting of members of the company for the period determined in the articles of association of the company. A physical person may act as a sole executive body of the company only.

The sole executive body of the company shall be competent:

1) to act on behalf of the company without the power of attorney, which includes representation of interests of the company and transactions making;
2) to issue powers of attorney with the right of representation on behalf of the company including powers of attorney with the right of substitution;
3) to issue orders related to appointment of employees of the company to any position, their transfer and dismissal, to apply incentives and take disciplinary actions;
4) to perform powers not referred to the competence of the general meeting of members of the company, board of directors (supervisory board) of the company and the collective executive body of the company.

Fundamental liability provisions are formalized in the following legislative acts and interpretations of supreme judicial authorities of the Russian Federation:

Civil Code of the Russian Federation (Part I) of 30.11.1994 N 51-FZ

Clause 3, art. 53 of the CC RF:
A person authorized to act on its behalf of the company by virtue of law, other legislative act or the statutory document shall act diligently and in good faith in the interests of the legal entity he represents. The Members of the collective bodies of the legal entity (supervisory or other board, management board, etc.) shall have the same liability.

Article 53.1. Liability of a person authorized to act on behalf of the legal entity, members of the collective body of the legal entity and persons determining actions of the legal entity

—A person authorized to act on behalf of the company by virtue of law, other legislative act or statutory document shall be obliged to recover losses caused to the legal entity through his fault upon request of the legal entity, its founders (members) acting in the interests of the legal entity.

—A person authorized to act on behalf of the company by virtue of law, other legislative act or the statutory document shall be responsibly if it is proven that in exercise of his rights and duties such person acted in bad faith or unreasonably, including circumstances when his actions (omissions) were inconsistent with ordinary conditions of civil turnover or general business risk.

—A person actually able to determine actions of the legal entity, including the ability to give instructions, shall be obliged to act diligently and in good faith in the interests of the legal entity and shall be responsible for damage caused to the legal entity through his fault.

—The Agreement on discharge or limitation of liability for bad faith actions shall be null and void.

LLC Law – article 44:

Liability of the members of the board of directors (supervisory board), the sole executive body of the company, members of the collective executive body of the company and the managing director:

- In exercise of their rights and duties the members of the board of directors (supervisory board) of the company, the sole executive body of the company, members of the collective executive body of the company as well as the managing director shall act diligently and in good faith in the interests of the company.

- Members of the board of directors (supervisory board) of the company, the sole executive body of the company, members of the collective executive body of the company as well as the managing director shall be responsible before the company for damage caused to the company due to their wilful actions (omissions), unless other grounds and extent of liability are determined by federal laws. In this case the members of the board of directors (supervisor board) of the company, members of the collective executive body of the company voting against the resolution resulting in damage to the company or not participating in voting shall bear no liability.

- the company or its member shall have the right to apply to court for recovery of damage caused by the member of the board of directors (supervisory board) of the company, the sole executive body of the company, member of the collective executive body or the managing director.

LLC Law – article 71:

Liability of the members of the board of directors (supervisory board) of the company, sole the sole executive body of the company (director, general director) and (or) members of the collective executive body of the company (management board, directorate), managing company or the managing director

- In exercise of their rights and duties the members of the board of directors (supervisory board) of the company, the sole executive body of the company (director, general directors), the acting executive body, members of the collective executive body of the company (management board, directorate) as well as the managing company or the managing director shall act diligently and in good faith in the interests of the company in relation to the company.

- Members of the board of directors (supervisory board) of the company, the sole executive body of the company (director, general directors), the acting executive body, members of the collective executive body of the company (management board, directorate) as well as the managing company or the managing director shall be responsible before the company for damage caused to the company due to their wilful actions (omission) unless other reasons for liability are determined by federal law.

- Members of the board of directors (supervisory board) of the company, the sole executive body of the company (director, general directors), the acting executive body, members of the collective executive body of the company (management board, directorate) as well as the managing company or the managing director shall be responsible before the company or shareholders for damage caused due to their wilful actions (omissions) in breach of company shares purchase procedure.

- In this case the members of the board of directors (supervisory board) of the company, of the collective executive body of the company (management board, directorate) voting against the resolution resulting in damage to the company or a shareholder or not participating in voting shall bear no liability.

- In determining the grounds and the extent of liability of the members of the board of directors (supervisory board), the sole executive body of the company (director, general director) and (or) members of the collective executive body of the company (management board, directorate) as well as the managing company or managing director general conditions of business turnover and other circumstances relevant to the case shall be regarded.

- If there are several persons are liable, they bear joint and several liability before the company and the shareholder.

Decree of the Plenum of the Supreme Court of the RF of 23.06.2015 N 25 'About application of certain provisions of Section I, Part I, of the Civil Code of the Russian Federation by courts' – clause 25:

- When applying provisions of article 53.1 of the CC RF concerning liability of a person authorized to act on behalf of the legal entity, members of the collective bodies of the legal entity or the persons determining actions of the legal entity it should be noted that negative consequences occurred for the legal entity when the said person was a member of the body of the legal entity are not indicative of bad faith and (or) unreasonableness of his actions (omissions) alone, as the potential occurrence of such circumstances is related to the risk of business and (or) other economic activity.

The list of actions, if committed, which prove director's bad faith or unreasonableness, is given in clauses 2 and 3 of the Decree of the Plenum of the SAC RF of 30.07.2013 №62 "On certain issues of recovery of losses by the persons being members of the bodies of the legal entity' (hereinafter referred to as the Decree of the Plenum of the SAC RF No. 62).

BRINGING TO LIABILITY FOR CERTAIN ACTIONS

The director's actions may be proved to be committed in bad faith, in particular, when he knew or should know that his actions (omissions), when committed, were incompliant with the interests of the legal entity, for example, *he has made a transaction upon terms and conditions known to be disadvantageous for the legal entity.*

CRITERIA OF UNREASONABLINESS

Based on the court practice concerning claims related to brining the sole executive body of the legal entity to liability it is definitely concluded that the actions of the general director of the entity are recognized to be unreasonable if in the course of his duties he has carried out multiple unnecessary transactions beyond usual transactions and no payments have been received in relation thereto (transactions of the Company went beyond the statutory activity of the Company, were carried out without the prior notice to the members of the Company, without any decision to be made at the general meeting of members of the Company concerning transfer of property of the Company being the main source of profit, the Company did not obtain consideration in a result of sale of the stated property).

The stated approach was translated into the court practice, in particular, *the Decree of the Arbitration Court of the North-Western District of 11.11.2014 in case No. A52-3479/2013.*

By virtue of clause 5, article 10 of the CR RF, the claimant should prove circumstances evidencing bad faith actions (omissions) of the director and (or) unreasonableness thereof resulting in adverse consequences for the legal entity.

If the claimant states that the director acted in bad faith and (or) unreasonably and provides evidence of losses incurred by the legal entity due to the director's actions (omissions), such director may give comments as to his actions (omissions) and state the reasons for losses (for example, unfavourable market conditions, bad faith actions on behalf of the counterparty, employee or the representative of the legal entity, illegal actions of third parties, failures, natural disasters and other events, etc.) and submit relevant evidence.

If the director refuses to give comments or such comments turn out to be evidently incomplete, if the court finds that the director acted improperly (article 1 of the CC RF), the court may impose the burden of proof that the duty to act in the interests of the legal entity in good faith and reasonably is not violated on the director.

Director's actions (omissions) are proven to be committed in bad faith, in particular when the director:

1) acted where there was a conflict between his personal interests (interests of the persons affiliate to the director) and the interests of the legal entity, including the director's actual interest in the transaction to be carried out by the legal entity, except for the cases when details of the conflict of interests have been disclosed in advance and the director's actions were approved as determined by law;

2) hided details of the transactions carried out from the members of the legal entity (in particular, if details of such transactions are not included into the statements of the legal entity in violation of law, articles of association or internal documents of the legal entity) or provided unreliable information to the members of the legal entity concerning the relevant transaction;

3) carried out the transaction subject to approval by the relevant bodies of the legal entity pursuant to law or the articles of association;

4) keeps documents related to circumstances resulting in unfavourable circumstances for the legal entity and fails to transfer the same to the legal entity upon expiry of his powers;

5) knew or should know that his actions (omissions), at the date thereof, were inconsistent with the interests of the legal entity, for example, he carried out the transaction (voted for it) on knowingly unfavourable conditions for the legal entity or with the party, which is known to be unable to fulfil the obligation (sham company, etc.).

A disadvantageous transaction shall mean a transaction, the value and (or) other conditions of which, being substantially adverse for the legal entity, differ from the value and (or) conditions, on which similar transactions are carried out in comparable circumstances (for example, if the consideration received within the transaction with the legal entity is two or more times lower the consideration provided by the legal entity for the counterparty's benefit).

Unprofitability of a transaction is determined at the date thereof; if the transaction found to be unprofitable due to violation of obligations resulting therefore, then the director shall be liable for relevant losses, if it's proven that the transaction was initially carried out in order not to fulfil it or to fulfil it in an improper way.

The Director shall be discharged from liability if he proves that although the transaction carried out by him was disadvantageous, but it formed a part of multiple transactions joined by the common business purpose aimed at the legal entity's profit. He shall be also discharged from liability if he proves that disadvantageous transactions were carried out to avoid greater damage to the interests of the legal entity.

In determining interests of the legal entity it should, in particular, be noted that the main purpose of activity of a commercial enterprise is profit (clause 1, article 50 of the CC RF); the relevant provisions of statutory documents and decisions of bodies of the legal entity (for example, concerning determination of lines of its activities, approval of strategies and business plans, etc.) should be taken into account. The director may not be recognized as acting in the interests of the legal entity if he acted in the interests of one or several members of the company but to the detriment of the legal entity.

The unreasonableness of actions (inaction) of the director is considered proven, in particular, when the director:

1) took a decision without taking into account the information known to him, which is relevant in this situation;
2) before making a decision, did not take actions aimed at obtaining information necessary and sufficient for its making, which are common for business practice in similar circumstances, in particular if it is proved that the reasonable director would postpone the decision under the circumstances in place until further information is received;
3) made a deal without observing the internal procedures that are usually required or accepted in the given legal entity to carry out similar transactions (for example, coordination with the legal department, accounts department, etc.)

Good faith and reasonableness in the performance of the duties assigned to the director are to take necessary and sufficient measures to achieve the objectives of the activities for which the legal entity was created, including the proper execution of public duty vested in the legal entity by the current legislation. In this regard, in the event that a legal entity is brought to public liability (tax, administrative, etc.) because of unfair and (or) unreasonable behaviour of the director, the losses of a legal entity incurred as a result may be recovered from the director.
In justifying the good faith and reasonableness of his actions (inaction), the director can provide evidence that the qualification of the actions (inaction) of the legal entity as an offense at the time of their commission was not obvious, including because of the lack of uniformity in the application of the law by tax, customs and other bodies, as a result of which it was impossible to make an unambiguous conclusion about the illegality of the corresponding actions (inaction) of a legal entity.

In cases of unfair and (or) unreasonable exercise of the duties of choosing and monitoring the actions (inaction) of representatives, contractors under civil law contracts, employees of a legal entity, as well as inadequate organization of the legal entity management system, the director is responsible to a legal entity for the resulting losses (paragraph 3 of Article 53 of the Civil Code of the Russian Federation).

In assessing the good faith and reasonableness of such actions (inaction) of the director, arbitration tribunals should consider whether such choice and control were or should have been, taking into account the usual commercial practice and the range of the legal entity's activities, to be part of the direct duties of the director, including whether the director's actions aimed at evading liability by attracting third parties.

Among other things, bad faith and unreasonable actions (inaction) of the director can be demonstrated by violations by him of the usual selection and control procedures adopted in this legal entity.

In cases of compensation for damages by the director, the plaintiff must prove the loss of the legal entity (paragraph 2 of Article 15 of the Civil Code of the Russian Federation).
The arbitral tribunal cannot completely refuse to satisfy the claim for compensation by the director of losses caused to the legal entity only on the grounds that the amount of these losses cannot be established with a reasonable degree of certainty (paragraph 1 of Article 15 of the Civil Code of the Russian Federation). In this case, the amount of damages to be reimbursed shall be determined by the court,

taking into account all the circumstances of the case, proceeding from the principle of fairness and proportionality of liability.

The mere fact that the director's action, which caused negative consequences for the legal entity, including the transaction, was approved by the decision of the collegial bodies of the legal entity, as well as its founders (members), or the director acted in pursuance of the instructions of such persons, since the director bears an independent duty to act in the interests of the legal entity in good faith and reasonably (paragraph 3 of Article 53 of the Civil Code) cannot be ground for refusing to meet the requirement to recover the losses from the director). At the same time, members of these collegiate bodies bear joint and several liability for damages caused by this transaction along with such director (paragraph 3 of Article 53 of the Civil Code of the Russian Federation, paragraph 4 of Article 71 of the Federal Law of December 26, 1995 No. 208-FZ *On Joint Stock Companies* (hereinafter referred to as the Law *On Joint-Stock Companies*), paragraph 4 of Article 44 of the Federal Law of 08.02.1998 No. 14-FZ *On Limited Liability Companies* (hereinafter referred to as the Law *On Limited Liability Companies*).

Those members of the collegial bodies of the legal entity who voted against the decision that caused the loss, or, acting in good faith (Article 1 of the Civil Code of the Russian Federation), did not participate in voting (paragraph 3 of Article 53 of the Civil Code, paragraph 2 of Article 71 of the Law *on Joint Stock Companies*, paragraph 2 of Article 44 of the Law *on Limited Liability Companies*) shall not be liable for damages caused to a legal entity. In addition, it is necessary to take into account the limited capacity of members of collegial bodies of a legal entity to access information about a legal entity, based on which they take decisions.

Meeting the requirement to recover the losses from the director does not depend on whether there was a possibility to recover property losses of a legal entity by other means of protecting civil rights, for example, by applying consequences of invalidity of a transaction, reclaiming a legal entity's property from another's adverse possession, recovery of unjust enrichment, and also on whether the transaction that caused damage to the legal entity was invalidated. However, in the event that a legal entity has already received compensation for its property losses through other protection measures, including by collecting damages from an immediate harm-doer (for example, an employee or counterparty), the claim for compensation to the director must be refused.

The participant of the legal entity who filed a claim for compensation by the director of damages acts in the interests of the legal entity (clause 3 of Article 53 of the Civil Code of the Russian Federation and Article 225.8 of the APC of the RF). In this regard, the fact that the person who filed the claim, at the time the director made an action (inaction), which caused losses for the legal entity, or at the time of the direct occurrence of losses was not a participant in the legal entity, shall not be ground for refusal to satisfy the claim. The running of the limitation period at the request of such a participant in relation to Article 201 of the Civil Code of the Russian Federation begins from the day when the legal predecessor of such legal entity participant found out or should have learned about the violation by the director.

In cases where the relevant claim for damages is submitted by the legal entity itself, the limitation period is calculated not from the moment of the violation but from the moment when the legal entity, for example, in the person of the new director, has got a real opportunity to learn about the violation, or when the controlling participant, who had the opportunity to terminate the powers of the director found out or should have learned about the violation, except when he was affiliated with the said director.

LIABILITY TYPES OF DIRECTOR/CHIEF OF A COMMERCIAL ORGANIZATION

Liability type	Explanations	Case
Specified by the Labour Code (principal legislative enactment - the Labour Code of the Russian Federation)		
Liability for damage brought to a company (Article 277 of the Labour Code of the Russian Federation)	A chief shall bear full liability for direct actual damage brought to a company (Article 277 of the Labour Code of the Russian Federation). The liability shall arise when several conditions are available: unlawfulness of actions (inaction), present damage to the company, causal connection between guilty actions (inaction) of the chief and the damage occurred, as well as the chief's guilt.	A court collected from a director an amount of a salary paid to an employee he employed with no need (Decree of the Federal Arbitration Court for Ural District dated 21.07.11 for case No. A76-22610/2010). In another case a director changed the amount of his/her fixed salary, having failed to agree it with the general shareholder meeting (Decree of the Federal Arbitration Court for Ural District dated 19.03.12 under case No. A76-5123/2011). In the third case, the court collected from a director an amount provided to a third party on the grounds of the cheque signed by the director, but the money did not arrive to the cash office (Decree of the Federal Arbitration Court for Ural District dated 07.06.12 under case No. A60-40049/2011)
Major breach of work commitments or taking an unreasoned decision	A chief of a company can be dismissed not only on common basis (Article 81 of the Labour Code of the Russian Federation), but also on special one. For example, the following can be considered as special grounds for director's dismissal: a chief has taken an unreasoned decision caused the impairment of business property, its unlawful use or another damage to the property (cl.9 part 1 Article 81 of the Labour Code of the Russian Federation), single major violation of work commitments by the chief (cl.10 part 1 Article 81 of the Labour Code of the Russian Federation), other grounds stipulated by the	The court confirmed legality of the branch chief's dismissal. Internal audit had found breaches of the requirements of law, supervisory bodies and intra-bank regulations, which became the result of lack of control by the branch chief. Particularly, the chief took unreasoned decisions on loans provision to several persons (Ruling of Supreme Court dated 04.06/09 No. 53-B09-4)

	labour agreement (cl.13 part 1 Article 81, cl.3 Article 278 of the Labour Code of the Russian Federation).	
Specified by the corporate legislation		
Liability for damage (including lost profits) caused to a company	Corporate legislation specifies the liability of a chief who violates his/her obligation to act in the company's interests reasonably and in a good faith (cl.3 Article 53 of the Civil Code of the Russian Federation). He/she shall be liable for the losses brought to the company by his/her guilty actions/inaction (cl.2 Article 71 of Federal Law dated 26.12.95 No. 208-FZ *On Joint-Stock Companies*, cl.2 Article 44 of Federal Law dated 08.02.98 No. 14-FZ On *Limited Liability Companies*, cl.2 Article 25 of Federal Law dated 14.11.02 No.161-FZ *On State and Municipal Unitary Enterprises*).	Most often the commercial courts deny the collection of the lost profit (Ruling of the Supreme Arbitration Court of the Russian Federation dated 17.08.10 No. BAC-11149/10, Decree of the Federal Arbitration Court for Volgo-Vyatskiy District dated 11.01.11 under case No.A82-802/2009). It is extremely difficult to prove the amount of the lost profit and a causal connection between the actions of the company director and possible lost profit. However, there are contrary examples: a company director sold a building owned by the company at the price that appeared to be much lower than the market one. Moreover, the chief had not taken any actions related to the establishment of a market price for the facility. As a result, the court collected from the director a difference between the market price and actual sale price of the facility (Ruling of the Supreme Arbitration Court of the Russian Federation dated 10.08.10 No. BAC-10065/10)
Specified by the legislation on bankruptcy		
Subsidiary liability under financial obligations of a company	Within a framework of a case on company bankruptcy when insufficient bankruptcy assets, the company chief, jointly with other persons controlling it, shall bear subsidiary liability under the financial obligations of the company, under the requests to cover the damage brought to the proprietary rights	As a rule, courts deny bringing a director to subsidiary liability under the company's obligations due to a failure to prove his/her guilt. Also, it is difficult to prove causal connection between the director's actions and the bankruptcy of a company (Decree of the Federal

	of creditors resulted from the performance of instructions of the chief (cl.4 Article 10 of Federal Law dated 26.10.02 No.127-FZ *On Insolvency (Bankruptcy*).	Arbitration Court of the Far Eastern District dated 21.06.12 under case No. A24-1960/2010). But still there are examples when commercial courts satisfied the requirements, although these cases are quite rare. For example, in one of the cases, the court established that the chief of a company-debtor had committed actions that later caused unreasoned spending of funds of the organization. Thus, the causal connection between the actions of the director and the bankruptcy of the company was found (Decree of the Federal Arbitration Court of the West Siberian District dated 05.07.12 under case No. A45-3006/2010).
Administrative liability		
For a range of administrative offences both a company and its official (most often, it is the director who acts as the official) can be liable.	Possible sanctions for an official are a warning and disqualification (i.e. deprivation of a right to occupy the posts at the executive body of a legal entity for the period from six months to three years - Article 3.11 of the Administrative Offenses Code of the Russian Federation). Maximum possible amount of a fine for an official is RUB 50 thousand (Article 3.5 of the Administrative Offenses Code of the Russian Federation), but the fine in this amount is quite a rare phenomenon. Particularly, it is provided for touting a counterparty with the conditions prohibited by Federal Law dated 28.12.09 No. 381-FZ *On the Principles of State Regulation of Commercial Activity* (part 2 Article 14.40 of the Administrative Offenses Code of the Russian Federation), for the breach of the requirements stipulated by	The director was brought to the administrative liability for non-payment of salaries to the employees (cl.1 Article 5.27 of the Administrative Offenses Code of the Russian Federation). As he was brought to the liability before for an identical offense, the court sentenced to disqualify him for one year (Decree of the Moscow City Court dated 01.12.11 under case No. 4**а**-2473/11). In another case, the company chief was also brought to liability for the violation of the deadline for salary payment to an employee on a day of the latter's dismissal. Since he had already been imposed with administrative penalty for commitment of an identical violation under part 1 of Article 5.27 of the Administrative Offenses Code of the Russian Federation), he was sentenced to disqualification for one year (Decree of the Deputy Chairman

	the legislation on co-funding of apartment blocks or other real estate items construction (part1 Article 14.28 of the Administrative Offenses Code of the Russian Federation). Disqualification is also quite a rare sanction. For example, it is used, if a director is brought to liability again for an identical breach of the labour and work safety legislation (Art.4.6, Part 2 Article 5.27 of the Administrative Offenses Code of the Russian Federation), for unfair competition (Article 14.33 of the Administrative Offenses Code of the Russian Federation).	of Sverdlovsk Region Court dated 23.01.12 under case No. 4**а**-5/2012). In one of the cases, an inspection from State Construction Supervision and Inspection Service found that the company was building a block of flats without a permit for construction. The director of this company was brought to liability on the grounds of part 1 Article 9.5 of the Administrative Offenses Code of the Russian Federation) and imposed with a fine in amount of RUB 50 thousand (Decision of Omsk Region Court dated 01.06.10 No. 77-289 (190)/2010).
Criminal liability		
For some illegal actions related to the company running the director can be brought to criminal liability.	Article 22 of the Criminal Code (crimes in the area of economic activity) specifies most of the crimes for which the chief of a company can be brought to criminal liability. For example, legalization (laundering) money and other property obtained by criminal means (Articles 174, 174.1 of the Criminal Code of the Russian Federation), non-admission, limitation or elimination of competition (Article 178 of the Criminal Code of the Russian Federation), wilful evasion from disclosure of the information determined by the legislation on securities (Article 185.1 of the Criminal Code of the Russian Federation, tax fraud (Articles 199, 199.1, 199.2 of the Criminal Code of the Russian Federation), unlawful actions when bankruptcy, deliberate bankruptcy and fraudulent bankruptcy (Articles 195-197 of the Criminal Code of the Russian Federation) etc. But the director can become a liable party under the crimes specified	A company director was brought to criminal liability under cl. "b" of part 2 Article 199 of the Criminal Code for recording false facts into VAT return and presentation of unlawful VAT to return from the budget. As a result, the company had failed to pay VAT to the budget in an especially large amount. The court recognized the director guilty and sentenced him to jail time for one year and six months with debarment from holding senior positions for three years. One more example: a dioxide balloon exploded in a cafe, two people died. The court found the director guilty since he had not organized training of employees, appraisal and routine occupational health and safety knowledge assessment. He had issued an order on imposing obligations on adherence to the occupational health and safety requirements upon a manager of the enterprise knowing that the manager had not been trained

	by other sections and chapters of the Criminal Code. For example, the director can be liable for the violation of occupational safety and health rules if it resulted in negligent infliction of grievous bodily harm or death of a person (Article 143 of the Criminal Code of the Russian Federation). Possible sanctions are fines, imprisonment, compulsive or correctional labour, debarment from holding particular posts or from being involved in particular activities.	properly and had not have required knowledge (Cassational Ruling dated 17.01.12 of Penal Chamber for Perm Territory Court under case No. 22-135).

SPECIAL LIABILITY

The Federal Law On Insolvency (Bankruptcy) provides for a special liability arising from the relevant legal relations:

Liability under the general rule

According to Art. 10 of the Federal Law *On Insolvency (Bankruptcy)* in case of violation of the provisions of the law on bankruptcy by the head of the debtor or the founder (participant) of the debtor, by the members of the debtor's management bodies, by the members of the liquidation commission (liquidator), the specified persons are obliged to compensate losses caused as a result of such violation.

HOW TO ESCAPE LIABILITY

Guided by the above rules of law, prior to the formation of appropriate judicial practice, it appears that in order to avoid adverse consequences in the form of liability arising from the possible incurring of debt of a company entailing the bankruptcy of an organization, a company participant must comply with and take the following measures:

to carry out regular periodic monitoring of the economic activities of the company by demanding reports from the executive body with the application of accounting documentation for subsequent guidance (*for example, to establish that the executive body is required to provide a report to the participant on a monthly basis with information on the assets of the company, on transactions made during the reporting period, on the presence of recurring debt, and on the maturity dates for existing transactions. Reports should be filed in the report book*);

Decisions should be made on the results of the analysis of the reports, if necessary (to hold extraordinary meetings with several participants for a decision in the form of a protocol) during which:

- to give guidance to the executive body for the priority repayment of maturing debts;
- to give guidance to the executive body on the observance by him of economic caution in the selection of counterparties, incl. by performing actions aimed at obtaining confirmation of the financial position of these persons;

- to assess the riskiness and economic feasibility of transactions made by the executive body, especially large ones (but not yet requiring agreement with the participant) and, if necessary, to take measures to reduce commercial risks.

FORMAL APPROACH EXCLUDED - POSITION OF THE SUPREME COURT OF THE RUSSIAN FEDERATION
The Economic Court of the Supreme Court of the Russian Federation (SC of the RF) explained what should be considered by the courts in such disputes. First, if the head of the debtor proves that, despite temporary financial difficulties, honestly hoped to eliminate them within a reasonable time, and he made maximum efforts for it, carrying out an economically justified plan - the top manager can be discharged from subsidiary liability for the period until the fulfilment of his plan was reasonable.

The Supreme Court explains that it is the duty of the head of an organization to file a bankruptcy petition when he realizes the criticality of the situation. Namely – when he saw that the further work of the company is impossible without negative consequences for the debtor and his creditors. In addition, courts should take into account the mode and specificity of the debtor's activities, as well as the fact that financial difficulties in a certain period may be caused by vincible temporary circumstances.

Paragraph 9 of the Decree of the Plenum of the Supreme Court of the Russian Federation No. 53 of December 21, 2017:
The head of the enterprise can be discharged from the subsidiary liability for the period when the top manager was carrying out an economically justified plan to pay off the company's debt. In this case, the head of the debtor must prove that the appearance of insolvency signs in the firm itself did not indicate an objective bankruptcy and he made the necessary efforts to correct the economic situation in the company. The fulfilment of the plan must be reasonable from the point of view of the ordinary leader in similar circumstances.

STATISTICS
More and more disputes about bringing to subsidiary liability are being resolved. The number of satisfied applications is also growing: while there were 5% up to 2016, then we have 20% in 2017. In particular, 27% of applications were granted, and about 375 people were brought to justice in the last quarter of 2017. Over the past 2 years, the aggregate amount of “courted” subsidiary debts was 170 billion rubles, and the average size of claims to one beneficiary for a year was 113 million rubles. At the same time, actual enforceability is only 0.25%.