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Corporate Transparency Ruling Looms

By Olga Razumovskaya

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The Supreme Arbitration Court plans to make an ambiguous decision on corporate transparency, allowing shareholders to inquire about salaries of top managers but not about a company's subsidiaries, a court official said Monday.

The court plans to issue a statement about the matter by late January. The statement is not binding but serves as a guideline for courts by summing up the arbitrator's views on existing legal practices.

Roman Bevzenko, head of the Supreme Arbitration Court's private law department, told The Moscow Times that the court first decided to tackle the issue of information disclosure about two years ago, when it saw lower courts passing various decisions on such issues.

The statement's draft, first published last month, was publicly discussed at the court's presidium session on Friday.

Analysts said the current draft is a double-edged sword because it gives shareholders,

including minority shareholders, additional and less access to information at the same time.

A potential loophole is also provided by a phrase allowing managers to deny minority shareholders' requests if they seek “obviously worthless information.”

“In our opinion, the interpretation of the 'obviously worthless' criterion will be used against minority shareholders because in practice, unfortunately, all such 'assessed' criteria are used in such a way,” said Denis Spirin, corporate governance director at Prosperity Capital Management.

“So joint-stock companies and courts just obtained a nice opportunity to reject shareholders' requests,” he said by e-mail.

Spirin also criticized the move to ban shareholders from seeking information on a company's affiliates.

In the past, this “really progressive point ... allowed minority shareholders to defend their rights better due to the fact that a lot of violations are committed through issuers' subsidiaries,” Spirin said.

Alexander Nadmitov, co-managing partner at Nadmitov, Ivanov & Partners, said the court statement looked like an attempt at compromise.

“The Supreme [Arbitration] Court is doing a balancing act, trying to support minority shareholders and satisfy big companies' interests,” he said.

Big corporations have been lobbying hard lately to limit the access of minority shareholders to corporate information, just as a campaign was initiated against them by whistleblower Alexei Navalny.

Navalny, a minority stakeholder in many major Russian companies, including Gazprom and VTB, went to court against Rosneft this year in an attempt to get hold of a copy of a shareholder agreement protocol he was denied access to.

The Moscow Arbitration Court supported Navalny on the issue in August, but Rosneft has appealed the decision and filed a separate complaint with the Constitutional Court.

Still, analysts said that while Navalny's much-publicized activism helped highlight the flaws in the courts' decision making, his efforts alone were not enough to force the Supreme Arbitration Court to consider matters of corporate transparency.

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