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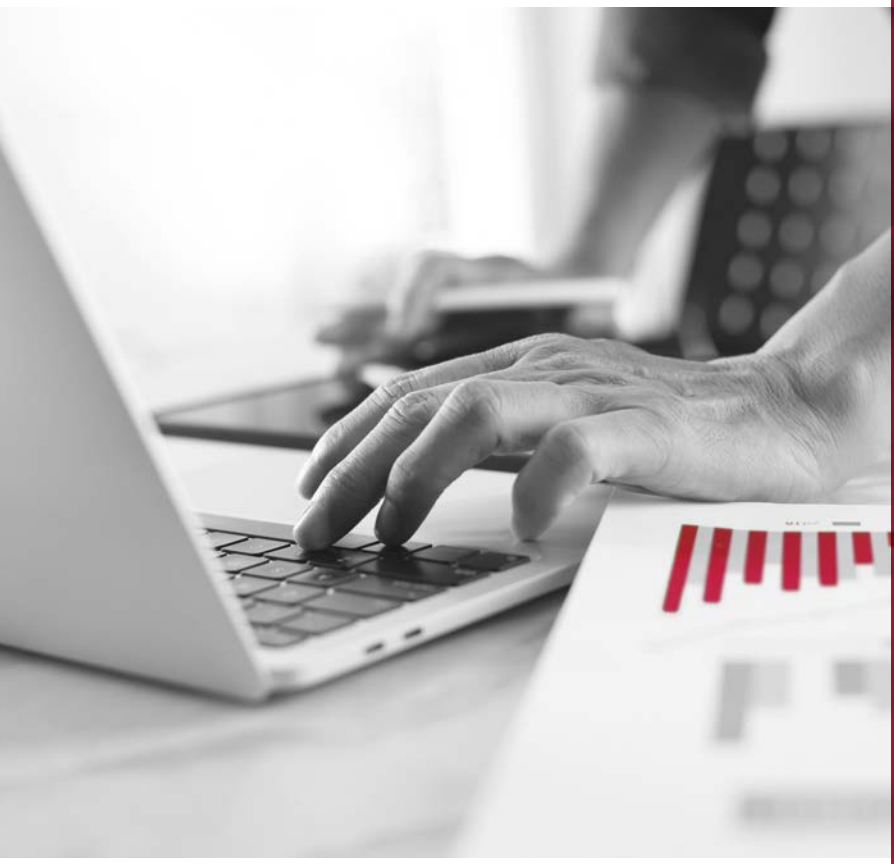

REGULATION OF BANKRUPTCY PROCEEDINGS IN RUSSIA

CONTENTS

This brochure describes the main provisions of Russian bankruptcy legislation and contains general information on the bankruptcy process in Russia. In particular: the criteria for commencing insolvency proceedings; the stages of a bankruptcy; the main restrictions in effect in respect of a debtor. This information will be of interest both for companies confronted by the bankruptcy of a counterparty, and also for companies that are currently planning to access the Russian market.

1. Legislative framework

After the collapse of the USSR, Russian legislation in the area of bankruptcy was completely revamped. The most important regulatory and legal act governing bankruptcy issues in the Russian Federation is the Bankruptcy Law (Federal Law No. 127-FZ dated 26 October 2002 "On Insolvency (Bankruptcy)" (hereinafter the "**Bankruptcy Law**"), which has been amended repeatedly. The bankruptcy process is also governed by the following regulatory and legal acts:

- the Civil Code of the Russian Federation (hereinafter the "**RF Civil Code**");
- the Commercial Procedure Code;
- the Law on Enforcement Proceedings.

The participation of the state authorities in bankruptcy proceedings is also regulated by Resolution No. 257 of the RF Government dated 29 May 2004 "On Protecting the Interests of the Russian Federation as a Creditor in Bankruptcy Cases and in Bankruptcy Proceedings".

2. Prerequisites required for the commencement of a bankruptcy case

A bankruptcy may be initiated in respect of a legal entity when the following four conditions occur simultaneously:

- the debtor is unable to satisfy the monetary claims of its creditors. Such claims may be either claims for the payment of monetary amounts (for example, in respect of transactions), or claims for the payment of severance pay and/or wages of persons who work or worked under an employment contract, and for the execution of statutory payments (taxes, fines, etc.);

- the debtor has failed to make payment for the indicated monetary claims within three months of the date when they fell due;
- the total monetary claims come to at least RUB 300,000;
- no moratorium on the commencement of bankruptcy cases is in effect.

3. Commencement of bankruptcy

The bankruptcy cases of legal entities and sole proprietors in the Russian Federation are considered in the state commercial courts. The bankruptcy is instigated through the filing of a petition with the court on recognising the debtor as bankrupt at the location of the debtor. A bankruptcy may be instigated by the following persons:

- the creditor;
- the credit manager under a syndicated credit (loan) agreement;
- an employee or former employee of the debtor, if they have claims for the payment of severance pay and/or wages;
- the competent state authority; or
- the actual debtor or the liquidation commission of the debtor.

To ensure the stability of the economy, the Government of the Russian Federation is entitled to impose a moratorium on the commencement of bankruptcy proceedings in respect of applications filed by creditors (for a period to be set by the Government of the Russian Federation[1].

During the moratorium, no enforcement measures may be applied; an enforcement document submitted by a claimant directly to a bank may not be executed. If a moratorium is imposed on the commencement of bankruptcy cases, enforcement proceedings in respect of financial penalties will be suspended for the duration of the moratorium. This includes any claims which arose before the imposition of the moratorium. The only exceptions are claims for compensation of any damage to life or health, for payment of salary and severance pay, and alimony.

- if the debtor opts out of the moratorium by filing the relevant information with the Unified Federal Register of Bankruptcy Information, the moratorium shall not apply to the debtor after the publication of the application.

[1] Federal Law No. 98-FZ dated 1 April 2020.

3.1 FILING OF A PETITION BY A CREDITOR OR EMPLOYEE (FORMER EMPLOYEE) OF THE DEBTOR

A mandatory criterion for a creditor or employee (former employee) of the debtor to file a petition with a commercial court on recognising a debtor as bankrupt is an effective decision on the existence of a corresponding debt issued by a court. Consequently, before filing a petition with a court on recognising the debtor as bankrupt, the creditor should file a claim with the debtor for the recovery of the debt and obtain a favorable court decision on such a claim. This norm aims to prevent instances where creditors abuse their right to file petitions on recognising debtors as bankrupt[2].

The right of a creditor, debtor, employee, former employee of the debtor to apply to a court arises on condition of a preliminary notice of their intention to file a petition on recognising the debtor as bankrupt. Such a notice must be published in the Unified Register of Information on the Activities of Legal Entities[3] at least 15 days prior to the filing with a commercial court. In the absence of such a publication, the petition on recognising a debtor as bankrupt should be set aside[4].

If a foreign state court or arbitration tribunal had previously considered the dispute between the creditor and debtor, the decision issued by such a court or tribunal should be recognised and enforced in the Russian Federation before the filing of the petition on recognising the debtor as bankrupt.

3.2 FILING OF A PETITION BY THE COMPETENT AUTHORITY

Petitions on recognising a debtor as bankrupt are filed on behalf of the state by the competent state authority – the Federal Tax Service of the Russian Federation (hereinafter the "**Competent Authority**"). Other state authorities notify the Competent Authority for these purposes regarding the debts owed to them.

The petition for recognising the debtor as bankrupt may be filed in connection with the debt owed by a person arising from:

- Monetary obligations (for example, transactions). In this case the bankruptcy proceeds according to the standard procedure, in other words, a court decision that has entered into legal force should have been issued for the filing of the petition on recognising the debtor as bankrupt;

[2] This rule does not apply to credit institutions, which are entitled to file a petition with a court from the date of the emergence of bankruptcy indicia at the debtor.

[3] https://fedresurs.ru/

[4] Ruling of the RF Supreme Court dated 12 March 2019 on case No. A11-10011/2018.

- Statutory payments (taxes, fines, etc.). Confirmation of such a debt should be obtained on the basis of the decision of a court or tax (customs) authority on the recovery of debt relating to statutory payments. The right to file a petition arises if the payment was not received on the expiry of thirty days.

3.3 FILING OF THE PETITION BY THE DEBTOR OR THE LIQUIDATION COMMISSION OF THE DEBTOR

A debtor files a petition with a court on the commencement of its own bankruptcy (filing of a debtor's petition) pursuant to a voluntary, and in certain cases, mandatory procedure.

The debtor is entitled to file a bankruptcy petition with the commercial court in anticipation of its bankruptcy, in other words, when indicia of bankruptcy have still not appeared, but circumstances already exist, attesting to the emergence of the indicia of bankruptcy in the near future. One example of such clear circumstances could be the adoption by a court of a decision compelling the debtor to make a monetary payment that is crippling, and where the entry into legal force of such a decision will result in the debtor's insolvency.

The debtor is required to file a bankruptcy petition in the following instances if:

- as a result of the satisfaction by the debtor of the claims of one creditor or several creditors the debtor is unable to meet its monetary obligations towards other creditors;

- a corresponding body has adopted a decision to file a bankruptcy petition with a court (in the case of unitary enterprises – the body authorised by the owner of the enterprise's assets, and in the case of other companies – the body authorised to adopt decisions on the liquidation of the company);

- the levy of execution on the debtor's assets complicates materially or renders impossible its business activities;

- the debtor meets the indicia of insolvency (the debtor defaults on some of the monetary obligations or obligations relating to statutory payments caused by the inadequacy of the funds) and/or indicia of the inadequacy of the assets[5] (the total monetary obligations and obligations relating to the execution of the statutory payments of the debtor exceed the value of the property (assets) of the debtor);

- if the debtor ows the payment of severance pay, wages and other payments due and payable to an employee (former employee) in accordance with labour legislation, and cannot repay it for more than three months due to the inadequacy of funds;

[5] Digital currency is also recognised as an asset of the debtor (Federal Law No. 259-FZ dated 31 July 2020).

- it is established during the liquidation of the company that the debtor is insolvent or has insufficient assets to pay creditors (in this case the obligation to file the bankruptcy petition is assumed by the liquidation commission).

The debtor should file the petition no later than one month after the date of the emergence of corresponding circumstances. The filing of a petition by the debtor should be treated with particular caution, as legislation stipulates liability for both the late filing and also the unsubstantiated filing of a bankruptcy petition with a court[6].

4. What does a bankruptcy process consist of?

In practice in a bankruptcy the debtor undergoes several stages of bankruptcy proceedings, and each stage is subject to its own set of rules and restrictions (these are primarily restrictions on the business activities of the debtor or the powers of its management bodies). The bankruptcy process starts when a petition has been filed to recognize the debtor as bankrupt and the recognition by a court of such a petition as substantiated.

Bankruptcy legislation stipulates the following bankruptcy stages:

- supervision[7];
- financial recovery;
- external administration;
- receivership proceedings;
- amicable settlement agreements[8].

As a rule, only the first stage is mandatory: as a part of the supervision the financial position of the debtor and opportunities to restore its solvency are determined. The issue of proceeding to other stages is resolved on the basis of this decision. If no opportunities for financial recovery or external administration are found, the debtor enters receivership proceedings – during this process the debtor's assets are sold, while the

[6] See section 13 of the Brochure.

[7] Supervision is analogous to preliminary insolvency proceedings under German law.

[8] At any stage of the bankruptcy the debtor and creditors can conclude an amicable settlement agreement, in other words agree on the termination of the proceedings on the bankruptcy case. The process for concluding such an amicable settlement agreement is subject to its own regulatory provisions.

sale proceeds are distributed between the creditors, and the debtor is declared bankrupt and liquidated.

Bankruptcy legislation stipulates the application of a simplified procedure for the following persons:

- debtors in respect of which the decision on liquidation had been adopted;
- debtors who have effectively ceased operations, are missing or whose location cannot be established;
- specialised companies[9] and mortgage agents.

In the case of the simplified procedure, the supervision, financial recovery and external administration stages are not applied. If it is established during the liquidation of the company that the creditor claims cannot be satisfied in full, only receivership proceedings are initiated.

Information on the commencement of the bankruptcy proceedings of a company is included in the Unified Federal Register of Bankruptcy Information. Such information is available on the Internet[10], and is also published in an official print publication[11].

5. Who is the bankruptcy administrator?

The bankruptcy administrator participates in all the stages of the consideration of the bankruptcy case and determines to a large extent the successful outcome of the case. The bankruptcy administrator is an individual, who has undergone special training and passed a state exam. All the bankruptcy administrators are members of private professional communities of bankruptcy administrators (so-called self-regulating organizations – "**SRO**").

[9] The legal status of specialist companies is determined by Chapter 3.1 of Section II of Federal Law No. 39-FZ dated 22 April 1996 "On the Securities Market". The specialist companies are a specialist financial company and specialist project finance company. The status of the mortgage agent is regulated by Federal Law No. 152-FZ dated 11 November 2003 "On Mortgage Securities".

[10] https://bankrot.fedresurs.ru

[11] On the date of the preparation of this brochure, the Kommersant newspaper is such a print publication http://www.kommersant.ru/bankruptcy.

The bankruptcy administrator should comply with the mandatory requirements established by bankruptcy legislation, and also the additional requirements on competency and independence established by the SRO[12]. In addition, the creditor or Competent Authority, which is the applicant in the bankruptcy case, or the creditors' meeting, is entitled to place additional requirements on the candidacy of the bankruptcy administrator:

- higher education in law or economics or education in an area of expertise that complies with the area of activities of the debtor;
- work experience as the head of an organization in a corresponding sector of the economy;
- work experience as a bankruptcy administrator (performance of a specific number of bankruptcy cases).

The following are the main responsibilities of the bankruptcy administrator:

- identify creditors and maintain the creditor claims register;
- adopt measures to protect the debtor's assets;
- convene and hold creditors' meetings;
- analyse the financial position of the debtor, its financial performance;
- identify characteristics of a premeditated and fictitious bankruptcy and duly notify the parties in the bankruptcy case thereof;
- notify creditors regarding the transactions and actions of the management bodies of the debtor.

Depending on the specific bankruptcy procedure, the name of bankruptcy administrators differs:

- supervision – the provisional administrator;
- financial recovery – the administrator;
- external management – the external administrator;

[12] In accordance with current clarifications, the provisional administrator in a bankruptcy case may not be an individual, whose candidacy was proposed by a creditor that is affiliated with the debtor (Clause 12 of the Overview of Judicial Practice in the Resolution of Disputes Related to Satisfaction of Claims of Controlling Persons and Affiliates of the Debtor in Bankruptcy Proceedings, approved on 29 January 2020 by the Presidium of the RF Supreme Court).

- the receivership proceedings – the receiver.

During supervision and financial recovery the bankruptcy administrator exercises mostly control and supervisory functions without replacing the management of the debtor. By contrast, in external administration and receivership proceedings, the traditional powers held by management of the debtor cease, and the bankruptcy administrator is vested with the task of managing the business.

The bankruptcy administrator is appointed by the commercial court overseeing the bankruptcy case. At the same time, the same person may assume the functions of administrator at different stages of the debtor's bankruptcy.

The bankruptcy administrator receives a fee and is also remunerated for current costs in connection with administration of the bankruptcy case. The fee and expenses are paid first and foremost from the debtor's assets.

The bankruptcy administrator may incur the following penalties for the non-performance or undue performance of obligations:

- dismissal on the basis of a petition of the parties in the bankruptcy case or the petition of an SRO;

- administrative liability in the form of a warning, monetary fine or disqualification;

- criminal liability;

- civil-law liability in the form of reimbursement of losses to the debtor, creditors, third parties, and in certain cases the SRO.

The Federal Service for State Registration, Cadastre and Cartography (Rosreestr)[13] is the over-sight body responsible for the activities of SRO and bankruptcy administrators. It may also hold the bankruptcy administrator liable.

The liability of the bankruptcy administrator for causing losses to the parties in the bankruptcy case and third parties is subject to mandatory insurance.

[13] https://rosreestr.ru/site/

6. Supervision

Supervision represents the first stage in a bankruptcy case and has the following goals: to analyse the financial position of the debtor, safeguard its property, accumulate creditor claims (all the claims are entered in a special register) and hold the first creditors' meeting, at which a decision is adopted on the next stage of the bankruptcy.

This procedure is introduced on the basis of the decision of the commercial court if the petition on recognising the debtor as bankrupt is substantiated. Supervision can take a maximum of seven months.

6.1 CONSEQUENCES OF THE INTRODUCTION OF SUPERVISION

Effective from the date of the ruling on the introduction of supervision, all creditors may only file their claims (in respect of monetary obligations and the execution of statutory payments (taxes, fines, etc.)) within the framework of the bankruptcy case. Furthermore, objections may be filed against such claims, *inter alia* from other creditors, the provisional administrator and a representative of the debtor's shareholders. If a claim is recognised as substantiated, it is included by the court in the creditor claims register. A creditor should file a petition with the commercial court for including its claims at this stage of the bankruptcy within thirty calendar days after the ruling on the introduction of supervision has been published. In this case non-working days are included, while the possibility to restore the deadlines is not provided by law[14]. Untimely filing results in a ban on participation in the first meeting of creditors. The court considers claims filed after the expiry of the thirty days period only in the next bankruptcy stage which follows the supervision.

To safeguard the debtor's assets, enforcement proceedings are suspended, the offset of claims, dividend payments, distribution of profits, the purchase by the debtor of its shares as well as the payment of the actual value of participation interests to a shareholder in the event of the latter's withdrawal as a shareholder from the debtor company, are not permitted.

The debtor may conclude the following transactions with the consent of the provisional administrator:

- transactions constituting more than 5% of the book value of the debtor's assets on the date of the introduction of supervision;

- transactions related to the receipt and issue of loans, sureties and guarantees, the assignment of rights of claim, the transfer of debt and also trust management over the debtor's assets.

[14] See Clause 2 of Information Letter No. 93 of the Presidium of the RF Supreme Commercial Court dated 26 July 2005 "On Certain Issues Related to the Calculation of Specific Timeframes in Bankruptcy Cases".

The management bodies of the debtor may no longer take decisions on:

- the reorganization (merger, consolidation, split off, spin off, restructuring) and liquidation of the debtor;
- the establishment of legal entities or on the participation of the debtor in other legal entities;
- the establishment of branches and representative offices;
- the payment of dividends or distribution of the debtor's profits between shareholders;
- the placement of bonds and other equity securities, with the exception of shares;
- withdrawing shareholders of the debtor, the acquisition of its own shares;
- participation in associations, unions, holding companies, financial industrial groups and other associations of legal entities;
- the conclusion of partnership agreements.

6.2 MANAGEMENT OF THE DEBTOR

The managing director of the debtor and other management bodies are not dismissed from management of the debtor. At the same time, the debtor may only conclude certain transactions with the consent of the provisional administrator.

The functions of the provisional administrator are extremely significant and are multilateral. For example, his powers include the following:

- adopt measures aimed at ensuring the safekeeping of the debtor's property;
- analyse the financial position of the debtor (review in order to ascertain whether the debtor's solvency can be restored, and also whether the debtor owns sufficient assets to cover the expenses in the bankruptcy case);
- identify creditors, notify them of the commencement of the proceedings;
- file objections regarding creditor claims;
- maintain the creditors' register;
- review the transactions of the debtor and prepare an opinion as to whether there any grounds for contesting them;

- convene and hold the first meeting of creditors.

In addition, the provisional administrator monitors the work of the managing director of the debtor. If the latter violates the requirements of bankruptcy legislation, he may be dismissed by the commercial court further to a petition filed by the parties in the bankruptcy case. To exercise such control and other functions vested with the provisional administrator, the law has established that the debtor's management bodies are required to submit any information concerning the debtor's activities to the provisional administrator further to the latter's request. In addition, the managing director is required to submit to the provisional administrator a list of the debtor's assets, the accounting documents and other documents which reflect the economic activities of the debtor for the past three years prior to the commencement of the bankruptcy. The managing director should notify the provisional administrator of all changes to the composition of the debtor's assets on a monthly basis.

Based on the results of the financial position of the debtor (*inter alia*, stock take of its property), the provisional administrator prepares an opinion as to whether the debtor's solvency can be restored and proposes the next stage of the bankruptcy. The decision on the selection of the next bankruptcy procedure is adopted at the first meeting of creditors. The date of this meeting is determined by the interim receiver.

6.3 TERMINATION OF SUPERVISION

On the basis of the information received from the provisional administrator on the financial position of the debtor, the first meeting of creditors determines the subsequent fate of the debtor. Depending on whether there are grounds for restoring the debtor's solvency, a decision may be adopted at the first meeting on:

- the introduction of financial recovery;
- the introduction of external administration;
- the recognition of the debtor as bankrupt and on the commencement of receivership proceedings.

On the basis of the decision of the first meeting of creditors, the court issues a ruling, respectively on the introduction of financial recovery or external management, or adopts a decision on the recognition of the debtor as bankrupt and on the commencement of receivership proceedings. The termination of the bankruptcy case by the court is also possible (if the solvency of the debtor is restored or an amicable settlement agreement is concluded).

7. Financial recovery

Financial recovery is a stage in bankruptcy applied to the debtor for the restoration of its solvency and repayment of debt in accordance with the debt repayment schedule.

The gist of financial recovery is that the actual debtor or its shareholders or third party apply to the creditor's meeting with a financial recovery plan and debt repayment schedule, which determines the procedure and deadlines for the payment of all the creditors' claims. Financial recovery is introduced for no more than two years.

If a third party applies to the creditors' meeting, it should provide – in addition to the financial recovery plan – a security for the debtor's payment in accordance with the proposed schedule. If the debtor violates the debt repayment procedure, the creditor's claims will be satisfied from the provided security.

After the creditors' meeting approves the financial recovery plan, the commercial court introduces a corresponding procedure and approves the candidacy of the administrator.

7.1 CONSEQUENCES OF THE INTRODUCTION OF FINANCIAL RECOVERY

From the date when the court introduces financial recovery, the performance of enforcement proceedings is suspended, previously adopted measures to protect creditor claims are revoked, while the payment of dividends and reorganization of the debtor without the consent of the creditors and the persons providing security are not permitted. Creditor claims against the debtor may only be filed after their review by the commercial court.

Without the consent of the creditors' meeting, the debtor is further not entitled to:

- conclude interested party transactions (or several related transactions);
- conclude transactions on the acquisition/alienation of property the value of which amounts to more than 5% of the book value of the debtor's assets;
- grant loans and credits;
- issue sureties and guarantees;
- transfer its assets for trust management.

In addition, the debtor has no right, without the consent of creditors and third parties which provided security, to adopt a decision on its reorganization (merger, consolidation, split off, spin off, restructuring).

Without the consent of the administrator, the debtor may not:

- conclude transactions relating to the acquisition or alienation of its assets (other than the sale of the products manufactured by the debtor);
- conclude transactions relating to the assignment of rights of claim or the transfer of debt;
- conclude transactions which result in an increase in accounts payable by more than 5% of the amount of the creditor claims;
- take out loans and credits.

7.2 ADMINISTRATION OF THE DEBTOR

The managing director and other management bodies of the debtor are not dismissed from management of the debtor. At the same time, however, transactions which reduce or could reduce the debtor's assets are only concluded with the consent of the creditors' meeting or the administrator.

As a rule, the commercial court appoints as administrator the person that exercised the functions of provisional administrator. Pursuant to the procedure for financial recovery, the administrator exercises in general controlling functions.

He is required to:

- maintain the creditor claims register;
- monitor performance of the debt repayment schedule;
- convene a meeting of creditors, when required to do so by law.

The administrator has the right to:

- approve the debtor's transactions in instances where such approval is required;
- demand information from the managing director of the debtor regarding the current activities of the debtor;
- file a petition in court on adopting measures to safeguard the debtor's assets;
- file in court claims on recognising as invalid transactions concluded by the debtor in violation of the law.

7.3 TERMINATION OF THE PROCEDURE

The debtor is required to prepare a report on the results of the performance of the debt repayment schedule by the end of the timeframe for financial recovery. The administrator considers the report and prepares an opinion on meeting the schedule.

Based on the report and the opinion, the court adopts one of the following court orders:

- ruling on termination of the proceedings on the bankruptcy case (if there are no outstanding debts);
- ruling on the introduction of external administration (if the debtor's solvency can be restored);
- decision on the recognition of the debtor as bankrupt and on the commencement of receivership proceedings (if the debtor's solvency cannot be restored).

8. External administration

External administration is ordered if there is reason to assume that solvency can be restored. Unlike financial recovery, management of the debtor is entrusted to a third party – the external administrator. External administration is ordered for a term of up to 18 months. In certain instances, it can be extended, but for no more than six months.

8.1 CONSEQUENCES OF THE INTRODUCTION OF EXTERNAL ADMINISTRATION

The introduction of external administration results in the termination of the powers of the managing director of the debtor and the vesting of these powers with the external administrator.

Property consequences:

- a moratorium is introduced on satisfying creditor claims on monetary obligations and on the execution of statutory payments (with the exception of current payments[15]). Such claims may only be filed in bankruptcy proceedings;
- previously adopted measures aimed at securing creditor claims are revoked. New measures aimed at securing creditor claims may only be imposed within the framework of the bankruptcy proceedings;

[15] Payments relating to claims, which arose after the court accepted the bankruptcy petition.

- major transactions[16], and also interested-party transactions[17], are only concluded with the consent of the creditors;

- transactions which result in the receipt or issue of loans, issue of sureties and guarantees, the assignment of rights of claim, the transfer of debt, the alienation or acquisition of shares, the interests of business partnerships and companies, trust management, are concluded by the external administrator after receiving approval from creditors. Approval is not required in cases where the possibility and conditions for their conclusion are stipulated by the external administration plan;

- in cases where the total monetary obligations of the debtor which arose after an external administration was ordered exceed total claims of the scheduled creditors included in the creditor claims register by 20%; transactions resulting in new obligations for the debtor may only be concluded by the external administrator with the consent of the creditors. These transactions may only be concluded without their consent if stipulated by the external administration plan.

8.2 EXTERNAL ADMINISTRATION OF THE DEBTOR

The external administrator performs comprehensive management of the debtor's activities in place of the company's management director. In particular, the external administrator:

- drafts the external administration plan[18] and submits it to the creditors' meeting for approval;

- submits a report on the implementation of the plan to the creditors' meeting;

- manages and disposes of the debtor's assets in accordance with the external administration plan (with due account of the aforementioned restrictions);

[16] Transactions or several interrelated transactions in respect of assets with a book value exceeding 10% of the book value of the debtor's assets on the most recent reporting date preceding the date of the conclusion of this transaction.

[17] Transactions in which a party is an interested party in relation to the external administrator or scheduled creditor, or the debtor. The concept of an interested party and related party is contained in Article 19 of the Bankruptcy Law, and also in Article 4 of RSFSR Law No. 948-1 dated 22 March 1991 "On Competition and Restrictions on Monopoly Activity on Product Markets".

[18] The external administration plan is drafted by the external administrator and submitted to the creditors' meeting for approval no later than one month after the approval of the external administrator. The plan should stipulate measures aimed at restoring the debtor's solvency, the terms and conditions and procedure for implementing the indicated measures, expenses on their implementation and the other expenses of the debtor. The following may, *inter alia*, be stipulated as such measures: repurposing the debtor's production facilities, closing loss-making production facilities, recovering accounts receivable, selling some of the assets or part of the enterprise, assigning the rights of claim of the debtor, enforcement of the obligations of the debtor (unitary enterprise) by its owner or third party, increasing the share capital, and replacing the assets. A mandatory requirement is the inclusion in the external administration plan of the timeframe for restoring the debtor's solvency and substantiation as to whether such restoration is possible within the established timeframe.

- performs a stocktake of the assets;
- maintains the accounting, financial and statistical accounting and reporting of the debtor;
- submits claims to the court on behalf of the debtor on recognising as invalid the transactions and decisions of the debtor, and also repudiates[19] contracts and other transactions of the debtor which prevent the restoration of its solvency;
- concludes an amicable settlement agreement on the debtor's behalf;
- adopts measures relating to the recovery of debt owed to the debtor;
- maintains the creditor claims register, and also files objections regarding creditor claims imposed on the debtor.

The management bodies of the debtor retain the right to adopt a number of corporate decisions: on an increase in the share capital of the joint-stock company through the placement of new shares, on filing a petition with the creditors' meeting on including in the external administration plan the possibility of an additional share issue, on filing a petition for the sale of the debtor's assets, on the replacement of the debtor's assets.

8.3 TERMINATION OF EXTERNAL ADMINISTRATION

The external administrator submits the report to the creditors' meeting for consideration. Based on the results of the consideration of the report, the creditors' meeting may adopt one of the following decisions on the:

- termination of external administration in connection with the restoration of the debtor's solvency and the transition to settlements with creditors;
- termination of the proceedings on the bankruptcy case in connection with the satisfaction of all creditor claims in accordance with the creditor claims register;recognition of the debtor as bankrupt and on the commencement of receivership proceedings;
- conclusion of the amicable settlement agreement.

[19] Contracts and other transactions of the debtor may be repudiated within three months of the date of the introduction of external administration. It may only be filed in respect of transactions not executed by the parties in full or in part if such transactions prevent the restoration of solvency or if the execution of such transactions results in losses for the debtor. The party under the contract in respect of which such repudiation was filed, is entitled to demand that the debtor reimburse any losses caused by the repudiation of the contract.

The report of the external administrator and the decision of the creditors' meeting should be approved by the court. If it refuses to do so, the court should adopt a decision on the further fate of the debtor.

9. Receivership proceedings

Receivership proceedings pursue the goal of the fullest possible satisfaction of creditor claims from the sale of the debtor's assets. Receivership proceedings may be commenced after any other stage of the bankruptcy when the debtor's solvency cannot be restored. The overall timeframe for this procedure is six months which may be extended according to the general rules by up to six months. At the same time, it is not uncommon for receivership proceedings to last several years, in particular in the case of bankruptcies of major companies.

9.1 CONSEQUENCES OF THE INTRODUCTION OF RECEIVERSHIP PROCEEDINGS

Once the court has determined bankruptcy of the debtor and has opened receivership proceedings, previous monetary obligations and statutory payments of the debtor are due and payable, while enforcement under writs of execution ceases, interest, penalties and other fines for non-performance or undue performance of monetary obligations and mandatory payments stop being accrued (with the exception of obligations that arose after the introduction of the receivership proceedings), and the previous attachments of the debtor's assets are lifted. Creditor claims may only be filed after the court has verified if they are substantiated. In this case the creditor should file a petition for the inclusion of its claims in the creditor claims register with the commercial court considering the bankruptcy case within two months of the date of the publication of information on the commencement of the receivership proceedings.

A creditor may also file a petition for the inclusion in the register of a non-monetary claim of a pecuniary nature by transforming it into a monetary claim (with the exception of current payments; claims for the recognition of ownership rights; claims for vindication; and claims for the invalidation of a void transaction). If the obligation is of a current nature, the court is entitled to consider if it is admissible to take an individual specific thing away from the bankrupt[20]. Thus, as a general rule, if the buyer has an unsatisfied claim against the bankrupt seller arising from a supply agreement, the buyer may not demand that the bankrupt seller perform an obligation to transfer the title to a thing in kind after the receivership proceedings have been commenced against the seller. After the commencement of receivership proceedings, the non-monetary claim to transfer assets in kind is unenforceable and must be assessed and transformed into a monetary claim by including them in the creditor claims register. The courts point out

[20] Clause 14 of the Overview of Judicial Practice of the RF Supreme Court No. 1 (2019).

that otherwise a creditor would receive preferential satisfaction over other creditors, which violates the principle of priority and proportionality in the satisfaction of creditor claims. For this reason, applications for state registration of the transfer of title to a thing should be dismissed without prejudice if they are filed outside of a bankruptcy case.

As a general rule, claims filed outside of this timeframe are not included in the register and are only satisfied after the repayment of all the claims included in the creditor claims register.

The claims of subordinated creditors shall be satisfied in order of priority preceding the distribution of the liquidation quota (i.e. after all creditors but before distribution of the remaining assets among the owners of the debtor).[21]

9.2 MANAGEMENT OF THE DEBTOR

From the date when the commercial court adopts a decision on the recognition of the debtor as bankrupt and the commencement of receivership proceedings, the powers of the managing director of the debtor and other management bodies of the debtor cease. Their authorities are exercised by the receiver, to be appointed by the court.

As a rule the commercial court appoints as the receiver the bankruptcy administrator who exercised his functions in the previous stages of the bankruptcy of the debtor.

The following constitute the main responsibilities of the receiver:

- to maintain the creditor claims register;
- to recover accounts receivable;
- to perform a stocktake of the debtor's assets, look for and recover the debtor's assets held by third parties;
- to sell the debtor's assets;
- to make payments to creditors in accordance with the order of priority for satisfying the claims of creditors established by legislation.

The receiver has the right:

- to dismiss the debtor's employees, including the managing director;

[21] See Clause 3 of the Overview of Judicial Practice of the Resolution of Disputes Related to the Establishment of Claims of Controlling Persons and Affiliates of the Debtor in Bankruptcy Proceedings (approved on 29 January 2020 by the Presidium of the RF Supreme Court).

- to repudiate transactions if these transactions prevent the restoration of the debtor's solvency;

- to file claims with the court on recognising as invalid transactions and decisions concluded or executed by the debtor;

- to file claims against third parties, which assume in accordance with legislation subsidiary liability for the debtor's obligations in connection with the debtor's bankruptcy;

- to perform other actions stipulated by legislation and aimed at the recovery of the debtor's assets.

9.3 SALE OF THE DEBTOR'S ASSETS AND THE ORDER OF PRIORITY FOR SATISFYING CLAIMS

Generally the debtor's assets are sold at auctions after the performance of an independent appraisal. The received monetary funds constitute the bankruptcy estate.

Then payments are made to scheduled creditors in accordance with the order of priority established by legislation.

The claims of each category of creditors are satisfied after the claims of the previous order of priority have been satisfied in full.

During insolvency proceedings, current claims against the debtor are considered separately. Current payments are the monetary obligations, claims for the payment of severance pay and/or the wages of individuals and mandatory payments that arose after the date of the adoption of the petition on recognising the debtor as bankrupt.

The validity of a current claim against the debtor is reviewed beyond the framework of the bankruptcy case[22] during standard action proceedings, in compliance with the rules on jurisdiction, arbitrability and the claims procedure for resolving a dispute.

The claims of creditors regarding current payments are satisfied in chronological order before the register claims.

We present below certain clarifications of the commercial courts on current payments that should be taken into account:

- To determine the time of the emergence of the obligation to pay for services and work, the date of the provision of services and performance of the work is relevant,

[22] Clause 3 of Judgment No. 60 of the Plenum of the RF Supreme Commercial Court dated 23 July 2009 "On Certain Issues Related to the Adoption of Federal Law No. 296-FZ dated 30 December 2008 „On the Introduction of Amendments to the Federal Law "On Insolvency (Bankruptcy)".

even though the performance of this obligation may further to the agreement of the parties be rescheduled to a later period (for example, by tying it to the signing of an act, the issue of a VAT invoice, through the provision of a deferral or extension of performance)[23].

- Claims arising after the moratorium on bankruptcy comes into effect (Article 9.1 of the Bankruptcy Law) are to be classified as current claims. Creditors may not initiate bankruptcy proceedings against the debtor in respect of such claims until three months after the lifting of the moratorium[24].

- Claims for the elimination of defects in performed work that were filed during the warranty period, but arose before the commencement of the bankruptcy case of a debtor should be considered in the bankruptcy case, as they are not current[25].

- Claims for the application of sanctions (reimbursement of damages caused by the non-performance or undue performance of an obligation, the collection of a penalty, interest for the illegal use of another person's funds) for a violation of monetary obligations pertaining to current payments, follow the fortunes of the indicated obligations.

  Claims for the application of sanctions for the violation of monetary obligations to be included in the creditor claims' register do not constitute current payments[26].

- The obligation to reimburse court costs for the purposes of qualification as a current payment is deemed to have emerged as of the entry into legal force of the court order on the collection of the indicated expenses.

After current payments, the remaining claims of creditors are satisfied in the following order of priority:

- settlements are performed in the first order of priority to the claims of individuals whose lives or health were impaired by the actions of the debtor through the capitalization of corresponding time payments, and also the compensation of moral damage;

- settlements are performed in the second order of priority relating to the payment of severance pay and the wages of individuals who work or worked under an employment contract, and on the payment of consideration under copyright contracts;

[23] Ruling of the RF Supreme Court dated 6 July 2017 on case No. A59-537/2016.

[24] Clause 11 of Judgment No. 44 of the Plenum of the RF Supreme Court dated 24 December 2020 „On Certain Issues Related to the Application of Article 9.1 of Federal Law No. 127-FZ dated 26 October 2002 „On Insolvency (Bankruptcy)".

[25] Ruling of the RF Supreme Court dated 26 December 2016 on case No. A21-8238/2015.

[26] Clause 11 of Judgment No. 63 of the Plenum of the RF Supreme Commercial Court dated 23 July 2009 "On Current Payments on Monetary Obligations in a Bankruptcy Case".

- settlements are performed in the third order of priority with other creditors.

The claims of creditors in respect of obligations secured by the pledge of the debtor's assets are satisfied from the value of the pledged item pursuant to a special procedure:

- if the claims of a bankruptcy creditor under a loan agreement are secured by the pledge of the debtor's assets, 80% of the proceeds from the sale of the pledged assets will be allocated to the repayment of the bank's claims under the loan agreement secured by the pledge of the debtor's assets, 15% will be allocated to the repayment of the claims of creditors of the second and third order of priority, while the remaining 5% is allocated to the repayment of claims related to expenses on the bankruptcy case and the payment of the fee to the bankruptcy administrator;

- in the remaining instances, 70% of the proceeds from the sale of pledged assets are allocated for the repayment of the claims of the creditor in respect of the obligation secured by the pledge of the debtor's assets, 20% is allocated for the repayment of the creditor's claims of the first and second priority, while the remaining 10% is allocated for the payment of expenses on the bankruptcy case and the payment of the fee to the bankruptcy administrator.

If the debtor's assets are insufficient to satisfy the claims of the creditors of one order of priority, the money is allocated between the creditors of a corresponding order or priority proportionate to the amounts of their claims included in the creditor claims register.

Claims of creditors which are not satisfied owing to a shortfall in the debtor's assets remain outstanding.

Should assets remain after satisfaction of all claims, these assets should be distributed between the shareholders of the debtor in accordance with its foundation documents.

9.4 SUBORDINATION OF CLAIMS OF AFFILIATED CREDITORS

In some cases, the court may decide that the priority of a creditor's claims must be lowered (hereinafter the „Subordination of Claims").[27]

According to the approach of the courts, the claims of creditors who are affiliated with the debtor are to be settled only after all other creditors have been paid, if the court determines that the financial assistance provided by the investor (both before the emergence of bankruptcy indicia, and also after the initiation of insolvency proceedings) took place instead of making a contribution to the charter capital of the debtor.

[27] For more details, see the Overview of Judicial Practice of the Resolution of Disputes Related to the Establishment of Claims of Controlling Persons and Affiliates of the Debtor in Bankruptcy Proceedings, approved on 29 January 2020 by the Presidium of the RF Supreme Court.

The institution of subordination is intended to protect external (independent) creditors.

Subordination can be applied to those claims which an investor has against a debtor while the debtor is in a financial crisis. The following circumstances may be evidence of such a crisis:

- the debtor or the liquidation commission of the debtor has decided to file for the bankruptcy of the debtor with a commercial court;
- the debtor meets the indicia of insolvency or indicia of the insufficiency of assets (objective bankruptcy);
- the debtor has outstanding debts for more than three months due to having insufficient funds to make payments to employees;
- the levy of execution on the debtor's assets complicates or renders impossible its business activities;
- satisfaction of the claims of one or more creditors will make it impossible for the debtor to fulfil its obligations;
- other circumstances specified in the bankruptcy laws.

Financing that has been provided to the debtor outside the ordinary course of business is called compensatory financing. It may take the form of:

- a loan agreement, sale and purchase agreement, lease agreement, contractor agreement, etc.;
- the issuance of sureties and other guarantees to a third party;
- the acquisition by a controlling person of the claims of independent creditors before the initiation of the bankruptcy proceedings against the debtor;
- a waiver of actions to collect the debt (waiver of the right to collect funds or other assets after the due date of execution);
- the provision of financing by a creditor affiliated with a controlling person under the influence of that controlling person (e.g. within the same group of companies).

Monetary claims which were provided to the debtor prior to the objective bankruptcy shall also be subordinated, if the aforementioned funds were provided to the debtor to redistribute the risk of bankruptcy.

Therefore, the courts take a broad understanding of compensatory financing that has been provided by an affiliate. An affiliate may be understood to mean a person who has a direct relationship with the debtor as well as a person who actually influences the business or participates in the distribution of profits.

Subordination of claims does not take place in cases where financing is provided to the debtor by the controlling person, even after the objective bankruptcy has occurred, but with the consent of the majority creditor (not affiliated with the debtor). The funds so allocated to implement a crisis management plan belong to the third priority of the creditor claims register, and the priority of such claims may not be lowered.

Claims against the debtor acquired from an independent creditor after the initiation of bankruptcy proceedings by controlling persons or affiliates are not subject to subordination.

If the only creditors of the debtor are its affiliates, their claims shall not be subject to subordination.[28]

9.5 TERMINATION OF THE RECEIVERSHIP PROCEEDINGS

After completing settlements with the creditors, the receiver submits a report on the results of the receivership proceedings to the court. On the basis of the report, the court issues a ruling on the termination bankruptcy proceedings or completion of the receivership proceedings and on the liquidation of the debtor.

In exceptional instances, if sufficient grounds appeared during the receivership proceedings for assuming that the debtor's solvency could be restored, and financial recovery and/or external administration had not been introduced previously in respect of the debtor, the commercial court may terminate the receivership proceedings and appoint external administration.

10. Amicable settlement agreement

Throughout the bankruptcy procedure an amicable settlement agreement may be concluded at any time between the debtor and its creditors. The law provides corresponding specifics for the conclusion of an amicable settlement agreement for each stage of the bankruptcy.

The decision of the creditors' meeting to conclude an amicable settlement agreement is adopted by simple majority of the total number of creditors (in other words, 50% + 1 vote). In this case, the terms and conditions of the amicable settlement agreement for

[28] Clause 17 of the Overview of Judicial Practice of the RF Supreme Court No. 3 for 2020, approved on 25 November 2020 by the Presidium of the RF Supreme Court.

creditors who voted against its conclusion (or did not participate in the voting) may not be worse than for those creditors who voted in favour of its conclusion. The agreement is concluded in writing and contains a provision on the procedure and deadlines for the performance of the debtor's obligation. The court approves the amicable settlement agreement and terminates the proceedings on the bankruptcy case.

Once the court approves the amicable settlement agreement, the powers of the provisional administrator, administrator, the external administrator and receiver cease. The external administrator or receiver performs the obligations of the managing director of the debtor until appointment of a new managing director of the debtor.

If the debtor fails to perform the amicable settlement agreement, the creditors are entitled, without terminating the amicable settlement agreement, to immediately contact the court considering the bankruptcy case to receive a writ of execution for the recovery from the debtor through enforcement procedures of the remaining unsatisfied claims.

11. Rights of creditors

Scheduled creditors may actively participate during the consideration of insolvency cases as they enjoy, *inter alia*, the following rights:

- participation in the ordinary meetings of creditors with the right to vote on all agenda issues put to the vote;
- convocation of extraordinary meetings of creditors (the right to convene meetings is enjoyed by creditors, whose claims equal at least 10% of the total claims included in the register);
- participation in the creditor committee;
- participation in court hearings regarding all standalone disputes within the framework of a bankruptcy case;
- filing of appeals against decisions on claims if the debt of the debtor to the scheduled creditor is confirmed by a court order that has entered into legal force and was issued beyond the framework of the bankruptcy case[29];

[29] The timeframe for contesting court decisions on claims used by other creditors to substantiate their claims for inclusion in the register starts to run from the moment when the court agreed to consider the motion on including the claims in the register; the status of scheduled creditor is not mandatory (Ruling of the RF Supreme Court dated 27 February 2019 on case No. A40-177772/2014).

- filing of appeals against the actions and/or inaction of the bankruptcy administrator;

- challenge of decisions adopted at the meeting of creditors[30];

- challenge of the transactions of the debtor (if the size of the accounts payable owed to the creditor exceeds 10% of the total size of the accounts payable included in the register, excluding the size of the creditor's claims in respect of which the transaction is contested and its related parties), including challenge of a creditor's withdrawal of a claim[31];

- filing of a claim for the recovery of losses and assignment of subsidiary liability against the controlling persons.

12. Contesting the debtor's transactions

Transactions concluded by a debtor may be contested in court for general reasons or for reasons specific to Bankruptcy Law.

In accordance with the RF Civil Code, invalid transactions may be of two types:

- voidable – transactions which are recognised as invalid only on the basis of a court order. Before a voidable transaction has been determined as invalid it is a standard valid transaction;

- null and void – transactions which are recognised as invalid, regardless of whether they were recognised as such by a court. Such transactions are invalid as of the conclusion thereof.

Generally, a transaction that violates the requirements of the law or other legal acts is voidable. Such a transaction may only be null and void in the instances stipulated by the law.

An invalid transaction (both null and void, and voidable) has no legal consequences and is invalid as of the conclusion thereof. Generally, in the event of the invalidity of a transaction, each party is required to return to the other party everything received under the transaction (e.g. transferred goods or the purchase value under a purchase agreement).

[30] Additional clarifications are contained, *inter alia*, in the Overview of Judicial Practice on Issues Related to the Invalidation of the Decisions of the Meetings and Committees of Creditors in Bankruptcy Proceedings, approved on 26 December 2018 by the Presidium of the RF Supreme Court.

[31] Clause 19 of the Overview of the Judicial Practice of the RF Supreme Court No. 3 (2021), approved on 10 November 2021 by the Presidium of the RF Supreme Court.

12.1 VOIDABLE TRANSACTIONS OF THE DEBTOR

The following constitute general grounds for recognising voidable transactions of the debtor as invalid:

- the transactions of the legal entity which contradict the purposes of its activities, explicitly determined in the foundation documents of the legal entity;
- transactions concluded without the consent of a third party, the body of a legal entity or state (municipal) authority, as required by law;
- transactions concluded by a representative or body of the legal entity in violation of the restrictions on the authorities established by the contract or the foundation documents or other internal regulations of the legal entity;
- transactions concluded by the representative or the body of the legal entity, to the detriment of the interests of the legal entity;
- transactions concluded under the influence of material misrepresentation (misrepresentation regarding the subject of the contract or the nature of the transaction, etc.);
- transactions concluded under the influence of deceit, violence or a threat;
- transactions on extremely unfavourable terms and conditions that the person was compelled to conclude due to a combination of adverse circumstances that the other party exploited (onerous transactions);
- other transactions stipulated by legislation.

In addition, the Bankruptcy Law stipulated special grounds for contesting a debtor's transactions. They concern the following transactions:

- transactions concluded by the debtor after filing the bankruptcy petition, or within one year before filing and where the unequal reciprocal performance of the obligations by the other party to the transaction is characteristic (for example, if the transaction price and/or other terms and conditions differ materially to the detriment of the debtor from the price and/or other terms and transactions in which analogous transactions are concluded in comparable circumstances);
- transactions which were concluded by the debtor for the purpose of causing damage to the property rights of creditors after filing of the bankruptcy petition, or within three years before its filing, if such damage was caused as result of their performance, and if the other party to the transaction knew about the indicated purpose

of the debtor by the time of the conclusion of the transaction. At the same time, the goal of causing damage to the property rights of the creditors is assumed if at the time of the conclusion of the transaction the debtor met or as a result of the conclusion of the transaction began to meet the indicia of insolvency or had insufficient assets and the transaction was concluded for no consideration or with an interested party, or was aimed at payment for a participation interest in connection with the withdrawal of a shareholder of the debtor, or was concluded despite the existence of other circumstances indicated in the law;

- transactions concluded by the debtor with an individual creditor or other person after the filing the bankruptcy petition or within one month (in certain instances – six months) before its filing and which result or could result in the prioritization of one of the creditors before the other creditors regarding the satisfaction of claims (for example, when the transaction resulted or could result in a change in the order of priority of the satisfaction of the creditors' claims under obligations that arose prior to the conclusion of the contested transaction).

The application on contesting the debtor's transactions may be filed with the court by the bankruptcy administrator on his/her initiative or further upon decision of the meeting or committee of creditors.

Such an application may also be filed by a scheduled creditor or the Competent Authority, if the amount of the corresponding accounts payable included in the creditor claims register exceeds 10% of the total amount of the accounts payable included in the register, excluding the amount of the creditor's claims in respect of which the transaction is contested, and its related parties.

12.2 NULL AND VOID TRANSACTIONS OF THE DEBTOR

Legislation provides the following instances of the nullity of transactions:

- transactions which violate the requirements of the law or another legal act, and at the same time encroach on public interest or the rights and legally protected interests or third parties (unless it follows from the law that such a transaction is voidable or other legal consequences should be applied);

- transactions concluded for purposes that are patently contrary to the fundamental principles of law or morality (as a rule, these are criminally punishable acts);

- sham transactions, in other words transactions concluded for show, without any intention of creating corresponding legal consequences;

- fraudulent transactions; in other words transactions concluded for the purpose of concealing other transactions, including transactions with other terms and conditions[32];
- transactions concluded in violation of the bans stipulated by the Bankruptcy Law or restrictions on the disposal of property;
- other transactions which are null and void by law.

13. Liability of controlling persons

The Bankruptcy Law formalises a number of provisions regarding the possibility of holding liable the management and the owners of the bankrupt debtor.

13.1 COLLECTION OF LOSSES

A claim for the collection of losses may be filed:

- against persons acting on behalf of the legal entity (managing director, management company);
- against members of the collegial bodies of the legal entity;
- against persons determining the actions of the legal entity, including the founders (participants) of the legal entity;
- against persons that are actually able to determine the actions of the legal entity.

The following parties are entitled to file a claim for the collection of losses on behalf of the debtor:

- the managing director;
- the founder (participant) of the debtor;
- the bankruptcy administrator on his/her initiative or by decision of the meeting of creditors or creditor committee;
- a scheduled creditor;

[32] Up-to-date examples in judicial practice can be found in challenges of loan agreements concluded between a related party and the debtor. The court is entitled, taking account of the specific facts of the case, on the basis of the norms of law on fraudulent transactions (or in the event of the establishment of the illegal purpose based on the rules on circumvention of the law) to reclassify the loan relations as relations related to an increase in the charter capital, assigning the concealed claim corporate status. The above serves as grounds for refusing to include such a claim in the register.

- a representative of the debtor's employees;
- an employee or former employee of the debtor owed money by the debtor;
- the Competent Authority.

Creditors in a bankruptcy case regarding which the proceedings were terminated in connection with the lack of funds required to conduct insolvency proceedings, are entitled to file a statement of claim against the controlling persons on the collection in their favour of losses caused through their fault to the debtor in an amount that does not exceed the size of the claims of this creditor against the debtor.

Fictitious bankruptcy also serves as one of the grounds for the collection of losses. If the debtor filed a bankruptcy petition or the debtor did not take measures to contest the unsubstantiated claims of creditors, then the debtor, managing director of the debtor and other controlling persons assume liability before creditors for the losses caused by the commencement of the bankruptcy case or the unsubstantiated recognition of the claims of the creditors[33].

13.2 SUBSIDIARY LIABILITY OF THE CONTROLLING PERSONS

A controlling person is an individual or legal entity:

- that had the right, no more than three years preceding the emergence of bankruptcy indicia, and also after their emergence, before the adoption by the commercial court of the petition on recognising the debtor as a bankrupt, to issue binding instructions for the debtor
- or that was able to otherwise determine the debtor's actions, *inter alia* regarding the commission of transactions and determination of their terms and conditions (hereinafter the "**Controlling Person**").

Standard list of Controlling Persons (is not exhaustive):

- managing director of the debtor;
- management company of the debtor;
- member of the executive body of the debtor;
- liquidator of the debtor, member of the liquidation commission;

[33] The rule is also applicable if the debtor did not contest the unsubstantiated claims of the creditors filed before or after the commencement of the bankruptcy case outside of the proceedings on the bankruptcy case.

- person that had the right to dispose independently or jointly with interested parties of 50% or more of the voting shares of the joint stock company, or more than half the participation interests in the charter capital of a limited liability company, of more than half the votes at the general meeting of the participants of the legal entity, or had the right to appoint (elect) the managing director of the debtor;

- person that derived a benefit from the illegal or bad-faith conduct of the management of the debtor[34].

Grounds for subsidiary liability:

1. The claims of the creditors cannot be settled in full owing to the actions and/or inaction of the Controlling Person;

2. It became impossible to settle the claims of creditors as a result of the actions and/or inaction of the Controlling Person. However, the proceedings in the bankruptcy case are terminated in connection with the lack of sufficient funds to reimburse expenses on the performance of the procedures applicable in a bankruptcy case, or the petition of the Competent Authority on recognising the debtor as bankrupt has been returned;

3. The debtor did not start meeting insolvency criteria as a result of the actions and/or inaction of the Controlling Person. However, subsequently it performed actions and/or took no action that aggravated the financial position of the debtor materially;

4. The obligation to file the petition of the debtor with a commercial court was not performed (the obligation to convene a meeting for the adoption of a decision on the filing of the petition of the debtor with a commercial court or to adopt such a decision was not performed).

The law establishes the presumption of guilt of the Controlling Persons if the debtor is recognised as bankrupt due to one of the following circumstances:

- material damage[35] is caused to the property rights of the creditors as a result of the conclusion (1) by the Controlling Person or (2) in favour of this person or (3) the approval by this person of one or several transactions of the debtor, including

[34] In particular it is assumed that the Controlling Person is a third party that received a material asset of the debtor (including through a chain of consecutive transactions) under a transaction concluded by the managing director of the debtor to the detriment of the interests of the debtor and its creditors (for example, on terms and conditions that are patently unfavourable for the debtor or with a person that is patently unable to perform the obligation ("fly-by-night firm") or through the use of paperwork that does not reflect actual business transactions).

[35] Such transactions include, for example, major transactions, and also the transactions that are significant for the debtor (applicable to the scales of its activity) and are simultaneously materially lossmaking.

suspicious transactions, or transactions resulting in the prioritisation of one of the creditors before the other creditors (see section 12);

- there are no accounting and/or reporting documents, which should be kept and stored, or the information they contain is incomplete or they are distorted. The violation should have occurred by the time of the issue of the ruling on the introduction of supervision or adoption of the decision on recognising the debtor as bankrupt. As a result of this violation, the performance of procedures applicable in a bankruptcy case should be material complicated[36], including the establishment and sale of the bankruptcy estate;

- third-priority creditor claims on principal debt appearing as a result of criminal, administrative or tax violations performed after a decision to hold the debtor or the acting/former sole director liable came into force (including claims on the payment of debt identified as a result of case proceedings on these violations) exceed fifty per cent of total third-priority creditor claims on principal debt included in the creditor claims register;

- documents, whose storage was mandatory in accordance with the legislation of the Russian Federation, are missing or are distorted;

- on the commencement date of the bankruptcy case mandatory data had not been entered in the Unified State Register of Legal Entities; in the Unified Federal Register of information on the Activities of Legal Entities.

In the event of a petition, the court is entitled to attach or adopt other interim measures regarding the property of the person held subsidiarily liable, and also the property owned by other persons regarding which the respondent is the controlling person.

The following persons may file a petition for holding the Controlling Person subsidiarily liable:

- the receiver (on his/her initiative, or further to a decision of the creditors' meeting or the creditors' committee);

- the scheduled creditor;

- the representative of the debtor's employees;

- the employee or former employee of the debtor;

[36] A material complication for the performance of bankruptcy procedures is understood to mean, *inter alia*, the impossibility of identifying the core assets of the debtor and the suspicious nature of concluded transactions; the impossibility of the entire scope of the persons controlling the debtor, and its main counterparties.

- the Competent Authority.

The right to file a petition on assigning subsidiary liability for the failure to fully settle the claims of creditors, after the completion of the receivership proceedings or termination of the proceedings in a bankruptcy case in connection with the lack of the funds required to conduct insolvency proceedings, is held by:

- creditors regarding current obligations;

- creditors, whose claims were included in the creditor claims' register;

- creditors, whose claims were recognised as substantiated, but that should be settled after the claims included in the creditor claims' register;

- the petitioner in a bankruptcy case in the event of the termination of the proceedings in the bankruptcy case, or the Competent Authority if the petition on recognising the debtor as bankrupt is returned.

If the amount of subsidiary liability cannot be determined at the time of the consideration of the petition on the assignment of subsidiary liability, after establishing all the required facts, the court issues a ruling containing in the operative part:

- conclusions that it has been proved that there are grounds for assigning subsidiary liability against the Controlling Persons and

- conclusions that consideration of the petition will be set aside until the completion of settlements with creditors.

The deadline for filing a petition on holding the Controlling Person subsidiarily liable – three years from the day when the applicant learned or should have learned about the grounds for the assignment of subsidiary liability, but no later than three years from the day when the debtor was recognised as bankrupt (the proceedings in the bankruptcy case were terminated or petitions on recognising the debtor as bankrupt were returned to the Competent Authority), and no later than ten years from the date when the actions and/or inaction took place, which served as the grounds for the assignment of liability.

The petition on the assignment of liability may also be filed no later than three years from the date of the completion of the receivership proceedings if the person entitled to file such a petition learned or should have learned about the grounds for the assignment of subsidiary liability after the completion of the receivership proceedings, but no later than ten years from the day when the contested actions and/or inaction took place.

The money recovered from the Controlling Persons is included in the bankruptcy estate. The claim on holding the Controlling Person subsidiarily liable may also be realized pursuant to the procedure for assigning a right of claim. Furthermore, the received money is included in the bankruptcy estate.

The amount of the subsidiary liability of the Controlling Person is determined as the amount of the outstanding claims, namely:

- the claims of creditors included in the register;
- the claims filed after the closing of the register;
- creditor claims in respect of current payments.

The assignment of subsidiary liability against a person does not preclude the filing of a claim for the collection of losses in the part not covered by the amount of the subsidiary liability.

14. Bankruptcy of individuals

The regulations on the bankruptcy of individuals who do not engage in entrepreneurial activities are relatively new for Russian law. They entered into force on 1 October 2015 and contain a number of special provisions.

An individual who does not engage in business and whose debts exceed RUB 500,000 may be recognised as bankrupt.

In this instance the petition for the bankruptcy of the individual may be filed with the court by:

- the creditor;
- the Competent Authority;
- the actual debtor.

However, it is not necessary to publish a notice in order to file a debtor's bankruptcy petition.

The aforementioned requirement on the minimum amount of the debt does not apply to a personal bankruptcy petition filed by the actual debtor. In special instances a deb-

tor may file a personal bankruptcy petition in court even if the amount of the debt is smaller.

The competent courts for bankruptcy cases of individuals are the commercial courts of the Russian Federation.

The court verifies the validity of a bankruptcy petition upon receipt. If the petition is substantiated, the court appoints a financial administrator as proposed by the creditor, the Competent Authority or the actual debtor, who has the right to

- contest the debtor's transactions on the grounds indicated in the Bankruptcy Law;
- file objections regarding creditor claims;
- hold a meeting of creditors in order to resolve issues on the preliminary approval of the transactions and decisions of the debtor;
- request from the debtor information on his/her activities relating to the performance of the debt restructuring plan;
- file a petition with a court on the adoption of measures aimed at safeguarding the debtor's assets, and also on the revocation of such measures;
- request information regarding the children of the bankrupt through the court[37].

The financial administrator is required to

- adopt measures aimed at identifying and safeguarding the debtor's assets;
- analyse the financial position of the individual, and identify indicia of a premeditated and fictitious bankruptcy;
- maintain the creditor claims register, notify the creditors of the holding of creditors' meetings, and send reports to the creditors;
- convene and hold the creditors' meeting (quarterly meetings are not required in this case);
- notify the creditors on the introduction of debt restructuring or the sale of the debtor's assets, and control the implementation of the debt restructuring plan and performance of current payments by the debtor.

[37] Ruling of the Supreme Court of the Russian Federation dated 15 November 2021 in case No. A56-6326/2018.

14.1 DEBT RESTRUCTURING

The Bankruptcy Law stipulates that an individual's debts may be restructured for up to three years. The court only approves the debt restructuring plan with the consent of the creditors.

The debt restructuring plan of an individual should contain provisions on the procedure and deadlines for the proportionate settlement of the claims of all the scheduled creditors and the Competent Authority.

In respect of creditors under obligations secured by the pledge of the individual's assets, the debt restructuring plan of the individual should stipulate the priority satisfaction of their claims from the sale proceeds of the pledged item.

Debt restructuring may not be approved by the court if the debtor was previously convicted for economic crimes, was subject to administrative liability for petty theft, damage to another person's property or other crimes in the area of bankruptcy. In addition, the debt may not be restructured if the bankruptcy petition was filed in respect of an individual, who has already been recognised as insolvent during the past five years.

During the debt restructuring period a moratorium is imposed on the payment of debts in full and also on the accrual of penalties. The debtor will not be able to acquire participation interests in companies or perform unilateral transactions. At the same time, transactions such as taking out loans, pledging assets, the sale and purchase of assets with a value of over RUB 50,000, vehicles and securities, will only be possible with the written consent of the financial administrator.

14.2 RECOGNITION AS BANKRUPT AND THE SALE OF PROPERTY

The court adopts a decision on the recognition of the individual as bankrupt in cases where:

- the individual, scheduled creditors or Competent Authority did not submit the debt restructuring plan of the individual;
- the debt restructuring plan of the individual was not approved by the creditors' meeting;
- the court revoked the debt restructuring plan of the individual. Such revocation is possible in particular upon application of the scheduled creditor or Competent Authority if the individual defaults on his/her obligations in accordance with the terms and conditions of the restructuring plan.

By declaring an individual bankrupt, the court resolves initiation of the sale of the individual's assets. The sale of the individual's assets is introduced for a term of no more than six months, which may be extended by the court.

The assets are sold at an auction. Some of the assets required for the life of the debtor and his family may not be sold. The debtor's only place of residence and land underneath, household artefacts and articles, items of individual use, cheap assets required for the professional occupation of the individual, food products and money in the amount of the subsistence minimum, etc., may not be confiscated for the payment of debts.

The list of the individual's assets which are excluded from the bankruptcy estate is approved by court.

As of the declaration of the individual as bankrupt:

- all rights in respect of the assets constituting the bankruptcy estate, including their disposal, are only exercised by the financial administrator;
- any transactions concluded without the participation of the financial administrator in respect of the assets making up the bankruptcy estate are deemed null and void;
- only the the financial administrator may register transfer/encumbrance of the debtor's rights to assets (*inter alia*, to real estate and securities);
- third party obligations should be enforced solely by the financial administrator;
- the debtor may not personally open bank accounts and deposit accounts at credit institutions and take out money.

In addition, the court is entitled to issue a ruling regarding temporary restrictions on the right on the individual to leave the Russian Federation.

The order of priority of the settlement of creditor claims is analogous to the order of priority established by the Bankruptcy Law in respect of bankrupted organizations and sole proprietors (see section 9.3).

Generally once the assets have been distributed among the creditors, the individual is released from any remaining liabilities.

Nevertheless, the release of the individual from remaining liabilities does not apply to a number of claims: creditor claims on current payments, on the reimbursement of harm caused to lives or health, on wage and severance payments, on the reimbursement of moral damage, on the recovery of alimony, other claims inextricably linked to the personality of the creditor, and also intentional and fictitious bankruptcy, the concealment by the debtor of information from the financial administrator, fraud, malicious evasion of the settlement of debts, etc.

14.3 OUT-OF-COURT BANKRUPTCY OF AN INDIVIDUAL

An individual is entitled to apply for bankruptcy in an out-of-court procedure if the following conditions are met[38]:

1) an individual's total amount of monetary obligations and obligations to make statutory payments, including obligations for which the due date has not arrived, as well as obligations for the payment of alimony and under a guarantee agreement, regardless of the late payment by the principal debtor, is not less than RUB 50,000 and not more than RUB 500,000.

Penalties (fines, penalty interest), interest for the late payment, losses in the form of loss of profit in connection with non-fulfilment or improper fulfilment of an obligation, as well as other pecuniary and financial penalties, including for a failure to fulfil an obligation to make statutory payments, are not taken into account;

2) as of the date of the filing of the petition, the enforcement proceedings against the debtor have been terminated in connection with the return of the enforcement document to the claimant in view of the debtor's lack of assets upon which enforcement may be levied, and no other enforcement proceedings have been initiated.

A petition to declare an individual bankrupt in an out-of-court procedure shall be filed by the individual personally or through a representative with the Multifunctional Public Services Center at the place of residence or the place of temporary residence of the applicant. The applicant must submit a list of all known creditors. The petition must be considered free of charge.

Based on the information from the data bank in the enforcement proceedings, the Multifunctional Public Services Center shall, within three business days, include the information on the initiation of out-of-court bankruptcy proceedings against an individual in the Unified Federal Register of Bankruptcy Information.

Upon the expiry of six months following the date of inclusion of such information in the aforementioned register, the individual's out-of-court bankruptcy procedure is completed.

14.4 SPECIAL CONSEQUENCES OF RECOGNISING AN INDIVIDUAL AS BANKRUPT

The status of bankruptcy is retained by the individual for five years, in other words during this term he/she has no right to assume obligations under credit and loan agreements without indicating his/her bankruptcy. In addition, an individual's bankruptcy case may not be reopened on the basis of the individual's own petition within five years of the date of completion of the procedures on the sale of property or termination of the bankruptcy proceedings during the course of these procedures.

[38] Federal Law No. 289-FZ dated 31 July 2020.

In addition, within three years of the date of completion in relation to the citizen of the procedures on the sale of property or termination of the bankruptcy proceedings during the course of these procedures, he/she may not hold positions on the management bodies of a legal entity or participate in some way in the management of a legal entity.

15. Cross-border bankruptcy

A cross-border bankruptcy is understood to mean a bankruptcy complicated by a foreign component, for example in cases where a foreign legal entity is a debtor or the property of the Russian debtor is located abroad.

15.1 LEGAL REGULATION OF CROSS-BORDER BANKRUPTCY

The Bankruptcy Law contains only separate norms concerning bankruptcy proceedings complicated by a foreign element, namely: the term "cross-border insolvency" has been formalised, the priority of Russia's international treaties before national legal regulation has been determined; it was established that the norms of the law also apply to foreign persons and the grounds for recognising the decisions of foreign courts on bankruptcy cases were stipulated [39].

15.2 SPECIFICS FOR THE PARTICIPATION OF FOREIGN COMPANIES DURING A BANKRUPTCY

Proceedings on an insolvency case in a Russian court may only be commenced in respect of legal entities located in Russia. The Russian court may not instigate bankruptcy proceedings in respect of foreign companies located outside the Russian Federation[40].

Foreign companies participating in bankruptcy cases being considered by Russian courts as creditors are subject to the application of the norms of Russian legislation on the resolution of disputes with the participation of foreign persons. Foreign creditors possess all the rights provided to creditors in accordance with the Bankruptcy Law. The specifics of the participation of foreign creditors relates to the special form of the attestation of the official foreign documents to be submitted to the court (legalisation or apostille), with their translation intoRussian, and also the special procedure for notifying foreign

[39] In 2011 the Ministry of Economic Development of the Russian Federation drafted a separate federal law regulation governing material aspects of cross-border bankruptcy, taking into account individual provisions of the UNCITRAL Model Law on Cross-Border Insolvency – 1997, and also Council Regulation No. 1346/2000 of the European Union on insolvency proceedings of 29 May 2000. The draft Federal Law "On Cross-Border Insolvency (Bankruptcy)" reinforced the statutory definition of cross-border insolvency, stipulated the principle of concurrent proceedings, and also contained provisions on cooperation between the bankruptcy administrators, applicable law and the competence of commercial courts. However, work on the project was put on ice and to date no separate law has been adopted on cross-border bankruptcy in Russia.

[40] A Russian court may also not apply foreign law to initiate and conduct bankruptcy proceedings in the Russian Federation. Thus, in one case, the court refused to apply the law of Latvia, the rules of which established a prohibition against a pledge creditor applying for the bankruptcy of a debtor (Judgment of the Commercial Court of the West Siberian District dated 21 June 2021 in case No. A67-7786/2020).

persons that do not have a management body, branch, representative office or representative in Russia authorised to carry out business on their behalf. The procedure for the attestation of documents and notification of foreign persons is determined in accordance with international treaties, with the participation of the Russian Federation[41].

15.3 RECOGNITION AND ENFORCEMENT OF THE DECISIONS OF THE FOREIGN COURTS IN RESPECT OF FOREIGN DEBTOR

Court orders issued by foreign courts on recognising foreign debtors as insolvent may be recognised by Russian courts and enforced in the Russian Federation.

The recognition and enforcement of such decisions is performed on the basis of international treaties[42], and in their absence – on the basis of reciprocity pursuant to paragraph 2 of Clause 6 of Article 1 of the Bankruptcy Law.

The substance of the principle of reciprocity is the ability to recognise and enforce the decision of the court of a foreign state on a bankruptcy case in the Russian Federation provided that analogous decisions of the Russian Federation are recognised in this foreign state[43].

To apply the principle of reciprocity, an applicant is required to submit evidence to the Russian court that the court orders of Russian courts in bankruptcy cases are recognised on the territory of the foreign state[44]. The burden of proof is vested with the applicant[45].

[41] For example, the Hague Convention Abolishing the Requirement for Legalisation for Foreign Public Documents, 5 October 1961.

[42] For example, the Treaty between the Russian Federation and the Republic of Belarus dated 17 January 2001 "On the Procedure for the Reciprocal Enforcement of the Court Orders of the Commercial Courts of the Russian Federation and the Business Courts of the Republic of Belarus"; Treaty on the Procedure for Resolving Disputes Related to the Performance of Business Activities, Kiev, 20 March 1992; Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters, Minsk, 22 January 1993.

[43] One can cite as an example of the reciprocal recognition of court decisions the Judgment of the Commercial Court of the North-West District dated 10 December 2018 in case No. A56-71378/2015, which established that Russian courts could recognise the decisions of English state courts on bankruptcy cases.

[44] One can cite as an example of the refusal to reciprocally recognise court decisions the Judgment of the Commercial Court of the Ural District dated 9 October 2019 in case No. A60-29115/2019, in which the court stated firstly that no international agreement on the recognition of bankruptcy judgments had been concluded between the Russian Federation and the Czech Republic; and secondly that no evidence was provided that the Czech courts recognised the judicial acts of Russian courts in bankruptcy cases.

[45] For example, in one of the cases the court refused to apply the principle of reciprocity, stating that the applicant had failed to submit evidence of compliance with the fundamentals of reciprocity on recognition of court orders on insolvency in Germany, in violation of Russian procedural norms. In addition, the document cited by the applicant as a foreign creditor claims' register had been compiled in German, and had been submitted as a copy, which had not been signed or had no other authentication (Judgment of the Ninth Commercial Court of Appeals dated 4 October 2018 on case No. A40-44174/2018).

A similar position of a Russian court to refuse to apply the principle of reciprocity in respect of the judgments of German courts owing to the failure of the applicant to prove that the principle had been applied in Germany in respect of the decisions of Russian courts: Judgment of the Thirteenth Commercial Court of Appeals dated 4 September 2017 on case No. A56-43366/2016.

In the absence of any other regulation in an international treaty, a Russian commercial court is only entitled to refuse to recognise and enforce the decision of a foreign court if:

- the decision under the law of the state where it was adopted has not entered into legal force;

- the party against which the decision was issued had not been promptly and duly notified of the time and venue for the consideration of the case or had not been able submit its explanations to the court for some other reason;

- consideration of the case in accordance with an international treaty signed by the Russian Federation or federal law is assigned to the exclusive competence of the court in the Russian Federation;

- a decision of a court in the Russian Federation adopted regarding a dispute between the same parties, on the same subject matter and on the same grounds has already entered into legal force;

- a case is being considered by a court in the Russian Federation regarding a dispute between the same parties, on the same subject matter and on the same grounds, the proceedings on which were commenced before the commencement of the proceedings on the case in the foreign court, or the court in the Russian Federation was the first to agree to consider the application regarding the dispute between the same parties, on the same subject matter and on the same grounds;

- the statute of limitation for enforcing the decision of the foreign court has expired and this term cannot be restored by the commercial court;

- enforcement of the decision of the foreign court would contravene the public order of the Russian Federation.

This brochure does not constitute legal advice; statutory regulation has been set out as of May 2022.

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