5.2. Main changes in legislation on bankruptcy of legal entities in 2022–2024[1]

Over the past three years the businesses bankruptcy regulation has not experienced any systemic changes. Russia's bankruptcy legislation continues to retain its basically pro-creditor approach, which is not focused on saving business. However, interests of creditors are not sufficiently protected, as the level of satisfaction of creditors' claims resulting from a company's bankruptcy is 5–6% of the amount included in the register of claims.

Planned systemic measures aimed at transforming the legislation in the interests of debtor and expanding opportunities for retaining businesses (introduction of restructuring) were mentioned as early as 2021.[2] Although these initiatives have not been implemented yet, in 2022–2024 certain steps were taken towards balancing positions of the creditor on the one hand and the debtor and its supervisor on the other. These include a significant increase in the size of claims against the debtor to initiate bankruptcy proceedings and allowing the supervisor to participate in the action before being held subsidiary liable.

Meanwhile, along with strengthening of the supervisor's position, the level of his liability to creditors continues to increase in terms of fixing the latter's right to change the method of disposing the right of claim for bringing the supervisor to subsidiary liability. Innovations stimulate owners of a financial organization, trying to protect its property, to repay the organization's debts to creditors faster using their own funds.

A large number of changes in the period under review are aimed at improving the bankruptcy procedure as a whole. Thus, in order to relieve the burden on arbitration courts, the judge was granted the right to consider certain isolated disputes in a simplified procedure (on inclusion of creditors' claims in the register, on remuneration of arbitration managers, etc.). Without prior application to the court, manager is authorized to request necessary information on an expanded range of parties.

Raising the size of claims against the debtor to initiate bankruptcy proceedings.[3] From May 29, 2024, the size of claims necessary for the arbitral tribunal to initiate bankruptcy proceedings has been increased:

— from Rb 300.000 to Rb 2 mn against the debtor, legal entity (p. 2 Article 6 hereinafter Bankruptcy Act);

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1. Author: *Polezhaeva N. A.*, Candidate of Legal Sciences, Senior Researcher, Laboratory for institutions and financial markets analytics, IAES RANEPA.
2. *E. A. Apevalova, N. A. Polezhaeva.* Businesses bankruptcy: actual trends // Russian economy in 2021. Trends and prospects. (Ed. 43) / [Under academic supervision of A. L. Kudrin, Doctor of Economic Sciences, V. A.Mau, Doctor of Economic Sciences, A. D. Radygin, Doctor of Economic Sciences, S. G. Synelnikov-Murylev, Doctor of Economic Sciences]; Gaidar Institute — Moscow: Gaidar Institute Publishing House, 2022. — p. 443–460.
3. FZ of 29.05.2024 No. 107-FZ "On Amending the Federal Law "On Insolvency (Bankruptcy)" and Article 223 of the Arbitration Procedural Code of the Russian Federation" // RG, No. 120, 04.06.2024

— from Rb 500.000 to Rb 3 mn against the debtor, the agricultural enterprise (p. 5 Article 177);

— from Rb 1 mn to Rb 3 mn against the debtor, strategic enterprise (p. 4 Article 190);

— from Rb 1 mn to Rb 3 mn against the debtor, natural monopolist (p. 3 Article 197).

At first, the size of claims for initiating bankruptcy proceedings was set depending on the scale of the debtor's economic activity and the importance of this activity for the state. Thus, to initiate bankruptcy proceedings against an individual, the amount of his debt had to be at least Rb 10,000, for an organization Rb 100,000, and for special entities (e. g., a strategic enterprise) Rb 500,000. However, over time, this reasoning became irrelevant, and the amount of debt required for bankruptcy of an individual (Rb 500,000), whose economic activity is usually less extensive, became higher than the amount of debt required for bankruptcy of organization (Rb 300,000). Moreover, in case of large enterprises, bankruptcy due to a debt of Rb 300,000 seemed to be a disproportionate measure.[1]

In establishing new claim amounts, previous figures used as a basis were indexed to the accumulated inflation rate and the consumer price index and rounded upwards, since the minimum amount of debt required to initiate bankruptcy proceedings should remain relevant for at least a few more years.[2]

However, the RF Government believes with good reason that a significant rise in the amount of debt required to initiate bankruptcy proceedings against a legal entity contradicts the interests of its employees and other creditors, since they are deprived of the opportunity to initiate bankruptcy proceedings if the debtor owes them a substantial amount of debt. It was correct to note that an increase in the period of accumulation of arrears can exacerbate the default crisis.[3]

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1. Minimum size of creditors' claims required to initiate bankruptcy proceedings against a legal entity, established by the 1992 and 1998 Bankruptcy Acts, was equal to 500 minimum monthly wage (MMW), which by 2002 equaled Rb 50,000. The small size of this amount together with other flaws in legislation allowed bankruptcy to be used as a way to redistribute property. The Bankruptcy Act of 2002 defined the minimum amount of debt in a fixed amount of Rb 100,000. While legislator mentioned violation of debtor's rights by initiating bankruptcy proceedings for an insignificant amount of debt as one of the most urgent problems, but did not explain why the new amount was also set small. The next increase in the minimum size of claims to Rb 300,000 happened only in 2015. Although the legislator explained this increase by a need to protect businesses from unjustified claims, experts consider this amount to be extremely low. Bankruptcy continued to be frequently used not for financial recovery of the company, but for solving problems with creditors, who received only a small percentage of their claims. Ref.: From rehabilitation to "funerals": how bankruptcy changed in Russia. URL: https://abkazakov.ru/comments/ot-reabilitatsii-k-pohoronam-kak-menyalos-bankrotstvo-v-rossii/
2. Explanatory Note to Draft Federal Law No. 516699-8 "On Amending the Federal Law 'On Insolvency (Bankruptcy)' and the Arbitration Procedural Code of the Russian Federation." URL: https://sozd.duma.gov.ru/
3. Official review of the RF Government "On Draft Federal Law No. 516699-8 'On Amending the Federal Law 'On Insolvency (Bankruptcy)' and the Arbitration Procedural Code of the Russian Federation" // SPS ConsultantPlus

Meanwhile, economic inexpediency of the bankruptcy procedure in cases when the cost of this procedure exceeded the previously established Rb 300,000 supports the increase of the threshold value under consideration.

Moreover, many creditors used bankruptcy as a tool to put pressure on debtors with no real purpose of causing bankruptcy. As a result, arbitration courts were overcrowded with insolvency cases that ended up with termination of insolvency proceedings.[1] Furthermore, affiliated creditors acting in the interests of the debtor, initiated bankruptcy proceedings pursuant to an enforceable court act in summary or writ proceedings to nominate an arbitration manager and control the case to the detriment of independent creditors.

Thus, despite possible violation of rights of such category of creditors, like, for example, debtor's employees, the increase in the size of claims required for the arbitration court to initiate bankruptcy proceedings against a debtor, a legal entity, is generally a positive change aimed at improving insolvency proceedings, relieving the burden on the courts and protecting organizations from abuse by unfair creditors.

It should also be noted that the amount of the state duty for filing a petition to declare a debtor bankrupt was significantly increased for organizations: from Rb 6,000 to Rb 100,000, for an individual from Rb 300 to Rb 10,000 (when a debtor files a petition to declare his/her own bankruptcy, the duty is not charged).[2] This increase is aimed to improve efficiency of judicial system and replenish municipal budgets. The amount of the previously existing fee was practically static for more than 10 years, resulting in loss of its economic and regulatory sense. The increase does not affect large bankruptcies, as in such cases the total cost to the creditor often far exceeds the fee. However, it can be a significant burden for a small business.[3]

The supervisor has the opportunity to obtain relevant status prior to filing an application for subsidiary liability and to participate in isolated disputes,[4] r*elated to subsidiary liability of the debtor*.[5] Norms that did not allow such participation were declared unconstitutional.[6] Previously, a supervisor could be recognized as controlling only after filing an application to bring it to subsidiary liability.

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1. What has changed in Bankruptcy Act: 2024 innovations. URL: https://companies.rbc.ru/news/HwFCYamnjS/chto-izmenilos-v-zakone-o-bankrotstve-novovvedeniya-2024-goda/
2. FZ of 08.08.2024 No. 259-FZ "On Amending Parts I and II of the RF Tax Code and certain legislative acts of the Russian Federation on taxes and levies" // RG, No. 179, 14.08.2024
3. The State Duma will discuss rising court fees and exemptions. URL:https://www.rbc.ru/economics/22/07/2024/669e3b519a7947f3a12a54b2#:~:text=Draft%20increases%20size%20levies%20,%20charged%2C%20yclarified%20in%20document
4. Consideration of disputes, applications, petitions, complaints, etc. by the arbitration court involving certain participants of the bankruptcy case and an autonomous fact in proof related to the main case.
5. FZ of 21.11.2022 No. 452-FZ "On Amending the Federal Law "On Insolvency (bankruptcy)"// RG, No. 266, 24.11.2022
6. Decree of the RF Constitutional Court of 16.11.2021 No. 49-P "Regarding Verification of Constitutionality of Article 42 of the RF Arbitration Procedural Code and Article 34 of the Federal Law 'On Insolvency (Bankruptcy)' in connection with the complaint of N. E. Akimov"// URL:/ http://pravo.gov.ru

Expanding the rights of a supervisor is aimed at balancing creditors and controlling parties' positions. Involvement in a bankruptcy case is not a ground for recognizing the guilt of a supervisor in the debtor's insolvency and for bringing him/her to subsidiary liability, but gives him/her the right to participate in isolated disputes that may affect bringing the supervisor to subsidiary liability, as well as the size of liability (p. 4 Article 34 Bankruptcy Act).

Actually, implementation of the considered changes may be associated with some adverse aspects, for example:

— a supervisor that became a participant in a bankruptcy case prior to filing an application for bringing him/her to subsidiary liability loses the opportunity to defense by referring to lack of "controlling" status in case of bringing to subsidiary liability;

— there are some difficulties in proving "supervisor's controlling status" in a petition, including determining whether and when a debtor is actually bankrupt, which can be used by unfair controlling supervisors against independent creditors;

— dishonest parties may file an obviously doomed to be rejected petition to join the bankruptcy case and later rely on the lack of this status when trying to bring them to subsidiary liability.[1]

Besides, specifics of bringing to subsidiary liability have been defined with regard to an insurance company, credit organization or non-state pension fund controlling the debtor in the context of expanding the rights of this controlling party; the decision on bankruptcy prevention measures involving the Bank of Russia or the Deposit Insurance Agency has been taken with regard to these organizations (maximum size of subsidiary liability; priority of satisfaction of claims of a bankrupt creditor being a credit organization, for which the above decision was taken, etc.[2]).

Changes in the method for disposing a claim for bringing a party controlling a debtor to subsidiary liability have become more accessible to a creditor.[3] A creditor for whose benefit a party controlling the debtor is brought to subsidiary liability may choose how to dispose the right to claim liability:

— collection on this claim;

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1. *A. S. Antonov, N. S. Chernyshenko.* Law allowed parties controlling a debtor to participate in a bankruptcy case // Vestnik Arbitrazhnoy Praktiki. 2022. No. 6. p. 49–59.
2. For example, in respect of the debtor's obligations arising prior to adoption of the above decision, claims on bringing the controlling organization to subsidiary liability may be brought against its controlling party at that time (p. 15 Article 184.3-3, p.1 3.1 Article 186.1-5, p. 13 Article 189.23). some lawyers refer to the "instructional" nature of this norm, its excessive descriptive manner, since the right to appeal to the court follows from general regularities of the mentioned right. Nevertheless amendments provide more clarity in the procedure of bringing to subsidiary liability, thus better informing the interested parties of their rights. Ref: *T. V. Sakhnova*. Bankruptcy as a metaprocedural substance // Herald of civil procedure. 2024. No. 1. p. 48–64.
3. FZ of 22.07.2024 No. 208-FZ "On Amending Articles 61.17 and 189.96 of the Federal Law 'On Insolvency (Bankruptcy)' and Articles 19 and 39 of the Federal Law 'On Insuring Deposits in Banks of the Russian Federation' // RG, No. 167, 31.07.2024.

— sale of this claim at auction (undecided creditor is deemed to have chosen this method);

— assignment to a creditor a part of that claim in the amount of the creditor's claim.

Previously, the Bankruptcy Act did not permit a creditor to further change the way of disposing of the above-mentioned right of claim, but did not expressly prohibit such a change either. However, courts indicated that creditors did not have this option because it was not directly provided for in the Act. Therefore, interests of creditors were affected. Changing the method for disposing a claim for subsidiary liability to assignment was allowed from 2021 by Supreme Court provided that creditors first chose debt collection or sale of the claim at auction and reimburse losses to those who incurred costs for these procedures.[1]

Since August 2, 2024, it is possible to change the method of disposing the right of claim for bringing the supervisor controlling the debtor to subsidiary liability to an assignment if this right could not be realized at auction (p. 6.1, 6.2 Article 61.17). Amendments also establish specifics of application of this rule in bankruptcy of financial and credit organizations (p. 7 Article 61.17, p. 37 Article 189.96). It should be noted that in the Bankruptcy Act, in contrast to the definition of the Supreme Court of the Russian Federation, there is no indication on the need to reimburse losses to those who spent on earlier procedures.

Thus, legal provision of creditor's right to change the way of disposing the right of claim for bringing the supervisor controlling the debtor to subsidiary liability and regulation of the relevant procedure fits the trend of recent years, i. e. increase the level of responsibility of parties controlling the debtor, which is one of the few valid and, according to practice, demanded tools for protection of creditors' rights.

Amendment of the procedure for repayment of creditors' claims of a credit organization at the expense of its founders (participants) or a third party in bankruptcy proceedings (Art. 189.93) and, similarly to the regulation for credit organizations, establishment of specifics of repayment of creditors' claims of an insurance organization and NPF by their founders, shareholders or third parties (Article 183.27).[2] Innovations encourage owners of a financial organization or a third party seeking to retain or acquire the organization's property, to repay its debts to creditors faster, thus accelerating satisfaction of their claims.[3]

1. Ref.: Review of judicial practice of the Supreme Court of the Russian Federation No. 2 (2021) (approved by the Presidium of the Supreme Court of the Russian Federation on 30.06.2021) // Bulletin of the Supreme Court of the Russian Federation, No. 10, October, 2021.
2. FZ of 08.08.2024 No. 243-FZ "On Amending Article 23.4 of the Federal Law 'On Banks and Banking Activities' and the Federal Law on Insolvency (Bankruptcy)"// RG, No. 178, 13.08.2024.
3. Report of the RF State Duma Committee on Property, Land and Property Relations "On Draft Federal Law No. 214674-8 'On Amending Article 23.4 of the Federal Law 'On Banks and Banking Activity" and the Federal Law "On Insolvency (Bankruptcy)" (first reading) // SPS ConsultantPlus

Thus, if liquid assets of a financial organization are insufficient to meet the claims of its creditors, a founder, a shareholder or a third party is entitled to provide funds sufficient to meet the organization's obligations to creditors, which transfer term may not exceed one year.

Effective from the date of the arbitration court's ruling on termination of bankruptcy proceedings, all rights and obligations of the financial organization are transferred to the provider of funds. If the provider of funds is a third party, the founders and shareholders of the financial organization have a pre-emptive right to buy out the property of the organization from the third party.

To prevent this instrument from being used to delay bankruptcy proceedings, certain measures are applied to parties who have volunteered to provide funds to meet obligations of a financial institution, but violated terms of timing or amount of transfer:

— funds transferred by such party shall be included in the bankruptcy estate of the financial organization;

— the party's claims in the amount of transferred funds shall be satisfied after satisfying claims of all other creditors;

— the party volunteering to provide funds is obliged to reimburse the financial organization and creditors for losses caused by the suspension of bankruptcy proceedings and pay a fine of Rb 10 mn to the organization;

— repeated declaration of intent to grant funds is accepted only by judicial decision.

Judges have been granted the right to consider certain isolated disputes on their own without holding a court session and summoning persons participating in a bankruptcy case.[1] The arbitral judge is entitled on its own initiative and in the absence of a motivated motion to schedule a court hearing summoning persons participating in the bankruptcy case to consider some isolated disputes on their own without holding a court hearing and summoning persons participating in the bankruptcy case.

The following isolated disputes are considered under the simplified procedure (Article 60.2):

— on splitting of court expenses and costs of remuneration of arbitration managers;

— on extension of external management and bankruptcy proceedings;

— on completion of bankruptcy proceedings;

— on claiming debtor's documents and valuables;

— on releasing arbitration manager from his duties;

— on engagement of managers to ensure fulfillment of duties at the expense of the bankruptcy estate in excess of the established limits;

1. FZ of 29.05.2024 No. 107-FZ "On Amending Federal Law 'On Insolvency (Bankruptcy)' and Article 223 of the RF Arbitration Procedural Code" // RG, No. 120, 04.06.2024.

— on urging owners of the debtors' property, i.e. unitary enterprises, to accept debtor's unsold property;

— on inclusion of creditors' claims in the register.[1]

A simplified procedure was introduced to relieve the courts of their workload, so that they could focus on cases that actually involve a legal conflict. Thus, in 2022, 1.954.876 isolated disputes were considered in bankruptcy cases. In H1 2023, there were 1.211.541 such disputes. The overwhelming majority of disputes relate to claims for inclusion in the register and extension of bankruptcy proceedings. Their number is increasing annually, while the percentage of appeals remains insignificant (1–5%), i.e. the majority of cases are uncontroversial. Nevertheless, the arbitral tribunal was obliged to hold court hearings on all isolated disputes in compliance with all formalities: receiving the application and issuing relevant ruling, scheduling a trial and notifying parties of time and place of the proceedings, etc.[2]

Expanding arbitration manager's rights to receive information and remuneration.[3] Starting from May 29, 2024, arbitration manager is entitled to request required information (including information being official, commercial and banking secrets) not only about the debtor, his controlling supervisors and members of its management bodies, but also about other parties having interest in the debtor. In all cases, preliminary application to the arbitral tribunal is no longer required (p. 1 Article 20.3).

Expanding the number of parties whose information may be requested by the arbitration manager and canceling the requirement to apply to the court in advance to obtain the required information are aimed at accelerating collection of information and, thus, reducing time for bankruptcy case consideration.

Meanwhile, transparent list of parties whose information may be requested by arbitration manager and relaxed control by the judge may result in abuses by arbitration managers, violations of their rights and new court disputes related to illegal obtaining of information. Thus, in case of abuse on the part of an arbitration manager, provision of information about its client by credit organization may be regarded as a violation of banking secrecy.[4] If practice shows that such abuses will be committed, preliminary application to the court to seek information should be returned.

It should be noted that now arbitration manager has the right to obtain information about the debtor and his spouse (but not about other relatives) in a personal bankruptcy case without prior application to the court (p. 7 Article 213.9).

With regard to remuneration to arbitration manager, it is stated that manager shall on his own calculate and pay the amount of interest on his remuneration, if this

1. Review: "The Act on significant changes in bankruptcy is effective as of May 29, 2024"// SPS ConsultantPlus.
2. Explanatory note to Draft Law No. 516699-8 "On Amending the Federal Law 'On Insolvency (Bankruptcy)' and RF Arbitration Procedural Code." // https://sozd.duma.gov.ru/
3. FZ of 29.05.2024 No. 107-FZ "On Amending the Federal Law 'On Insolvency (Bankruptcy)' and Article 223 of RF Arbitration Procedural Code" // RG, No. 120, 04.06.2024.
4. Major changes in the Bankruptcy Act // https://www.urso.ru/01.01.09.01/2020.

amount is less than Rb 100,000. If such amount ranges from Rb 100,000 to Rb 1 mn, it has to be approved by the arbitration judge in a simplified manner, i. e. solely without a court hearing and without summoning parties participating in the bankruptcy case (unless there is a motivated motion to schedule a court hearing (p. 2 Article 60)). The amount exceeding Rb 1 mn is subject to approval at a meeting of the arbitration court (p. 9 Article 20.6).[1] These innovations are aimed at reducing the burden on courts hearing bankruptcy cases, as previously any amount of interest was determined by the court in a judicial act issued at the conclusion of the relevant procedure (except for bankruptcy proceedings, where the amount was determined by a separate judicial act).

Other changes include (a) a ban on challenging certain transactions[2] in order to protect owners of mortgage bonds from risks associated with bankruptcy of credit institutions, to increase attractiveness of investments in mortgage-backed bonds[3] and (b) changes aimed at reducing terms of settlements with creditors of a credit organization by granting an indemnity, allowing to accelerate bankruptcy proceedings[4].

5.3. The state of science and innovation[5]

In 2024, active lawmaking activities were carried out in the science and technology (S&T) studies, a set of long-term documents was adopted, including the Strategy for Scientific and Technological Development of the Russian Federation, and a list of priority areas and key knowledge-intensive technologies was approved. Changes were introduced in the system of S&T development governance, including the assignment of new functions to the Russian Academy of Sciences

1. In exceptional cases, the amount of interest on remuneration of an arbitration manager may be reduced by the court at the request of a party to the case, if it is clearly disproportionate to manager's contribution to achieve results of bankruptcy proceedings (p. 18 Article 20.6). This norm enshrines in the Bankruptcy Act the already existing legal opinion of the RF Supreme Court, whereby a decision on reduction of such amount shall be made by the arbitration court, if the court finds that the manager demonstrated negligence performing his duties or if the work was only partially performed. Thus, granting the arbitration manager the right to calculate the amount of interest on his own remuneration is subject to control. Refer, for example: Review of judicial practice on participation of an arbitration manager in a bankruptcy case (approved by Presidium of the RF Supreme Court on 11.10.2023) // Bulletin of the RF Supreme Court, No. 12, December, 2023.
2. Federal Law No. 409-FZ of 20.10.2022 "On Amendments to the Federal Law 'On Mortgage-Backed Securities' and Certain Legislative Acts of the Russian Federation" // RG, No. 240, 24.10.2022.
3. Explanatory Note to Draft Federal Law No. 1262116-7 "On Amending the Federal Law 'On Mortgage-Backed Securities' and Certain Legislative Acts of the Russian Federation" // SPS ConsultantPlus.
4. Federal Law of 22.07.2024 No. 208-FZ "On Amending Articles 61.17 and 189.96 of the Federal Law 'On Insolvency (Bankruptcy)' and Articles 19 and 39 of the Federal Law 'On Insuring Deposits in Banks of the Russian Federation'// RG, No. 167, 31.07.2024.
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