

# Fundamental changes to the Law on Bankruptcy

*For the attention of legal entities, of employees of companies' financial, tax, legal departments as well as teams working with bad debts, and of court-appointed administrators*

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**Pepeliaev Group advises that, on 6 May 2024, the Federal Law "On Amending the Federal Law 'On Insolvency (Bankruptcy)' and article 223 of the Russian Commercial Procedural Code" (the "Law")<sup>1</sup> was passed in the third reading.**

The Law is aimed at simplifying how courts consider bankruptcy cases and at improving the procedures they apply. Most of the amendments will come into effect from the date when the law is published, including in standalone disputes instigated after that date. Below, we outline the key changes.

## **The threshold has been raised for corporate bankruptcy cases to be instigated**

The minimum amount of debt needed for a corporate bankruptcy case to be instigated has been increased to RUB 2 million, while for agricultural companies, strategic enterprises and natural monopoly entities it has gone up to RUB 3 million.

## **How certain standalone disputes and issues will be considered has been simplified**

Standalone disputes in a bankruptcy case will be considered without a court hearing being held and without a summons when they concern the following:

- creditors' claims being included in the register;
- a court-appointed administrator being relieved of his/her duties;
- external management procedures and bankruptcy proceedings being extended;
- bankruptcy proceedings being completed;

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<sup>1</sup> Draft Law No. 516699-8.

- court costs in a bankruptcy case being apportioned;
- the administrator engaging persons to ensure that obligations are performed at the expense of the bankruptcy estate in excess of established limits;
- the debtor's documents and items of value being demanded;
- owners of the property of debtors that are unitary enterprises being compelled to accept the debtor's unsold property.

It is possible for the above disputes to be considered in a court hearing with the parties being summoned at the initiative of the court or further to a well-grounded application of parties to the dispute / bankruptcy case.

The court is to produce a reasoned ruling on the outcome of any standalone disputes within 5 days from the date when it receives:

- an appeal against the operative part of the ruling;
- an application for a reasoned ruling (5 days is given from the date when the operative part is posted for it to be drawn up).

### **Pepeliaev Group's comment**

With the simplified procedure being introduced for establishing claims, interested parties need to monitor when creditors' applications are received and to timely apply to the court with a well-grounded (as the law stresses) request for such applications to be considered in a court hearing with the parties being summoned. A creditor can do this at the same time as it files the claim.

If a dispute is considered in a hearing, this offers chances to supplement the position and provide new evidence, refuting more effectively the arguments of the administrator, other creditors and interested parties.

### **Appealing against the outcomes of standalone disputes, culminating in the operative part of a ruling being signed**

The Law provides for two options for appealing against the outcome of the first instance court's consideration of standalone disputes culminating in the operative part being issued:

- the first option allows an appeal to be filed against the operative part of the ruling by the established deadline, with the reasoning for the appeal then being filed against the full text of the ruling within 15 days from the date when the latter is produced;
- the second option involves appealing against the full text of the ruling immediately after it has been produced, further to a person making an

application that is filed within 5 days after the operative part of the ruling is produced, in which case the deadline for an appeal is calculated from the date when the reasoned ruling is handed down.

### **A uniform deadline for appealing against court rulings in bankruptcy cases**

The law establishes a single one-month deadline for appealing (1) first instance rulings to the court of appeal and (2) appeal rulings to the cassation court.

Certain rulings of the appeal court cannot be appealed to the cassation court. These include those relating to the designation of or a refusal to designate an expert examination under the Law on Bankruptcy, and concerning the obligation to repay expenses in a bankruptcy case.

Although the legislature has excluded from the Law article 42(7), which concerns appealing against rulings further to applications being considered for securing a bankruptcy petition, this does not mean that these rulings are not permitted to be reviewed. At the same time, article 46(5) now provides that rulings on securing creditors' claims and debtor's interests will be enforced immediately.

#### **Pepeliaev Group's comment**

The unification and extension of the deadline for appealing court rulings can be assessed as a positive change. The ten-day deadline made it extremely difficult to prepare meaningful appeals.

It is important to take into account that these amendments will apply only to court rulings handed down after the date when the amendments enter into force. Therefore, it is recommended to closely monitor the date when the Law is published.

### **Establishing creditors' claims**

Aside from the simplified procedure for establishing claims, there are a number of other new aspects with respect to this category of disputes.

Now creditors can submit claims to a commercial court only in electronic form (article 71(1) and article 100(1) of the Law on Bankruptcy).

With reference to objections to creditors' claims:

- the set of persons has been expanded who are entitled to put forward objections (any persons participating in the case and commercial proceedings in a bankruptcy case);

- a person is permitted to put forward objections if they have substantiated that future claims against the debtor are likely, but are deprived of such a right owing to objective circumstances;
- new deadlines are set for putting forward objections: they must reach the court within 30 days from the date when the deadline expires for filing claims;
- it is stipulated that claims against which well-grounded objections have been filed shall be considered in a court hearing;
- any of the objecting persons may file a motion to have the limitation period applied.

There is a new rule that it is permissible in bankruptcy proceedings to reinstate the deadline for filing claims when it has been missed for valid reasons. Previously, this possibility existed only in cases of a personal bankruptcy.

In addition, the legislature has established a mechanism for excluding a creditor's claims or changing their priority (article 71(8) of the Law on Bankruptcy) if the relevant circumstances became known after the claim was established, but not later than 3 months from the date when they were "found out".

### **Pepeliaev Group's comment**

The new developments in how claims are considered give rise to a number of difficulties and risks. A solely electronic procedure for submitting them may make it difficult for interested parties to familiarise themselves with the materials. To date, electronic access to a case file in the first instance court is not available in all courts or is complicated.

The rule that it is permissible to raise objections before the end of the claims period (and by ensuring that objections are received before the end of that period) partially deprives interested parties of the opportunity to exercise their right. This is especially so when it is a matter of claims being made closer to the end of the period for claims to be put forward.

### **Broadening the powers of court-appointed administrators**

The legislature has assigned to court-appointed administrators powers that were previously vested in the court. Administrators will now be able to request information on their own:

- in relation to a debtor and its controlling and interested parties (including information containing confidential banking and commercial information that is protected by law);

- in relation to the spouse and other relatives (in-laws) of a debtor who is an individual.

### **Pepeliaev Group's comment**

Vesting such powers in court-appointed administrators in the absence of clear criteria for "other persons with an interest in relation to the debtor" may lead to abuses and adverse consequences for the business environment.

Certain risks are created for credit institutions, as they will be obliged to provide information. However, such disclosure, if abused by the administrator, may be interpreted as a violation of banking confidentiality, including by the bank itself.

### **Changes in personal bankruptcy cases**

Among the significant new developments are:

- a debtor's spouse obtaining the status of a person involved in a bankruptcy case;
- the procedure being adjusted for approving a regulation on the manner, conditions and deadlines for an individual's property to be sold.

The new procedure consists of the following stages:

- within a month after the inventory and valuation of the individual's property has been completed, the administrator submits a draft regulation to the meeting (committee) of creditors;
- the meeting (committee) of creditors must approve this draft or an alternative regulation and the financial administrator must publish it in the Unified Federal Register of Bankruptcy Information (the "UFRBI") within two months;
- disagreements with respect to the regulation may be put forward within two months from the date when the information is published in the UFRBI.

In respect of property located outside the Russian Federation, a separate determination is made. This is enforced in accordance with the rules of procedural legislation of the state in whose territory the property is located or in accordance with the Russian Federation's international treaties with that state.

## What to think about and what to do

Given the scale of the changes, we recommend revising algorithms of actions and internal procedures in relation to the bankruptcy of your business partners.

Those involved in both ongoing and new bankruptcy cases should have regard to the procedure for the new developments to come into force and how they will apply (with few exceptions) to proceedings that are already under way.

To avoid missing the deadlines for putting claims forward, creditors should strictly comply with the electronic procedure for submitting applications to be included in the register.

Credit institutions need to strengthen internal control over whether requests from court-appointed administrators are justified. This is to avoid unlawfully divulging legally protected information.

## Help from your adviser

The bankruptcy and anti-crisis defence of business practice has extensive experience in providing integrated support during bankruptcy cases, acting on the side of the creditors, owners and management of a debtor company. They also provide assistance in individual standalone disputes.

We are ready to offer support in drawing up corporate documents and internal instructions on how to work with clients and business partners that are going bankrupt. We assist companies in their dealings with court-appointed administrators and court bailiffs in relation to debtors' obligations.

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