



BIRCH LEGAL

Legal alert from the dispute
resolution practice
Bankruptcy

News from the bankruptcy sector

01

Bankruptcy for foreigners

The Supreme Court, in its ruling dated 08.02.2024 in case No. A40-248405/2022 on the bankruptcy of Westwalk Projects LTD (Republic of Cyprus), identified several possible signs indicating a close connection with Russia for the possibility of the bankruptcy of foreign entities, including

Center of controlling persons' main interests – in the Russian Federation

Controlling persons – citizens or permanent residents of the RF

Majority of creditors have citizenship or a close connection to the RF

Significant amount of transactions are conducted in the RF

Controlling persons are affiliated with companies in the RF

The main evidence in the case is located in the Russian Federation

News from the bankruptcy sector

02

Other important rulings from the Supreme Court

A good-faith creditor does not need to track information about the bankruptcy of a former counterparty
(Ruling of the SC RF in case No. 308-ЭC20-8515(16))

“ ...this approach practically **obliges every counterparty to monitor for information** on the bankruptcy of persons with which legal relations are essentially completed, thereby creating further burdens for the creditor and increasing its costs which **cannot be considered justified** ”

It is impossible to oblige all creditors to analyze the financial status of counterparties with which relations are essentially complete for signs of bankruptcy. Thus, such creditors cannot have liability measures in the form of accrual of interest on funds imposed upon them until the transaction is declared invalid

Set-off of the bankrupt party's claims against Creditors' claims without assets is possible
(Ruling of the SC RF in case No. 307-ЭC21-20702(4))

Claims against third-priority creditors can be terminated via set-off if it has no assets. Since such a creditor is not able to replenish the debtor's property estate, the implementation of such set-off will not violate the interests of other creditors. On the contrary, the “dropout” of such a creditor entails benefits for the others:

- the volume of claims included in the register is reduced which improves the position of other third-priority creditors
- the eliminated creditor no longer affects the outcome for the debtor

News from the bankruptcy sector

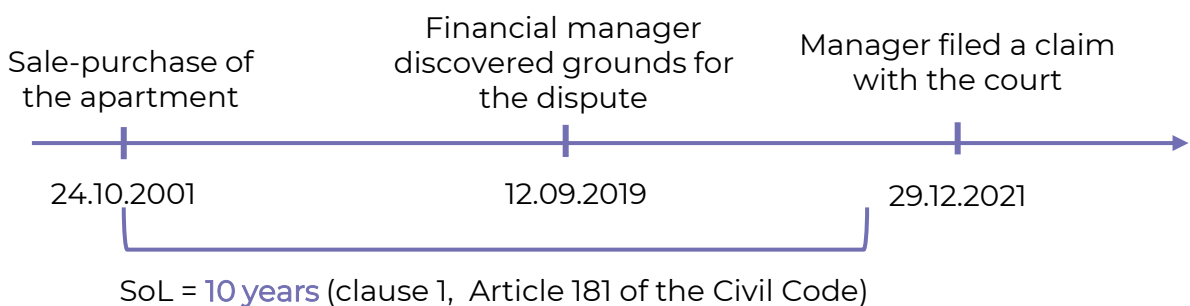
03

The statute of limitations

The Supreme Court indicated that it is necessary to apply the statute of limitations in force when the asset was acquired

(Ruling of the SC RF in case No. 305-ЭC20-20127(20))

- ✓ during a search, documents were found related to an apartment belonging to the debtor's authorized representative
- ✓ the financial manager filed an application to recognize the purchase and sale of the apartment as void
- ✓ the courts satisfied the application to recognize the transaction as void and rejected the owner's reference to the statute of limitations
- ✓ the Supreme Court refused to satisfy the manager's claims and indicated that the statute of limitations had expired, since they were calculated according to the rules that were in force at the time the transaction was concluded



Comparison of the different versions of clause 1, Article 181 of the Civil Code

Then	10 years	"A claim to apply the consequences of the invalidity of a void transaction may be brought within ten years from the date on which its execution began "
Now	3 years	"The statute of limitations of claims on applying the consequences of the invalidity of a void transaction... amounts to three years . The limitation period begins from the day when the execution of the void transaction began, and in the event of a claim being brought by a person which is not a party to the transaction, from the day when this person learned or should have learned about its conclusion "

News from the bankruptcy sector

04

To subordinate claims

To subordinate claims, it is necessary to confirm the beneficial interest of the creditor

(Ruling of the SC RF in case No. 310-ЭC23-20235)

Essence of the dispute

Over the course of several years, the bank provided the debtor with 13 loan agreements: to replenish working capital and repay obligations of third parties. The debtor used most of the funds to repay earlier debts on loans.

Position of the lower courts

The courts of the first three instances subordinated the bank's claims, since they established signs of affiliation with the debtor and joint actions to conceal the funds of the bank (which itself became bankrupt). The financing in question was associated with a high risk of non-repayment of funds. Thus, the courts decided that the purpose of the bank's actions was to redistribute the risk of loss of invested funding in the event of the unprofitability of the debtor's activities.

Position of the Supreme Court of the RF

The plaintiff indicated that the courts did not establish the status of a controlling person for the bank and did not establish the influence of controlling persons on the financing for the debtor.

The Supreme Court overturned the rulings of the lower courts because they ignored the question of whether the bank (creditor) had a beneficial interest. The Supreme Court concluded that in order to lower the priority, it is necessary to establish the ability of the creditor to control the use of funds invested in the company and receive unlimited profit (as a result of such control).

The restructuring procedure ought to be extended if the debtor did not fulfill the plan due to extenuating circumstances

(Ruling of the SC RF in case No. 305-ЭC21-28610(4))

A debtor citizen appealed to the Supreme Court with a complaint against the rulings of the lower courts which refused to extend the restructuring plan, canceled the plan, declared the debtor bankrupt and introduced a procedure for the sale of said citizen's property. In his complaint, the debtor referred to:

- 1 the volume of property exceeding the amount of obligations
- 2 actions indicating a desire to repay the debt
- 3 the lack of an objective opportunity to fulfill the plan

An obstacle to the execution of the plan was the delay in the procedure for removing encumbrances due to active opposition from the bank. The Supreme Court overturned the acts of the lower courts and sent the case for reconsideration.

News from the bankruptcy sector

06

The bankruptcy procedure for legal entities

The State Duma adopted in its first reading a bill with significant amendments to the bankruptcy procedure for legal entities

Simplified procedure

An array of isolated disputes will be considered in a simplified manner: by a judge without calling the parties and holding a hearing. In exceptional cases, the court will be able to summon the parties upon a reasoned motion or at its own discretion.

- 1 on inclusion of claims in the register (in the absence of objections)
- 2 on reclaiming documents and valuables of the debtor
- 3 on extending the term of external management
- 4 on the release of the arbitration manager from his duties

In these disputes, the court, as a general rule, makes only the operative part of the ruling. In case of an appeal, the court prepares a reasoned ruling within 5 days.

Deadline for filing an appeal

The deadline for filing an appeal for most of the rulings adopted as a result of consideration of separate disputes will be increased.



News from the bankruptcy sector

07

Raising the bankruptcy threshold

1

The minimum amount of claims against the debtor has increased in general.

Then	Now
300 000	2 000 000

2

The minimum requirements for agricultural organizations have increased.

Then	Now
500 000	3 000 000

3

The minimum requirements for strategic enterprises and natural monopolies have also increased.

Then	Now
1 000 000	3 000 000

Key contacts for more information



Evgeny Oreshin
Partner, Attorney at law
Dispute Resolution

evgeny.oreshin@birchlegal.ru



Yury Knyazev
Senior Associate
Dispute Resolution

yury.knyazev@birchlegal.ru



Daria Bilyk
Junior Associate
Dispute Resolution

daria.bilyk@birchlegal.ru

Follow us on Telegram



birchlegal.ru

© BIRCH LEGAL 2024. All rights reserved. BIRCH LEGAL LLC's Taxpayer Identification Number (INN) is 7703618107. The information provided in this legal alert may not be considered as professional advice or legal services and is not advice related to a specific situation. This information is intended for the general review of the users in relation to issues that may be of interest to them. BIRCH LEGAL is not liable for incomplete information.