The Russian Supreme Court clarifies a new procedure for considering bankruptcy cases

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

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Pepeliaev Group advises that a draft resolution of the Plenum of the Russian Supreme Court (the 'Supreme Court')[1] has been published to clarify how global changes which were adopted this year should be applied in the procedure for considering bankruptcy cases[2].

Below are the key provisions of the draft concerning the bankruptcy of legal entities, with a portion of them being already actively implemented in today's court practice.

1. A new 'threshold' being applied to initiate a bankruptcy case[3]

The amount of claims should be at least RUB 2 million on the exact date of the court hearing which will check whether the bankruptcy petition is justified.

It does not matter if the previous version regarding the threshold of RUB 300,000 was in effect on the date when the bankruptcy petition was filed or during the period when such petition was left without action or after it was accepted and until the date when a check was made of whether the bankruptcy petition was substantiated.

It is for the first time that the Supreme Court has claimed it possible to refuse to initiate the procedure even if there was debt for which the law provides. Such a refusal is possible in a situation when the debtor has confirmed that the difficulties were temporary and that it would be able to perform the obligations which have already become due.

The amount of the claimant's claims of RUB 2 million also applies to the claims of the debtor's employees. However, the debtor may file a petition for its own bankruptcy irrespective of the above threshold amount.

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[1] Draft resolution of the Plenum of the Supreme Court "On certain issues connected with law No. 107-FZ "On amending the Federal Law "On insolvency (bankruptcy)" dated 29 May 2024 and article 223 of the Russian Commercial Procedure Code" being brought into force".
[2] For more details on the amendments, please read our previous alert.
[3] Articles 6(2) and 33(2) of the Bankruptcy Law.

Pepeliaev Group's comment

We recommend that creditors whose claims are less than RUB 2 million take into account the risk of a refusal to initiate the procedure if their bankruptcy petitions have still not been checked in terms of whether they are justified. The risk can be overcome by other creditors filing petitions to join the bankruptcy case.

Those debtors who have prospects of settling accounts with creditors are recommended to formulate an economically feasible position and contract bankruptcy specialists to work it through.

2. A documentary procedure for considering standalone disputes[4]

A documentary procedure implies that a dispute is considered, including all procedural issues (including regarding legal succession) arising out of it, by an exchange of procedural documents. However, it is possible to switch to the general procedure at the initiative of a court or further to a motion of the parties.

The documentary procedure is not a type of simplified procedure, and it consists of several stages.

Initiating the proceedings

A court's ruling to initiate proceedings in a standalone dispute should contain a procedure for the parties to familiarise themselves with the petition, the timeframes for objections to be submitted (at least 5 days) and for the dispute to be considered.

The court may extend the above deadlines further to a well-grounded motion of interested parties.

Gathering positions (objections) of interested parties

Objections that have been submitted after the deadline has expired:

- will not be entered in the case files, and nor will the court take them into account;
- may be entered in the case files provided that the deadline has been missed for valid reasons and the objections were received before the ruling was issued.

That objections have been filed does not constitute a ground for the standalone dispute to be considered under the general procedure.

[4] For the list of disputes to which the simplified procedure applies, i.e. with no court hearing taking place and without the parties being summoned to court, please read our previous alert.

Considering the dispute with a ruling being issued by signing the operative part

3. The specific aspects of notifications being made regarding standalone disputes

The court will not notify the parties to a case of any standalone disputes if:

- there is information that the person has been notified of the bankruptcy case;
- the person himself has applied to the court with regard to this case.

4. The fine legal points of rulings being drafted and challenged under standalone disputes

Pursuant to the new provisions of the Bankruptcy Law[5], a court will limit itself to adopting the operative part of the ruling in a number of standalone disputes. To have a reasoned ruling the party to the dispute may apply to the court within 5 days after the operative part has been published. The court will not consider such an application if it has been filed before the operative part is issued or after 5 days have expired. However, if an appeal is filed within the established deadline[6], the court will draft a reasoned ruling on that ground.

5. The specific aspects of claims being included in the register

The procedure for asserting claims

Taking into account the new provisions[7], creditors may file claims only in electronic form, and these will be considered, according to the general rule, under the documentary procedure. Similar rules also apply to a motion that creditors' claims be excluded from the register.
An application can be submitted in 'hard-copy' form if the applicant provides valid reasons for not complying with the established procedure (for instance, the applicant lives in an area with no access to the Internet or lacks any technical capacities or he/she is incarcerated and the like).
If the application is submitted in the 'hard-copy' form, the court leaves it without action and proposes that the defect be rectified or that valid reasons be provided for choosing such a format for the application.

Objections to creditors' claims

Objections to creditors' claims should be filed with a first-instance court in electronic form.

The Supreme Court provides clarity on some of the issues pertaining to the status and powers of creditors, including the power to assert objections.

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[5] Articles 60(2)(4), 71(2)(5) and 100(3)(5) of the Bankruptcy Law.
[6] Article 61(1) of the Bankruptcy Law.
[7] Articles 71(1) and 100(1) of the Bankruptcy Law.

A creditor who has been denied inclusion in the register retains its status and rights until the end of the appeal, including appeal proceedings in the Supreme Court.

Parties that are called "potential creditors" also enjoy the right to object to the claims of other creditors. The court, however, should assess the probability of future claims against the debtor. This may apply, for instance, to claims under a condition (including joint suretyship).

The deadline for objections to be submitted and claims to be considered

Creditors' claims shall be considered not earlier than 60 calendar days, which includes a 30-day period for objections to be filed and another 30-day period for the court to consider the claims. Objections may be filed before the above 60-day period expires.

Pepeliaev Group's comment

The documentary procedure for considering claims drastically changes the approach to safeguarding parties' interests in bankruptcy cases. When a creditor turns to a court, their position must be complete to the maximum extent and be supported with documents, including source accounting documents.

Persons who have the right to assert objections must regularly monitor and familiarise themselves with creditors' claims. If there are grounds, they should put forward their objections supported by all valid arguments and provide substantiation if it is sought to switch to the general procedure for claims to be considered. Otherwise, they may not have the chance to develop their position and provide new evidence.

6. Challenging judgments issued outside the bankruptcy case

The Supreme Court has clarified the new procedure for parties to the bankruptcy case to challenge court judgements that have been adopted outside the bankruptcy case[8]. This is now possible only by applying the rules for court judgments to be revised in view of new or newly discovered circumstances.

What to think about and what to do

The recent amendments to the Bankruptcy Law significantly affect the strategy and the tactics of dealing with distressed debts, including the conditions for initiating bankruptcy and the methods for safeguarding one's interests.

Many of the new developments are difficult to comprehend and to apply. We recommend that you already start taking into account the provisions of the draft resolution of the Plenum of the Supreme Court. These provisions reflect the court practice that is evolving regarding how the new regulation will be applied (this, for instance, concerns the threshold of a debt, how claims are considered and the procedure of how court judgments are to be challenged).

Meanwhile, the final Resolution might contain changes that go beyond mere drafting points, in which case we will keep you informed accordingly.

Help from your adviser

Our Bankruptcy and Anti-Crisis Protection of Business Practice has an extensive experience of providing comprehensive legal support in bankruptcy cases and of safeguarding principals' interests in standalone disputes (for instance, when claims are established, transactions are challenged or secondary liability is imposed).

We place special emphasis on devising a strategy of pre-trial defence based on assessing the prospects for litigation and applying out-of-court methods to handling a matter. This allows us to achieve the necessary outcome with fewer efforts and to avoid risks.

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[8] Article 16(12) of the Bankruptcy Law.