



RUSSIAN DESK

Bankruptcy estate in bankruptcy cases of individuals: New clarifications by the Supreme Court of the Russian Federation

The bankruptcy law of the Russian Federation¹ contains a number of provisions on the bankruptcy of individuals and individual entrepreneurs. When such cases are considered in court, a significant number of issues arise related to challenges of transactions and the sale of the property owned by the bankrupt individual.

In this newsletter you will find an overview of the most important clarifications on the establishment and distribution of the bankruptcy estate in the bankruptcy cases of individuals prepared by the Supreme Court of the Russian Federation on 25 December 2018².

POWERS OF THE INSOLVENCY ADMINISTRATOR

The decision to remove any property from the bankruptcy estate of a bankrupt individual (or not to include property in the bankruptcy estate) is adopted by the insolvency administrator independently without recourse to the courts. This issue is only considered by a commercial court if there are any differences between the parties in a bankruptcy case.

CHALLENGE OF THE COURT ORDERS OF A COURT OF GENERAL JURISDICTION REGARDING THE DIVISION OF PROPERTY AND THE PAYMENT OF ALIMONY

If marital property has already been divided in a court of general jurisdiction and a corresponding court order has been issued, then the insolvency administrator and the creditors of the bankrupt individual are entitled to appeal against the indicated court order after the commencement of a bankruptcy case in respect of one of the spouses if the individual violated the rights and legal interests of the creditors. The elapsed procedural time limit for a challenge may be restored by a court.

A similar regulation has been established for the filing of a challenge by creditors and the insolvency administrator against alimony ordered by a court of general jurisdiction.

CHALLENGE AGAINST AN OUT-OF-COURT AGREEMENT ON THE DIVISION OF COMMON PROPERTY

An out-of-court agreement of spouses on the division of their common property may be challenged within the framework of a bankruptcy case in a commercial court if bankruptcy legislation establishes special grounds for such a challenge (for example, the agreement implies unequal consideration and worsens the position of the debtor materially).

In other instances such an agreement may only be challenged through action proceedings in a court of general jurisdiction (in other words, outside the framework of a bankruptcy case).

A similar regulation has been established for the filing of a challenge by creditors and the insolvency administrator against an out-of-court alimony agreement.

OTHER WAYS TO PROTECT THE RIGHTS OF CREDITORS

If adverse consequences have arisen for creditors owing to a concluded alimony agreement (for example, owing to a deterioration in the property status of the individual debtor and a material imbalance of the rights of creditors and the rights of the recipient of the alimony that arose in connection with this fact), then the debtor, insolvency administrator and creditors are entitled to file the following actions with a court of general jurisdiction:

- for a change or termination of the alimony agreement;
- for a change in the amount of alimony established by court;
- for exemption from payment of alimony;
- for exemption from payment of debt on alimony and/or debt regarding payment of a penalty for late payment of alimony.

¹ Chapter X of Federal Law No. 127-FZ dated 26 October 2002 "On Insolvency (Bankruptcy)".

² Judgment No. 48 of the Plenum of the Supreme Court of the Russian Federation dated 25 December 2018 "On Certain Issues Related to the Specifics for the Establishment and Distribution of the Bankruptcy Estate in the Bankruptcy Cases of Individuals".

All the creditors of a debtor and also the insolvency administrator are entitled to participate in the consideration of the action in a court of general jurisdiction as third parties.

CONSIDERATION OF CASES ON THE INSOLVENCY OF BOTH SPOUSES

If insolvency procedures are introduced in respect of both spouses, then a court may consider the issue of consolidating both the cases for the purposes of procedural savings.

In this case the insolvency administrator maintains separately a creditors' claims register regarding the common obligations of the spouses and creditors' claims registers regarding the personal obligations of each of the spouses.

We would be delighted to answer any additional questions that you may have related to the new clarifications of the Supreme Court of the Russian Federation.



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