

RUSSIAN DESK

Dear readers,

The participation of scheduled creditors in insolvency procedures always leads to a lot of questions. There was a time when some creditors tended to write off debt without filing claims against the debtor in a bankruptcy case. Today, the terms and conditions for insolvency procedures have been greatly improved.

Participation in creditors' meetings and meetings of the creditor committee is very important in bankruptcy cases. The Supreme Court of the Russian Federation has prepared updated interpretations on this issue (hereinafter the "Overview")¹.

The management and lawyers of companies seeking to recover debt in Russia and file claims in bankruptcy cases should study the Overview in order to use the new interpretations in their practical work.

We hope that this will be an informative read and will be happy to answer any questions you may have.

Best regards,



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Participation of creditors in bankruptcy proceedings

1. NOTICE ON A MEETING

According to the general rule, the notice on holding a meeting previously needed to be sent by post to each scheduled creditor without fail. The evolution of electronic media, including the Unified Federal Bankruptcy Register², has changed this rule. According to the position of the Russian Supreme Court, a timely

publication on the holding of a creditors' meeting in the Unified Federal Bankruptcy Register gives creditors a real opportunity to participate in the meeting. If the notice on a creditors' meeting was not sent by the bankruptcy receiver to the creditor by post, but it was made available in electronic form, the notice will be deemed sufficient; a creditor cannot cite a lack of notice when challenging the decisions taken.

2. FORM OF HOLDING A MEETING

The usual procedure for holding a creditors' meeting is attendance in person and voting by ballot. Absentee voting is considered an exception to the rule and is fraught with a high risk that the decisions made will be challenged. The Russian Supreme Court has indicated that holding a creditors' meeting of a legal entity debtor through absentee voting (without joint attendance) or in person and in absentia (including with the use of telecommunications) is not, in and of itself, a violation. Holding a meeting in this form cannot be seen as grounds for invalidating the decisions made at the meeting.

EXAMPLE

The provisions of the Bankruptcy Law³ that regulate the procedure for holding creditors' meetings of a legal entity debtor stipulate the possibility of holding a creditors' meeting through attendance in person. A decision to hold subsequent meetings through absentee voting is taken by a majority of votes at a creditors' meeting held through attendance in person. In this case, when preparing for and holding a meeting through absentee voting the bankruptcy receiver is entitled by analogy to be governed by Article 213.8 of the Bankruptcy Law, which was developed for the bankruptcy of individuals and individual entrepreneurs.

¹ Overview of Court Practices on Issues Involved in the Invalidation of the Decisions of Creditors' Meetings and Creditor Committees during Bankruptcy Proceedings, approved by the Presidium of the Russian Supreme Court on 26 December 2018.

² <https://bankrot.fedresurs.ru/>

³ Federal Law No. 127-FZ dated 26 October 2002 "On Insolvency (Bankruptcy)".

3. REVERSAL OF DECISIONS BY THE MEETING

A creditors' meeting is entitled to reverse a decision. However, decisions can only be reversed up to the point when the decision begins to affect the rights and legal interests of third parties.

EXAMPLE

A creditors' meeting is entitled to reverse the decision on the selection of the bankruptcy receiver, thereby rescinding its consent to court approval of the relevant candidate, and to resolve this issue differently (in favour of a different candidate). However, the decision can only be reversed prior to the approval of the (initially selected) bankruptcy receiver by the court.

4. PROCEDURE FOR CHALLENGING DECISIONS

The Russian Supreme Court gave its interpretation on challenging the decisions of a creditors' meeting. According to the general rule, if one of the participants previously did not agree with a decision, it was forced to file a claim in court to have this decision declared unlawful. The Russian Supreme Court has indicated that an interested party also has the right to cite the fact that the decision does not have legal force in connection with material breaches of law (authorities were exceeded, the meeting did not have a quorum, etc.) under any separate dispute, regardless of whether the decision was challenged.

EXAMPLE

The composition of creditors changes after the holding of a meeting, with the baseless claims of a majority creditor (60% of votes) being excluded from the register. The court decides that the decisions at the first meeting were taken on the strength of the votes of a party that is not actually a creditor, and therefore the decisions do not have legal force. The court obliges the first creditors' meeting to be held again.

5. CHALLENGE OF DECISIONS

A scheduled creditor that participated in a meeting and voted for or abstained from voting on a decision does not subsequently have the right to refer to its invalidity. However, this rule should not be applied if there were violations that affected the creditor's decision-making process during voting.

EXAMPLE

When justifying the need to establish additional remuneration at a meeting, the bankruptcy receiver referred to the large volume and complexity of bankruptcy proceedings. It was subsequently discovered that the information provided by the receiver was not true. The court concluded that the creditor was misinformed. The decision violates the rights and lawful interests of the creditors, since it obliges them to pay additional remuneration without good reason. In this case, the period for challenging the decision starts from the time when the creditor learned or should have learned of the deception or misinformation.

We will be happy to answer any additional questions you may have concerning the new interpretations of the Supreme Court of the Russian Federation.



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