

Preventing the withdrawal of capital from Ukraine: The role of insolvency receivers



The Ministry of Justice of Ukraine has brought to the attention of insolvency receivers that, during the exercise of powers in bankruptcy cases, it is necessary to establish among the creditors or beneficiaries of the debtor the persons to whom sanctions have been applied.

To carry out relevant verifications, the insolvency receivers use the data posted on the official website of the President of Ukraine as to the implementation of the decisions of the National Security and Defence Council of Ukraine on the application of sanctions to individual persons and legal entities. Insolvency receivers also verify information in the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Organizations.

In case of doubts about the relevance of such information, the insolvency receivers can file a request for it to be provided directly to the creditors or the debtor. Such novelties are directed at preventing the possibility of creditors related to the aggressor state avoiding restrictive measures and precluding the payment of funds in favour of such creditors in bankruptcy cases.

A moratorium on the fulfilment of obligations where the Russian Federation or persons related to it have the status of creditors has been in effect in Ukraine since March 2022. A Resolution of the Cabinet of Ministers of Ukraine No. 187 dated 3 March 2022 prohibits the fulfilment of obligations to, including:

- citizens of the Russian Federation, except for those residing on Ukrainian territory under legal grounds;
- legal entities established and registered according to the

legislation of the Russian Federation; and

- legal entities established and registered according to the legislation of Ukraine, in which the ultimate beneficial owner, member or participant (shareholder) with a share in the authorized charter capital of 10% or more is the Russian Federation, a citizen of the Russian Federation (except for citizens of the Russian Federation residing on territory of Ukraine under legal grounds) or a legal entity established and registered according to the legislation of the Russian Federation.

The restriction mentioned does not apply to banks, telecommunication networks and companies, in respect of which the Cabinet of Ministers of Ukraine has adopted a decision on the temporary administration by the state of their shares and corporate rights to safeguard national security and defence.

For almost a year since the Resolution of the Cabinet of Ministers of Ukraine has been in effect, the practice of imposing an obligation on the creditors to provide the court with information on whether there is a person among the founders/participants/ultimate beneficial owners of the relevant creditor who may be related to the aggressor state has become almost standard.

The courts have already established their initial practice on the refusal to commence proceedings in bankruptcy cases mainly because of the creditor's relations with the aggressor state. In case No. 910/8991/21, the Economic Court of Kyiv in December 2022 dismissed the creditor's claim to commence proceedings for the bankruptcy of the Ukrainian State Corporation for Transport Construction (Ukrtransbud) due to the fact that the creditor is a person associated with the aggressor state. ■



ROMAN MARCHENKO
Ilyashev & Partners Law Firm,
Ukraine



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