

Ukraine and Russia: Recent case law

Vadym Kizlenko provides an overview of creditor claims against persons connected with the Russian Federation, citing recent case law



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A number of regulations have been adopted aimed at protecting the country's economy from the aggressor state



Since the beginning of the full-scale Russian invasion of Ukraine, a number of regulations have been adopted aimed at protecting the country's economy from attempts of the aggressor state to influence the activities of domestic companies through the use of legal mechanisms, including through bankruptcy proceedings.

1. The Cabinet of Ministers of Ukraine adopted Resolution No. 187 dated 3 March 2022 on Ensuring the Protection of National Interests in Future Claims of the State of

Ukraine in Connection with the Military Aggression of the Russian Federation ("Resolution No. 187"), which introduced a moratorium (ban) on the fulfillment of monetary and other obligations, the creditors (collectors) of which are the Russian Federation (aggressor state) or persons associated with the aggressor state.

2. Section XIII of the Law of Ukraine On Enforcement Proceedings was supplemented by Clause 10² in accordance with Law No. 2129-IX dated 15 March 2022, according to which,

before the Law on the Regulation of Relations Involving Persons Associated with the Aggressor State enters into force, the execution of enforcement procedures is suspended and the substitution of the execution creditors in enforcement proceedings in which the execution creditors are the Russian Federation or persons associated with the aggressor state is prohibited.

3. The National Bank of Ukraine adopted Resolution No. 18 dated 24 February 2022 on the Operation of the Banking System During the

Period of Martial Law, which, among other things, prohibits banking and other authorized institutions from carrying out any currency transactions, a participant in which is a legal entity or an individual, located (registered/permanently residing) in the Russian Federation or in the Republic of Belarus, as well as currency transactions to fulfill obligations to legal entities or individuals located (registered/permanently residing) in the Russian Federation or in the Republic of Belarus.

Case law developments

At present, case-law is developing quite dynamically regarding the procedure for considering monetary claims of creditors associated with the aggressor state, where the provisions of the above regulations have been applied.

On 30 May 2023, the Supreme Court adopted a pilot decision, which actually determined the future of creditors connected with the Russian Federation in bankruptcy cases. In its resolution of that date in Case No. 925/1248/21, the Commercial Cassation Court within the Supreme Court refused to recognize the monetary claims of the creditor, who turned out to be a legal entity established and registered in accordance with the legislation of the Russian Federation. The court came to the following conclusions:

“...And therefore, the moratorium (ban) given in the first subparagraph of [Resolution No. 187(1)] on the Fulfillment of Monetary and Other Obligations, the creditors (collectors) of which are legal entities, established and registered in accordance with of the legislation of the Russian Federation (Clause 8.4) in relation to the provisions of the Code of Ukraine on Bankruptcy Procedures On the Rules and Effects of the Appeal and Recognition of Monetary Claims of a Creditor Against a Debtor in

a Bankruptcy Case (Clause 8.5) excludes the possibility of recognizing, according to the rules of this Code, the monetary claims of those creditors who are persons defined in [Resolution No. 187], in particular, legal entities established and registered in accordance with the legislation of the Russian Federation, which is an LLC. Consequently, despite the presence of formal grounds for dismissing the LLC's monetary claim against the Debtor on the basis of the fourth subsection of Article 202 and the fourth paragraph of Article 226 (1) of the Civil Procedure Code of Ukraine, taking into account the circumstances established by the courts that the LLC is registered in Moscow, Russian Federation (code 50877746028662) (Clause 4.6), that is, that the LLC legal entity was created and registered in accordance with the legislation of the Russian Federation, the Court concludes that these circumstances exclude the possibility of recognizing the monetary claims of the relevant entity (entities) against the debtor in a bankruptcy case according to the rules of national legislation - Code of Ukraine on Bankruptcy Procedures...”

In case No. 910/8991/21, Alfa-Leasing Ukraine LLC filed a claim with the Commercial Court of Kyiv City to initiate bankruptcy proceedings against the Ukrainian State Corporation for Transport Construction Ukrtransbud, citing the existence of outstanding debts. During the hearing of the case by the courts of the first and appellate instances, it was established that the initiating creditor, in accordance with Resolution No. 187, is a person associated with the aggressor state, and therefore there is a moratorium (ban) on the fulfillment and forced fulfillment, of monetary and other obligations in favour of Alfa-Leasing Ukraine LLC.

The courts concluded that at the time of the moratorium established by Resolution No. 187, the Ukrainian State Corporation for Transport Construction Ukrtransbud had

no legal grounds to fulfill its obligations in favour of Alfa-Leasing Ukraine LLC. As such, the circumstances of the presence of contradictions (disagreements) established in case No.

910/8991/21 indicate that there is a dispute about the right in substantive relations on which the initiating creditor's claims against the debtor are based and, therefore, the courts refused to initiate bankruptcy proceedings.

On 7 August 2023, during hearing of case No. 910/9131/16 on the bankruptcy of PJSC Creative, the Commercial Court of Kyiv City established that one of the creditors - OJSC Mytishchi Milk Factory is a legal entity established and registered in accordance with the legislation of the Russian Federation. Under such circumstances, the court concluded that the repayment of the claims of OJSC Mytishchi Milk Factory would be considered a violation of the legislation of Ukraine, taking into account the moratorium established by Resolution No. 187.

With reference to the provisions of Article 607 of the Civil Code of Ukraine, the court concluded that the moratorium established by Resolution No. 187 terminates the debtor's monetary obligation, and therefore, there is no subject of the dispute, as a result of which the proceedings were closed regarding the claims of such a creditor.

Summary

In conclusion, it should be noted that this approach of national courts is justified and fair. The opinion of the courts regarding such creditors is a consequence of state policy implementation in relation to the aggressor state in terms of the maximum limitation of economic opportunities for the influence of the aggressor state both within Ukraine and abroad. ■



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