

Claims filed by persons affiliated with a debtor during bankruptcy proceedings: Clarifications of the Russian Supreme Court



Русская версия

On 23 December 2025 the Plenary Session of the Russian Supreme Court issued Judgment No. 41 "On Establishing the Claims of the Controlling Persons of a Debtor and the Affiliates of the Debtor during Bankruptcy Proceedings"^[1] (hereinafter the "**Judgment**").

Russian courts hold that the claims of the affiliated creditors or controlling persons of a debtor are subordinated, in other words, they can only be satisfied once the claims of all independent creditors have been settled if the court finds that the claim of the affiliated creditor arose in connection with the financing of the debtor during the period of the property crisis.

The Judgment the Supreme Court systematises the legal positions previously expressed on the matter of subordination, clarifying individual issues of import today.

1. Scope

The legal positions set out in the Judgment do not apply to the bankruptcies of individuals and individual entrepreneurs.

2. Concept of the controlling person of a debtor

In order to decide whether a claim should be subordinated, the majority creditor or the main counterparty of a debtor may be declared to be the controlling person if two criteria are met:

- The majority creditor effectively determined the debtor's actions at the time of the property crisis;
- The majority creditor derived benefits from the lossmaking activity of the debtor.

3. Compensatory financing

A claim of the controlling person against the debtor that arose in connection with the acquisition of rights of claim from independent creditors may be declared compensatory financing.

The following are exceptions to this rule:

- a claim of the controlling person acting as a surety if the suretyship agreement was concluded before signs attesting to a property crisis appeared;
- a claim that arose in connection with the acquisition of rights of claim from independent creditors against the debtor after the introduction of the first bankruptcy procedure (except in instances when it can be shown that the goal was to establish control of the bankruptcy procedure).

4. Rights of subordinated creditors

The Russian Supreme Court clarified that subordinated creditors enjoy the same scope of rights as scheduled creditors whose claims are considered in the third order of priority on the creditor claims' register, except for:

- the right to vote at a meeting of creditors, other than instances where the claims of the higher-priority creditors have already been settled or there are no such claims. In any case, such creditors may not vote on the issue of electing the receiver or self-regulating organisation;
- the right to file petitions on challenging transactions on bankruptcy grounds or a petition on imposing secondary liability on other

controlling persons. There is one exception, when the debtor's capital must be divided between different groups of controlling persons.

Please note that this Overview does not constitute tax or legal advice.

Should you have any questions related to the protection of the rights and interests of foreign persons in Russia, the CIS and the Eurasian Economic Union, please rest assured that ADVANT Beiten is always at your disposal.

[1]. Judgment No. 41 of the Plenary Session of the Supreme Court of the Russian Federation dated 23 December 2025 "On Establishing the Claims of the Controlling Persons of a Debtor and the Affiliates of the Debtor during Bankruptcy Proceedings".

Best regards,

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