

Newsletter Russia

Challenging transactions during bankruptcy proceedings: overview of the positions of the courts during 2019-2021



German version

Russian version

On 30 December 2021 the Federal Tax Service published an overview of the court practice of commercial courts on challenging transactions during bankruptcy proceedings^[1].

The overview represents the current court practice of the cassation commercial courts and the Supreme Court of the Russian Federation, whose position must be duly considered when challenging transactions during bankruptcy proceedings.

The information resources of the Federal Tax Service of the Russian Federation available in the public domain and other sources may be used in order to assess whether a debtor's transactions were actually concluded or not

The existence of a record in the Unified State Register of Legal Entities (USRLE) that the information on the location of the company, its founders, participants or individuals entitled to act without a power of attorney is false may attest to the fictitious nature of the transaction with this company.

During assessing the fictitious nature of the legal relations of a bankrupt entity and the counterparty attention should be paid to the following facts:

- the company does not have the physical infrastructure required to provide the services, for example, vehicles for the provision of cargo carriage services;
- the minimal number of employees of the counterparty;
- the lack of proper source documents;
- there are no facts in the accounting or tax reporting data attesting to the conclusion of the contested transaction,
- the engagement of third parties to perform the obligations is economically ineffective.

Assessment as to whether the debtor would usually conclude such a contested transaction as part of its standard business activity

The atypical nature of the debtor's transaction may attest to the non-compliance of the subject matter of the contested transaction with the main lines of business of the debtor declared in the USRLE.

Data from marketplaces may be used to appraise the property

To determine the market value of a debtor's property alienated under a contested transaction, courts may use information contained in public sources of marketplaces, for example, www.auto.ru, www.avito.ru.

Transactions on the disposal of the intellectual property of the debtor and actions involving the transfer of the licensed activity to another person may be challenged

Intellectual property may constitute a significant proportion of the debtor's assets. Disposal of the indicated assets during the periods of suspicion established by the Bankruptcy Law may attest to indicia that the business has been transferred from the debtor to a new person, which means that there are grounds for challenging the transaction.

For example, the mining licence of a debtor also constitutes a tangible asset, as it represents the right of the debtor to engage in income-generating activity. Actions involving the assignment of the right to engage in such licensed activity may be challenged during a bankruptcy case.

Use by the debtor of previously alienated property may indicate that there are grounds for challenging the transaction

The transactions of a debtor involving the sale of property during the periods of suspicion established by the Bankruptcy Law may be challenged, taking into account the subsequent fate of the alienated property and the expedience of such transactions.

The disposal of debtor's property and subsequent acquisition of rights to use said property, in particular under a lease agreement, may attest to the suspicious nature of such transactions.

The actual affiliation of the parties to the contested transaction may be established

To challenge a transaction in a bankruptcy case, the actual affiliation of the representatives of the debtor and the counterparty may be established by using evidence obtained, *inter alia*, from the data of social networks, the mass media, public source online, for example:

- establish using data from a civil registry office, photographs from social networks that a marriage was concluded, but subsequently dissolved between the representatives of the debtor and the counterparty;
- establish using the protocols of an inspection by a notary of personal pages in social networks whether the parties to the contested transactions have in fact friendly relations;
- establish a body of facts indicating that the data of the parties to the transaction match to some extent: their places of birth, residence, matching surnames, participation in legal entities, common children, labour relations, etc.

[1] Letter No. KCh-4-18/18485@ of the Federal Tax Service of Russia dated 30 December 2021 "On Providing an Overview of Court Practice in Disputes Related to Challenges of Transactions".

Kind regards



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