

# Legal Status of Trustee in Bankruptcy in the Russian Federation

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**Abstract**—The article provides the analysis on the legal activity regulation of trustees in bankruptcy appointed based on materials of the Russian legislation and practice of its application. The authors have tried to bring general theoretical questions as close as possible to existing problems arising in the course of applying bankruptcy legislation. **Aim:** justify the need to improve the application effectiveness of bankruptcy legislation by improving the rules relating to trustees in bankruptcy as the main participant in bankruptcy procedures. **Methodology:** dialectic method of cognition, techniques of formal logic, general scientific and private scientific methods were used. **Results:** the paper considered problematic issues of interpretation and application of the norms of the current Russian legislation arising in work of the financial manager appointed in the bankruptcy case of a citizen. There is a statistical analysis of the main results of applying the current Russian bankruptcy law. There is a legal uncertainty in the Russian bankruptcy law regarding the content of its rights and obligations. A critical assessment of law enforcement practice is given, according to which a situation arises when financial managers do not fulfill a number of their duties or execute at their discretion. **Conclusions:** attention was drawn to the need to prepare the act of official interpretation of the law on the most pressing issues of the arbitration manager.

**Keywords**—Russian bankruptcy law, insolvency, bankruptcy proceedings, trustee in bankruptcy, financial manager, creditors

## I. INTRODUCTION

The relevance of the stated research topic on rights and obligations consideration of trustees in bankruptcy is determined by a number of circumstances. On the one hand, there have recently been legislative tendencies towards toughening and extending the legal liability of trustees in bankruptcy, and there are strict punitive measures for even minor violations of bankruptcy laws. On the other hand, the application of disciplinary responsibility to trustees in bankruptcy is extremely loyal. In fact, it is formal. Due to its multi-faceted composition, the procedure to bring trustees in bankruptcy to criminal responsibility is extremely complicated. Different types of rules enshrining one or another type of legal responsibility have their own approach and pursued goals, which creates situations in which the same act of trustees in bankruptcy as understood by various prosecuting entities can often qualify in fundamentally different ways. This phenomenon leaves almost no chance to create a single

consistent practice on identical episodes of violation by bankruptcy law by trustees in bankruptcy.

The situation is aggravated by the fact that the institution of bankruptcy of citizens is extremely poorly worked out today. Due to the inconsistency of certain provisions of the Federal Law of October 26, 2002 No. 127-FZ “On Insolvency (Bankruptcy)” (hereinafter referred to as the Bankruptcy Law) a paradoxical situation arises in which the financial manager actually gets the opportunity not to perform his duties which, in fairness and in the spirit of the law, he must perform.

The low legal quality of the Law on Bankruptcy in terms of the legal regulation of insolvency relations of citizens has created a “legal” basis for unfair participants to abuse their rights in the course of applying bankruptcy procedures. In many ways, it is possible by the unfair actions of financial managers, pursuing their own selfish goals. Today there are practically no legal ways to prevent such abuses. However, neither the legislation nor the law enforcement practice has developed effective mechanisms to identify the situation of a “conflict of interest” of a financial manager in a citizen bankruptcy procedure. This circumstance creates the difficulty of attracting trustees in bankruptcy to any kind of legal liability.

It confirms the relevance of the stated research topic for the development of the legal doctrine of bankruptcy and various types of responsibility, improvement of lawmaking and law enforcement in the outlined sphere of social relations.

## II. METHODOLOGY

The methodological basis of this study was: (1) universal (dialectical) method of cognition, (2) general methods of formal logic, (3) certain general scientific research methods (system approach, statistical analysis) as well as (4) private scientific methods of jurisprudence (formally-logical method of interpretation of law, dogmatic method). Using this set of methods as an organically coherent system, a comprehensive and comprehensive analysis of the phenomenon under the study was carried out, the shortcomings of legal regulation were identified and proposals for improving bankruptcy legislation were formulated.

The study used analytical data published annually in the Unified Federal Register of legally relevant information on the facts of the activities of legal entities, individual entrepreneurs and other economic entities (Fedresurs, fedresurs.ru). In

addition, empirical information was used on the practice of applying bankruptcy law, cited by the Court Department at the Supreme Court of the Russian Federation.

### III. RESULTS

The conclusions formulated in the paper can serve as the basis for further theoretical developments to improve the balance of the legal status of trustees in bankruptcy, proposing methods to bring the practice of attracting arbitration managers to different types of responsibility in a uniform direction, forming the same approaches for identical violations.

The paper substantiates the proposals on the need to prepare formal acts of interpretation of law on specific issues of the law enforcement. It is recommended to adopt the relevant act at the level of the Supreme Court of the Russian Federation. Certain provisions of the work may be included in the educational process for the study of business law and the institution of insolvency (bankruptcy).

### IV. DISCUSSION

***The concept of trustee in bankruptcy.*** The legal definition is set out in Section 2 of the Bankruptcy Law. The trustee in bankruptcy is considered to be “a citizen of the Russian Federation who is a member of the self-regulating organization of trustees in bankruptcy”. It is symptomatic that this definition fully reflected the provision of paragraph 1 clause Article 20 of the Bankruptcy Law. This provision provides that a trustee in bankruptcy shall also be “recognized as a citizen of the Russian Federation who is a member of one of the self-regulating organizations of trustees in bankruptcy” (SRO TB).

The legal status of the trustee in bankruptcy essentially depends on two circumstances - on the bankruptcy procedure conducted by it, as well as on the status of the insolvent debtor (general or special). Therefore, the Bankruptcy Law identifies five types of the trustee in bankruptcy and gives them the appropriate definitions - interim manager, administrative manager, external manager, bankruptcy manager and financial manager. A temporary administrator is appointed to carry out the monitoring procedure, an administrative administrator to conduct financial rehabilitation, an external administrator to conduct external management and exercise other powers specified in the Bankruptcy Law. The arbitral tribunal to participate in a citizen bankruptcy case approves the finance manager. The definition of a bankruptcy trustee is somewhat different from all others. They are considered not only an arbitration administrator approved by an arbitration court to conduct bankruptcy proceedings and exercise other powers established by the Bankruptcy Law, but also the state corporation Deposit Insurance Agency. The latter exercises the same powers in the cases established by the Bankruptcy Law.

***Statistical analysis of the application of bankruptcy law.*** Over the past three years, Russia has been dropping in the World Bank’s Doing Business rating on the “resolution of insolvency” indicator. In 2018, Russia moved from 54 to 55 place.

To calculate this indicator, the World Bank conducts a survey of experts and calculates several indicative indicators. In

particular, according to experts, no key indicators for 2018 in Russia changed: experts estimated the period of bankruptcy procedures at two years, costs - at 9% of the value of the debtor’s property, the efficiency index of the regulatory framework - at 11.5 points. It is noteworthy that the debt repayment ratio technically increased from 40.7 to 42.1 points, despite the fact that the first two indicators (time and cost of procedures) are used to calculate it. The increase in the ratio is associated with a decrease in the interest rate at which the proceeds of the creditors for bankruptcy are being discounted.

The expert community assumes that after making changes to the current Russian bankruptcy legislation, which allows not apply the monitoring procedure, Russia has a chance to improve its rating by reducing the period to conduct bankruptcy procedures and reduce costs for this reason. However, it is unlikely to affect the efficiency in terms of the number of healthy companies and the amount of satisfied creditors' claims. For reference: the draft law “On Amendments to the Federal Law “ On Insolvency (Bankruptcy) ” and certain legislative acts of the Russian Federation on the procedure to restructure debts in bankruptcy cases of legal entities was adopted by the State Duma of the Russian Federation in the first reading in December 2017.

At the same time, Russian experts also focus on a number of methodological flaws in the considered indicator of the World Bank. In particular, the assessment of legislation in isolation from the analysis of its enforcement does not allow an objective result. The methodology to calculate the indicator involves interviewing respondents, and any local survey does not always provide reliable information. The rating does not take into account the procedure effectiveness in terms of satisfying the claims of non-tax creditors, as well as the possibility and effectiveness of bringing the persons controlling the debtor to subsidiary liability

The number of trustees in bankruptcy in Russia is annually increasing. Their total number at the end of 2018 was 10,039 people, for comparison, in 2011 there were 8,150 (+ 23.1%). Their maximum number in 2016 was 10,153. It is easy to establish a pattern between the increase in the number of trustees in bankruptcy and the increase in the number of bankruptcy procedures, which was caused by the emergence of consumer bankruptcy (citizen bankruptcy) in Russian legislation. Most trustees manage both bankruptcy and legal bankruptcy cases (59% of the total number of trustees who published reports from January 2015 to September 2018). Another 36% of trustees specialize only in bankruptcy procedures for legal entities and 5% only in bankruptcy procedures for citizens.

The sale of a citizen’s property and bankruptcy proceedings are the most commonly used procedures in a bankruptcy case. In January-September 2018, one trustee in bankruptcy accounted for an average of 4.2 completed procedures for the sale of a citizen’s property, against 1.8 for bankruptcy proceedings of legal entities.

The average remuneration per trustee, who completed the sale of property of citizens in January-September 2018, increased by 1.9 times - up to 77.9 thousand rubles. In contrast, in the bankruptcy proceedings of legal entities, by contrast,

decreased by 5%, to 965, 6 thousand rubles compared with the same period of 2017. However, there are those trustees who reported zero remuneration. In the first half of 2018, such trustees were 36% (in 2017 for the same period - 37%).

In the bankruptcy proceedings, the average amount of creditors' claims in the registry per procedure in January-September 2018 increased by 5% compared to the same period in 2017 (to 212.1 million rubles), and the satisfied claims increased by 5%, (up to 13.5 million rubles). In the procedures for the sale of property of citizens, the first indicator increased 2.8 times (to 55.1 million rubles), the second - 2.5 times (to 401 thousand rubles).

It is necessary to focus attention on the fact that the application of the Law on Bankruptcy indicates a rather low percentage of satisfaction of creditors' claims in case of bankruptcy of legal entities. Moreover, in the procedures of bankruptcy of citizens, this indicator strives to zero at all. According to the results of the bankruptcy proceedings, creditors for 6 months of 2018 received 6.4% of the requirements included in the registers, 6.3% - for January-September 2017. According to the results of the procedures for selling property of citizens, the share of satisfied creditors' claims was respectively 0, 7% and 0.8%. It is significant that the coefficient of satisfaction of creditors' claims is systematically decreasing from year to year: 5.5% in 2017, 6% in 2016, and 6.3% in 2015. If in 2016, the average amount of satisfied creditors' claims within one case was 6 million rubles. In 2017 - only 4 million rubles. (1.5 times less).

The number of complaints against trustees in bankruptcy is quite a lot, but only 20% of them for the first 9 months of 2018 are satisfied. As for the disqualification of trustees, in 2017 there was a sharp increase in this indicator compared to 2016. There is a significant number of disqualified trustees in bankruptcy in several regions. These include the Republic of Tatarstan, the Republic of Bashkiria, Krasnodar Krai and Krasnoyarsk Krai. In Moscow, despite a significant number of bankruptcy cases, 1-2 trustees are disqualified per year, and in St. Petersburg - 0-1.

***The problematic issues of applying bankruptcy law in Russia.*** For a long time, the most problematic issue in the Russian law enforcement practice was the application of the rules on bankruptcy of developers. This was associated with a significant number of defrauded co-investors (construction participants), a low level of satisfaction of creditors' claims, a significant number of criminal acts committed in the housing market under construction. The scientific literature rightly pointed out the main shortcomings of the legal regulation of shared construction, which determined the commission of certain types of economic crimes, and in particular, the commission of fraudulent acts in the field of shared construction [1, 2]. Researchers identified typical ways of committing crimes related to the construction and operation of apartment buildings [3]. Amendments to the Russian bankruptcy legislation, in terms of improving the application of bankruptcy procedures for developers, it seems, will help prevent the commission of criminal acts in the housing market.

Today it is not fully resolved in Russian legislation and therefore, in our opinion, a number of problems remain. In

particular, there are difficulties associated with bringing to criminal responsibility of individuals for committing fictitious and deliberate bankruptcy [4]. It is necessary to develop effective measures to prevent the commission of offenses in the field of tax evasion and mandatory payments [5], as well as in the sphere of monetary relations [6], including bankruptcy cases. The issue of unification of civil law and the Law on Bankruptcy is urgent on the satisfaction of creditors' claims [7]. Legal uncertainty in the structure of rights and obligations exists in relation to a trustee in bankruptcy, who is appointed in a bankruptcy case. In more detail, we will stop on the last of the specified scientific problems.

***The legal status of a financial manager.*** The basic rights and obligations of trustees in bankruptcy are established in section 20.3 of the Bankruptcy Law. In addition, separate articles of the Bankruptcy Law on individual bankruptcy procedure supplement them. For example, Articles 66 and 67 establish additional rights and obligations with respect to the interim administrator, article 99 outlines the powers for the external administrator, article 129 for the bankruptcy authority.

The legal regulation of the financial manager is the subject of scientific research in the doctrine [8-12]. Meanwhile, not all issues have been fully resolved. The rights and duties of the financial manager have distinctive peculiarities compared with trustees in bankruptcy assigned in the bankruptcy case of legal entities. This circumstance is paid attention by the researchers of the corresponding questions [13, p. 14]. The powers of the financial manager are enshrined in paragraphs 7-8 Article 213.9 of the Bankruptcy Law. However, even the question of the list of duties of a financial manager in law enforcement practice is controversial. This circumstance in turn causes difficulties in qualifying the actions of the manager. Thus, in some cases it is difficult to answer the question of whether the financial manager has violated bankruptcy laws or not, whether it is necessary to bring him to legal responsibility or not. We illustrate the thesis we have indicated by the following examples.

***The duty of financial managers to publish information.*** It is necessary to publish certain information in a bankruptcy case in the Unified Federal Register of Bankruptcy Information (hereinafter - UFRBI). With regard to the financial manager, the question arises about the need to publish information on the receipt of the lender's claims by the financial manager. This duty is established for the external and bankruptcy trustee by clause 2 Article 100 of the Bankruptcy Law and reads as follows: "The external trustee must include within five days from the date of receipt of creditor's claims in the Unified Federal Register of Bankruptcy Information about receipt of creditor's claims with indication of (for a legal entity) or surname, name, patronymic (for an individual) of the creditor, taxpayer identification number, main state registration number (their presence), the sum of the stated requirements, the grounds of their origin, and must provide persons participating in a bankruptcy case, to familiarize themselves with the requirements of the lender and the documents attached thereto."

Relations with the bankruptcy of citizens and not regulated by Chapter X of the Bankruptcy Law are extended, inter alia, to the provisions on external management and bankruptcy



proceedings (paragraph 1 Article 213.1 of the Bankruptcy Law). Thus, from the point of view of a formal logical interpretation, the responsibility of publishing the relevant information should also extend to the financial manager.

In practice there is often a different situation based on a different interpretation of the Bankruptcy Law. In particular, financial managers perform the responsibility at their discretion, therefore, extremely rare. However, they refer to the provision of section 213.7 of the Bankruptcy Law. The Article contains a list of information subject to mandatory publication in a citizen bankruptcy procedure. However, this article does not prescribe to publish information about the claims of creditors, which are received by the financial manager. Moreover, financial managers argue for economic reasons: the implementation of these actions entails an increase in the cost of the bankruptcy procedure at the expense of the debtor's property and, accordingly, a reduction in the bankruptcy masses, which can be classified as damage caused to creditors' property rights (Resolution of the Arbitration Court of the Volga District dated of December 20, 2016 in case No. A12-45751 / 2015).

To avoid evading of the financial manager from fulfilling the obligation in question, many courts, when accepting creditors' applications for inclusion in the register of creditors' claims for consideration in the resolution part of the definition, indicate the need to submit evidence to the court of the relevant publication (Determination by the Arbitration Court of Sverdlovsk Region dated of April 5 in case No. A60-55071 / 2016, Determination of the Arbitration Court of the Altai Territory of March 22, 2017 in case A03-1942 / 2016).

The situation is more complicated with the obligation of the financial manager to publish to UFRBI information about the identified property of the debtor. The duty of the external manager to take control of the debtor's property, to conduct its inventory and publish its results is expressly provided for in section 99 of the Bankruptcy Law. Article 127 of the Bankruptcy Law also lays down the same obligation for the bankruptcy trustee. The analysis of these and other articles of the Bankruptcy Law shows that the system of legal regulation pays considerable attention to the execution of this duty of the bankruptcy commissioner, as well as to the report on the identified property.

But all this is directly provided for the case of bankruptcy of legal entities. If a citizen bankruptcy case is open, then there is a gap on this issue. At least, Article 213.9 of the Bankruptcy Law does not establish the obligation of the financial manager to publish any information about the property of a bankrupt citizen. This obligation is not provided in Article 213.4 of the Bankruptcy Law, which, as mentioned earlier, establishes a list of information that is mandatory for publication in UFRBI. Financial managers consider the following indirect evidence (argumentum a contrario) as another argument of their inaction. The duties of the financial manager specified in the law duplicate most of the provisions designed for the external and bankruptcy trustee. There is no corresponding obligation to publish information about the property of the debtor. Consequently, if the legislator had the intention to oblige the

financial manager to publish the relevant information, this obligation would be duplicated in the law.

Thus, guided by the principle "a duty not expressly established by law, is not enforceable," the overwhelming majority of financial managers do not publish relevant information about property.

***The duty of financial managers to conduct an inventory of the property.*** On the basis of paragraph 2 clause 8 Article 213.9, the financial manager is obliged to take measures to identify the property of the debtor-citizen, as well as to ensure the safety of this property. In contrast to the situation of bankruptcy of companies, a citizen's bankruptcy case does not provide obligations to take an inventory of the debtor's property.

In practice, financial managers are limited to list the property of the debtor. The inventory of property is included in the report of the financial manager on its activities.

There is also no legal certainty when drawing up the inventory. It can be stated that there is no uniformly established practice of applying the Bankruptcy Law for the case when a financial manager discovers assets that are not to be included in the bankruptcy estate. In some cases, the financial manager describes all the property, and then goes to the arbitration court with a statement about the exclusion of a particular object from the bankruptcy estate. In other cases, the financial manager, at its discretion, does not initially describe specific objects of property that, in his opinion, are not subject to inclusion in the bankruptcy estate. In the second case, there are favorable conditions for abuse, when it is possible to conceal any unregistered valuable property of the debtor.

***The duty of financial managers to hold a creditors' meeting.*** There are many questions by the provision on the obligation of the financial manager to convene and hold meetings of creditors to consider matters within his competence [14, p. 41]. This duty is expressly provided in paragraph 7 clause 8 Article 213.9 of the Bankruptcy Law. The procedure for holding a meeting of creditors of a debtor-citizen is regulated by a separate article (Article 213.8 of the Bankruptcy Law). Nevertheless, a summary of court practice indicates that there are often cases when a citizen's bankruptcy procedure has been carried out, but there have not been a single meeting of creditors.

In such cases, financial managers use a different arsenal of arguments to justify their position. In one of the cases, which was considered by the Arbitration Court of Irkutsk Region, the financial manager explained that he did not hold a meeting of the debtor's creditors, since "the debtor is not an individual entrepreneur and, therefore, it is not necessary to hold such a meeting". In another case, an explanation was given by the financial manager that "he did not hold a meeting of creditors due to the debtor's lack of property to be included in the bankruptcy mass, no transactions to be challenged, there are also no other controversial points in the procedure". In the following case, the meeting of creditors was first appointed by the financial manager, but subsequently canceled due to the absence of issues on the agenda on which voting is envisaged.

These explanations of financial managers did not raise any questions or comments from the court, did not give rise to

additional time for the financial manager to hold a meeting of creditors or to provide written explanations about the reasons for their inaction, did not serve as a basis to refuse the petition to complete the bankruptcy procedure. It is not necessary to clarify that the court did not apply in relation to such financial managers any measures of legal effect for failure to comply with the requirements of the law. Bankruptcy law cannot agree with such applications.

#### V. CONCLUSION

There is every reason to believe that the provisions of the Bankruptcy Law, which regulate the specific rights and obligations of trustees in bankruptcy, are imperfect and require considerable and painstaking elaboration. It is required to harmonize certain provisions of the Bankruptcy Law with each other [15, p. 50]. Now, the determination of the legal status of a financial manager, or rather the range of his rights and obligations, represents legal uncertainty. This is beyond his special place in the field of business relations and the main role in bankruptcy proceedings. The current law enforcement contradictions provide fertile ground for many potential situations in which the rights and legitimate interests of bona fide participants in a bankruptcy case will be significantly violated, and bringing the arbitration manager to responsibility and, accordingly, recovering damages becomes almost impossible.

In our opinion, the official act of law interpretation is urgently needed at the moment. The act must clarify which rights and duties of external and bankruptcy trustees specifically apply to the financial manager, and whether they apply at all. The act must give a detailed interpretation of the content of each group of rights and obligations of the trustees. For example, how do the different types of trustees in bankruptcy relate to each other: to inventory (describe) property and report on it, the obligation to publish various types of information in an official source, to hold a meeting of creditors *et cetera*.

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