

# Newsletter

## *Shifting Paradigms in Insolvency: The Supreme Court's Evolving Guidance for Controlling Persons and Affiliated Creditors*

30 December 2025

Dear Ladies and Gentlemen,

On the eve of the New Year, the Plenum of the Supreme Court of Russia approved two key resolutions that introduce new approaches to disputes concerning subsidiary liability<sup>1</sup> and the subordination of affiliated creditors' claims<sup>2</sup>. In fact, the Supreme Court has softened the rules for subsidiary liability, establishing new methods of protection and drawing the courts' attention to the need to personalize and individualize liability. Regarding the subordination of affiliated creditors' claims, the position of the Supreme Court indicates a tightening of this institution's model.

Current case law demonstrates a broad range of bankruptcy proceedings involving Russian entities that form part of large international corporate groups (including, among others, Microsoft, Siemens Energy etc.). In situations where such Russian entities lack sufficient assets to settle all creditor claims, bankruptcy effectively represents the only viable mechanism for their liquidation. At the same time, Russian case law is not limited to the insolvency of Russian companies and also encompasses bankruptcy proceedings involving foreign legal entities. Moreover, a significant number of bankruptcy cases involve foreign persons acting as creditors, including in matters concerning the inclusion of their claims in the register of creditors of Russian debtors. These factors underscore the relevance and practical significance of the information set out below.

### **1. Subsidiary liability**

The Supreme Court has provided clarification on key aspects of subsidiary liability, including differentiating claims for damages recovery, individualizing the liability of collegial management bodies' members, and reducing liability amounts.

To be clear, subsidiary liability is a special remedy under Russian Bankruptcy Law that holds controlling persons liable for the debts of a debtor if they have taken actions that have contributed to the debtor's insolvency. You can find more details about the liability of management and beneficiaries in our guide.

#### **1.1 Individualization of the responsibility collegial bodies' members**

The Plenum expressly confirmed that liability of collegial management bodies' members (boards of directors, management boards, etc.) must be individualized (clauses 22.1-22.2). Mere participation in a collegial body or voting as part of a collective decision is not sufficient to establish liability.

For each individual, the claimant must prove: personal involvement in the relevant decisions or actions; and personal fault that contributed to the debtor's insolvency.

As a result, corporate documentation becomes critically important. Minutes of meetings, records of dissenting opinions, internal memoranda, and other documents evidencing a person's individual position may play a decisive role in defending against subsidiary liability claims.

<sup>1</sup> Resolution of the Plenum of the Supreme Court of Russia dated 23 December 2025 No. 42 "On Amendments to Resolution of the Plenum of the Supreme Court of the Russian Federation dated 21 December 2017 No. 53 "On Certain Issues Related to Bringing the Debtor's Controlling Persons to Liability in Bankruptcy".

<sup>2</sup> Resolution of the Plenum of the Supreme Court of Russia dated 23 December 2025 No. 41 "On the Establishment of Claims of the Debtor's Controlling Persons and Affiliates of the Debtor in Bankruptcy Proceedings".

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## **1.2 Reduction of the amount of subsidiary liability at the stage of its determination**

A dispute on subsidiary liability is considered in two stages: (1) determining the grounds for liability, and (2) determining the liability amount after settlements with creditors have been completed. Previously, the second stage was mainly considered formally by the courts and was usually reduced to a simple arithmetic operation to determine the difference between the amount of sustained and unsustained creditors' claims. This was done without an independent assessment of the damage caused and its proportionality to the claimed amount of subsidiary liability.

The Plenum has now confirmed that the court may reduce the amount of subsidiary liability on the second stage if it is proven that the actual damage caused by the controlling person is significantly lower than the amount formally claimed. This means that the proportionality between the person's conduct and the resulting damage must be assessed, opening additional possibilities to limit financial exposure (clause 26.3).

## **1.3 Accounting for claims of affiliated creditors**

The Plenum allowed claims of affiliated creditors (including majority shareholders) to be included in the calculation of subsidiary liability, provided that such creditors acted in good faith and did not contribute to harm being caused to other creditors (clause 26.5). Accordingly, courts must assess not only formal affiliation, but also the creditor's actual economic and managerial influence; and whether its behavior contributed to the debtor's insolvency or prejudiced other creditors.

## **1.4 Strengthening the role of the prosecutor**

The prosecutor's right and obligation to actively participate in disputes on subsidiary liability has been expressly emphasized (clause 31.1). Such participation is aimed at protecting public interests and may increase the overall scrutiny applied by courts in these disputes.

## **1.5 Procedural activity of a person held liable**

The Plenum highlighted that a person facing subsidiary liability must take an active procedural position (clause 56.1). Failure to provide explanations, objections, or evidence may be interpreted by the court as indirect confirmation of the claimant's arguments. A passive defense strategy is therefore no longer neutral and may substantially weaken the position of the defendant.

## **2 Subordination of claims of affiliated creditors**

The Supreme Court has also clarified the rules governing the treatment of claims of affiliated persons in bankruptcy proceedings. While the inclusion of affiliated creditors' claims remains permissible, their legal stability depends directly on the economic feasibility of transactions, the behavior of such creditors during the crisis period, and the sufficiency of documentation process for transactions with affiliated persons.

### **2.1 Expanding the concept of controlling persons**

The Plenum broadened the concept of a controlling person (clause 3). In addition to formal managers and beneficiaries, this category may now include: major counterparties; or majority creditors who effectively determine the debtor's behavior during the crisis period.

If such persons benefit from the continuation of loss-making activities or force the debtor to adopt economically unjustified decisions, they may be recognized as controlling persons, and their claims may be subordinated.

### **2.2 Redemption of claims from independent creditors**

The Plenum has clarified the treatment of claims acquired from independent creditors after the commencement of bankruptcy proceedings (clause 12).

Assignment of claims is not automatically considered as compensatory financing and does not, by itself, lead to subordination. However, if the court determines that the purpose of the acquisition was to gain control over the bankruptcy proceedings in violation of the creditors' equality principle, such claims may be subordinated.

### 2.3 Position of subordinated creditors in the absence of independent creditors

A special rule applies where independent creditors fail to file their claims within the statutory time limits. In this situation, the rights of third-priority creditors are transferred to subordinated creditors (clause 24). This prevents claims from being subordinated solely on the basis of affiliation and ensures a more balanced outcome.

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