The prosecutor's office is foreclosing the enterprises that private owners received in the 1990s. Even if such an asset was subsequently transferred to another person for a fee, they will not receive compensation during deprivatization. **Svetlana Permyakova,** Senior associate of the law firm "Tomashevskaya & Partners" and her colleague told us how the prosecutor's office justifies claims, what position the authorities take, and what companies should pay attention to when planning their business.

The prosecutor's office returns companies into state ownership. What you need to know about deprivatization

Owners risk losing control over their enterprises. The authorities have begun to return the assets that were given up for privatization. At the same time, they do not pay compensation to those persons who owned the assets for a long time, nor to their heirs or new owners. This creates uncertainty in business planning and investments. More than 15 large companies that ensure the country's defense capability or are strategically important have already been returned to state ownership. For the first time, the prosecutor's office filed a lawsuit to reclaim shares in favor of the state in 2020. The court satisfied the claim in full, and Bashkir Soda Company JSC was transferred to the state's balance sheet (decision of the Arbitration Court of the Republic of Bashkortostan dated 11.12.2020 in case No. A07-20576/2020).

Using the example of assets that were transferred to the state, we will tell you how the prosecutor's office motivated its demands and what violations companies should not allow in order not to lose assets. In the summary table on disputes, you can see what basis for the demand the prosecutor's office used (see the table "Asset and basis for the demand of the Prosecutor General's Office"). We will consider the dangerous trends that can be observed in judicial practice, which follows the position of the supervisory authority. We will tell you about the amendments that the Russian Union of Industrialists and Entrepreneurs (hereinafter referred to as RSPP) proposes to protect the rights of companies.

The prosecutor's office will check legality of asset acquisition

Cases when assets of private companies are seized for the benefit of the state are called de-privatization. However, from a legal point of view, this term does not reflect the essence of the demands put forward by the prosecutor's office. The claims are based on corruption offences violations, invalid

transactions, the lack of their approval and the illegality of foreign investments. The prosecutor's office can demand the return of property, even if it has passed through several owners. Let's take a closer look at how the supervisory authority justifies the requirements to seize property.

Corruption offences. Assets are seized because the companies violate the provisions of the Federal Law of 25.12.2008 No. 273-FZ "On Combating Corruption". If the owner cannot prove that he used legally received money to acquire the property, the latter will be seized.. This possibility is provided for by subparagraph 8 of paragraph 2 of Article 235 of the Civil Code.

Recovery of property from another's unlawful possession Sometimes the prosecutor's office comes out with claims for vindication to reclaim property from someone else's illegal possession. In addition, the supervisory authority may request that the transaction be declared invalid and that the situation that existed before the violation of the right be restored. Such cases involve the return of assets that became private property during privatization. If an entrepreneur acquired property in the 1990s, the asset is reclaimed even if it is now owned by another owner who is not connected with the state by any legal relationship. Subsequent owners of the asset, including third parties and heirs, are left without compensation, even if they openly owned the property and bore the costs of its maintenance. In this case, it does not matter whether they were aware of that there had been any violatios in the privatization process.

Foreign investment with violations. Deprivatization disputes include cases on transactions in which the parties violated the requirements of the Federal Law of 29.04.2008 No. 57-FZ "On the procedure for implementing foreign investments in business entities of strategic importance for ensuring the defense of the country and state security", hereinafter referred to as the Law on Foreign Investments. The court recognizes such transactions as null and void, since they contradict the principles of public order and morality. A special consequence of invalidity of transactions is applied to them in the form of seizure of a strategic asset to the state property.

Financing of terrorism. The court may decide on the seizure of the assets if their owners carry out extremist activities through controlled legal entities. This does not happen often, but we see that over the last two years a similar practice has developed.

How to understand that a business may be at risk of deprivatization

Conduct an internal audit to prepare a position in advance if the company:

- works with the state defense order;
- privatized assets in 90s or acquired them after privatization;
- has strategic assets or licenses and at the same time has foreign persons as members (including persons with dual citizenship or a residence permit in a foreign state);
- carried out privatization transactions without any approvals;
- does not have transaction documentation, is not cor- did not correctly or fully include the assets on the balance.

Actions of supervisory authorities organs have common features

Constant monitoring of cases helps to adapt to the new situation. When considering the demands of the prosecutor's office, attention is drawn to common features. Disputes about deprivatization take place in closed court sessions, which makes it difficult to plan a position in future disputes. It is impossible to understand what exactly the prosecutor's office based its demands on. It is unclear what line of defense the investor has chosen and what assessment of his arguments

the court gave. In addition, the prosecutor's office ignores the statute of limitations, and the court considers cases quite quickly. For example, the case of "TGK-2" was considered in 16 days, which became an absolute record (case No. 2-1709/2023). On average, courts need from two to four months to make a decision. For such complex cases, this is a very short period, at least because it is necessary to establish

The prosecutor's office may drop the claim for an unknown reason

In two cases, the prosecutor's office dropped its claims after the trial court issued a decision. This happened in disputes regarding Heidelberg Cement Rus (case No. A56-74979/2023) and Siberian Energy Company (case No. 2-5985/2023). The reasons for the prosecutor's office dropping the claims are not disclosed. Such practice is still insignificant, but it shows that in some cases the owner can retain assets even after the start of legal proceedings.

factual circumstances that are more than 30 years old.

It is important to prepare a defense strategy in advance, especially in cases of minority shareholders who have fewer rights than majority shareholders. For example, in the Solikamsk Magnesium Plant case, the prosecutor's office demanded shares from the majority shareholder, and then foreclosed on the shares of minority shareholders. This became possible because the plant's shares were in free float on the Moscow Exchange. The claim was the first and so far the only one when minority shareholders were involved in deprivatization. Businesses were concerned that the case would set a precedent. However, recently there was an unexpected turn in the trial. The Central Bank appealed the court's decision and stated that such a verdict would undermine shareholder confidence in the stock market. The appeal hearing was postponed until September 19, 2024.

The situation is developing very quickly, so in the near future we can expect the first clarifications from the law enforcement agency as to whether it is possible to seize shares from minority shareholders in the context of such disputes (decision of the Perm Territory Arbitration Court dated 02.04.2024, case No. A50-21394/2022).

The prosecutor's office ignores the statute of limitations

Consider the possibility of an appeal from the prosecutor's office and prepare counterarguments for transactions, especially historical ones. The legislator has established statute of limitations period within which one can demand that a transaction be declared null and void and the consequences of invalidity be applied (clause 1 of Article 181 of the Civil Code). General rules for all statute of limitations in civil law apply to vindication claims (Article 196 of the Civil Code). In any case, the preclusive period is 10 years.

If the issue is about applying the consequences of invalidity of a transaction which is null and void, then for the parties to such a transaction the period is counted from the moment the transaction is concluded. For a person who is not a party to the transaction, the period is counted from the moment when he learned or should have learned about the commencement of the execution of the transaction, but in any case no later than 10 years from the date of commencement of the execution of the transaction. For the recovery of property from someone else's illegal possession, the limitation period also cannot exceed 10 years from the date of violation of the right.

The rule on the ten-year cut-off period was introduced into the Civil Code on September 1, 2013. For transactions concluded earlier, this period is calculated from the moment the amendments are adopted. If we follow the provisions of civil legislation, then privatization transactions concluded in the 90s cannot be declared invalid. However, the prosecutor's office continued to file lawsuits after September 1, 2023.

The authorities are speaking out conflicting opinions about deprivatization

In the public space, the authorities promote the point of view that deprivatization

Asset and basis for the Prosecutor General's Office's demand

Vindication. Property located in illegal possession	Property acquired with corruption offences has signs of invalidity	M&A transaction	Unification is engaged in extremist activities	Cause of action is unknown
Bashkir soda company (Case No. A07-20576/2020)	Far East shipping company (Case No. 2-604/2023)	Dalnegorsk mining and processing plant (Case No. A51-13465/2023)	PJSC "Ural Plant" auto-textile products" (case No. 2a-6716/2023)	TGK-2 (Case No. 2-1709/2023)
Rostov optical-mechanical plant (Case No. A82-13185/2023)	Uralbiopharm (Case No. 2-5959/2023)	Radio electronic Pluto plant (case No. A40-221753/2022)	OOO "Standart" quality", LLC "Russian North", OOO Rodnik i K, OOO Krymskiy wine house", OOO "Traditions" success", LLC "New Level" and shares JSC Feodosia cognac and wine factory"	Syassky cellulose-paper mill (Case No. A56-24370/2023)
Metafrax Chemicals (Case No. A50-18611/2023)	"Rolf" (cases No. 2-3056/2024, 2-854/2022)	Port of Perm (Case No. A50-17636/2023)		JSC "Klimovsky" specialized cartridge factory"
Voronezh organic synthesis (Case No. A12-18383/2023)	"Makfa" (Case No. 2-3407/2024)	Kaliningrad nautical trading port (Case No. 2-4380/2023)		PJSC "Yaroslavsky shipbuilding factory" (Case No. A82-6992/2024)
Solikamsk magnesium plant (cases No. A50-24570/2021, A50-21394/2022)	Rus-Oil, Azimut (Case No. 02-0614/2023)			OOO Kuban-Vino (Case No. A76-8446/2024)
Kuchuksulfat (Case No. A03-15486/2021)	Agroholding Pokrovsky (Case No. 2-987/2023)			Chelyabinsk electro-metallurgical plant (ChEMK) (Case No. A60-5228/2024)
	FESCO (Case No. 02-4153/2022) T Plus Holding (Case No. 2-5454/2023) Stroygruppservis, Malushin (Case No. 02-0635/2023) Port Petrovsk (Case No. 02-2129/2022) Resorts Stavropol region (Case No. 02-2509/2022)			Ivanovsky heavy plant machine tool industry (Case No. A17-1139/2024)

Note: *There are two related cases where the court declared the general contract invalid (null and void) and reinstated it the situation that existed before the violation of the right. The first case No. A56-116780/2022 — Commercial Center, Transport and Forestry (KCTL), the second — No. A56-102381/2023 — subsidiaries of JSC Severnaya Verf.*

is absent as a phenomenon. In March 2024, at an extended meeting of the board of the Prosecutor General's Office, the President stated that the prosecutor's office files claims for the seizure of assets in favor of the state only if it establishes a violation of the law and harm to the country. The Prosecutor General in June 2024 spoke in the same vein when answering questions from RBC.

At the same time, officials express an opposite position in relation to the ongoing processes. At the St. Petersburg International Economic Forum - 2024, representatives of the financial block of the Government and the Central Bank critically assessed the fact that assets are increasingly being converted to the state's benefit. The Forum noted that minority shareholders face with violations of their rights, and the actions of the prosecutor's office contradict the principle of respect for private property. All this scares private investors away from stock exchange trading.

RSPP proposes to introduce amendments

The RSPP proposed amendments to the provisions of the law on privatization in order to protect asset owners. The organization proposed to prescribe in the law the procedure for reviewing privatization transactions that were carried out with violations (interfax.ru). The president of the RSPP, Alexander Shokhin, reported on the preparation of amendments (rbc.ru). Let's consider these initiatives in more detail.

Refer to the statute of limitations. The RSPP proposes to make a direct reference to the statute of limitations in the Law on Foreign Investments. This could change judicial practice on the issue of statute of limitations.

Set compensation. If the owner is forced to return the property he received under the transaction, he must receive compensation. The authors of the initiative propose giving the entrepreneur the right to demand compensation for the market value of the seized asset.

The court and the prosecutor's office interpret the statute of limitations in their own way

Vladimir Shishov, Head of Corporate Practice and M&A transactions of the law firm "Tomashevskaya & Partners", co-author of the article

It is difficult to say what the court thinks about the expiration of the limitation period. Many hearings were held behind closed doors (for example, in the cases of Makfa No. 2-3407/2024 and Rolf No. 2-3056/2024), so it is impossible to assess the approach of the prosecutor's office and the position of the defendant specifically on the issues of limitation periods in civil legislation. It can be stated that the courts side with the prosecutor's office, but the plaintiff's arguments are not disclosed in the public space. The supervisory authority claims that the court sides with it only when a violation is revealed during an inspection.

There are known cases when the prosecutor's office initiates a criminal case so that during the investigation reveal that privatization was carried out with violations. In such a case, the limitation period will be counted from the moment the violation is discovered.

In addition, the prosecutor's office refers to the fact that the law of the Russian Federation is an intangible asset. Therefore, the statute of limitations in deprivatization disputes, in the opinion of the supervisory body, cannot be applied at all. This position can be argued.

If the rules on the application of statute of limitations period were interpreted differently, then the prosecutor's office would not be able to file lawsuits against the owners of companies that were privatized in the 90s.

Oblige the prosecutor's office to issue an order. The supervisory authority must issue an order to return shares and property of strategic enterprises to the previous owner if the latter violated the provisions of the Law on Foreign Investments. If the company does not comply with the injunction, the prosecutor's office has the right to seize the asset and transfer it to the state property.

Do not foreclose on shares and property. The provisions of the Law on Foreign Investments stating that it is possible to seize the shares and the assets of the strategic companies after recognizing a null and void transaction as invalid, should be removed. Let us recall: the legislator has confirmed that the consequences of the invalidity of a transaction must be directly established in the law (Article 169 of the Civil Code).

Perhaps, with this amendment, the RSPP wants to reduce the likelihood that assets will be transferred to the state without compensation. According to the proposed wording, the income received as a result of a void transaction can be seized to the state property only if the parties to such transaction acted wilfully.

moves that are obtained as a result of a voidable transaction if the parties acted intentionally.

The prosecutor's office is interested in collecting in favor of the state the assets of those enterprises that are of strategic importance and play a role in the defense capability of the state. At the time of preparation of this article, the court has never refused the prosecutor's office, so it is practically impossible to challenge its demands. Moreover, the supervisory authority has twice refused its demands. This means that entrepreneurs can fight for their interests.

The situation may change if at least some of the amendments to the legislation proposed by the RSPP are adopted. Perhaps in the future, entrepreneurs will not only receive compensation, but will also be able to protect individual assets from foreclosure. However, until then, companies must take into account the risk of deprivatization when they engage in business planning or conclude transactions.