THE INSOLVENCY REVIEW

Seventh Edition

Editor
Donald S Bernstein

THE LAWREVIEWS

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SEVENTH EDITION

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This article was first published in October 2019
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Published in the United Kingdom
by Law Business Research Ltd, London
Meridian House, 34-35 Farringdon Street, London, EC2A 4HL, UK

www.TheLawReviews.co.uk

ISBN 978-1-83862-061-5

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

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ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following for their assistance throughout the preparation of this book:

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ARENDT & MEDERNACH

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PREFACE

This seventh edition of *The Insolvency Review* once again offers an in-depth review of market conditions and insolvency case developments in key countries. A debt of gratitude is owed to the outstanding professionals around the world who have dedicated their time and talents to this book. As always, their contributions reflect diverse viewpoints and approaches, which in turn reflect the diversity of their respective national commercial cultures and laws.

In a prior edition of this book, we examined the challenges faced by multinational enterprise groups attempting to restructure under diverse and potentially conflicting insolvency regimes. At that time, the European Parliament and Counsel had recently published the Recast Insolvency Regulation,[1] which included provisions relating to cooperation and communication across group restructuring proceedings in multiple jurisdictions, and UNCITRAL's Working Group V was in the process of developing its Enterprise Group Insolvency: Draft Model Law (the EGI Model Law).[2] This year's edition provides an occasion to revisit this topic in light of the Working Group's EGI Model Law and the EGI Model Law's Guide to Enactment (the Guide to Enactment).

The EGI Model Law is designed to provide states with a legislative framework to address the cross-border insolvency of enterprise groups, complementing the UNCITRAL Model Law on Cross-Border Insolvency (the Model Law) and part three of the UNCITRAL Legislative Guide on Insolvency Law (the Legislative Guide, part three).[3] What distinguishes the EGI Model Law from the Model Law, which concerns itself with multiple proceedings of a single debtor, is the focus on multiple insolvency proceedings relating to multiple related debtors.[4]

The EGI Model Law defines 'enterprise group' as two or more entities, regardless of legal form, that are engaged in economic activities and may be governed by insolvency law, that are interconnected by control or significant ownership.[5] When members of an enterprise group are located in different jurisdictions, the EGI Model Law is intended to support cross-border cooperation and coordination with respect to their insolvency proceedings and establish new mechanisms that can be used to develop and implement a solution for the group (a

1 Regulation (EU) No. 2015/848 of 20 May 2015 on insolvency proceedings (recast), 2015 O.J. (L 141) <https://eur-lex.europa.edu/eli/reg/2015/848/oj>.

2 See UNCITRAL, Report of Working Group V (Insolvency Law) on the Work of its Forty-Fifth Session (New York, 21 to 25 April 2014), U.N. Doc. A/CN.9/803 (6 May 2014) <https://undocs.org/en/A/CN.9/803>.

3 UNCITRAL, Enterprise Group Insolvency: Guide to Enactment, Working Group V (28 to 31 May 2019) <https://undocs.org/en/A/CN.9/WG.V/WP.165>.

4 ibid., at I.A.3.

5 EGI Model Law, at Article 2.

group insolvency solution) through one (or potentially more) insolvency proceedings (each a planning proceeding) taking place in a state where a group member has its centre of main interests (COMI).[6] A planning proceeding is a main proceeding commenced in respect of an enterprise group member provided (1) one or more other enterprise group members are participating in that main proceeding for the purpose of developing and implementing a group insolvency solution, (2) the enterprise group member subject to the main proceeding is likely to be a necessary and integral participant in that group insolvency solution, and (3) a group representative has been appointed. The group representative will be able to seek a wide range of relief in any group member's insolvency proceeding. Ultimately, a group insolvency solution can be a reorganisation, sale or liquidation of some or all of the assets and operations of one or more enterprise group members, with the goal of protecting, preserving, realising or enhancing the overall combined value of those enterprise group members.[7] The EGI Model Law does not address the procedure for seeking approval of the group insolvency solution, leaving that to the law of the approving jurisdiction.[8]

The court overseeing the planning proceeding may grant certain types of relief if necessary to preserve the possibility of developing or implementing a group insolvency solution.[9] These forms of relief include, among other things, staying execution against the assets of an enterprise group member, suspending the right to transfer, encumber, or otherwise dispose of any assets of an enterprise group member, staying the commencement or continuation of individual actions or individual proceedings concerning the assets, rights, obligations or liabilities of an enterprise group member, and approving arrangements concerning the funding of an enterprise group member and authorising the provision of finance under those funding arrangements.[10] With respect to approval of post-filing funding arrangements, the Guide to Enactment notes that the court might take into consideration various criteria, including whether the funding arrangement is necessary for the continued operation or survival of the business of that enterprise group member or for the preservation or enhancement of the value of its estate, whether any harm to creditors of that enterprise group member will be offset by the benefit to be derived from continuing that funding arrangement, whether the funding arrangement safeguards the development of a group insolvency solution, and whether the interests of local creditors are protected.[11]

Moreover, the EGI Model Law also seeks to minimise the need for commencement of non-main proceedings in a second state in which an enterprise group member has an establishment and facilitates the centralised treatment of claims in an enterprise group insolvency by including a mechanism under which such claims can be addressed.[12]

It remains to be seen how swiftly and extensively the EGI Model Law will be incorporated into national laws. There is reason to believe, however, that some of the 45 jurisdictions

6 UNCITRAL, Enterprise Group Insolvency: Guide to Enactment, Working Group V (28 to 31 May 2019) <https://undocs.org/en/A/CN.9/WG.V/WP.165>.

7 ibid., at Article 2(f).

8 ibid., at Article 26.

9 ibid., at Article 19.

10 ibid., at Article 20.

11 UNCITRAL, Enterprise Group Insolvency: Guide to Enactment, Working Group V (28 to 31 May 2019) <https://undocs.org/en/A/CN.9/WG.V/WP.165>.

12 ibid.

that have adopted the existing Model Law may act relatively quickly, given the need for an enterprise group solution and the public nature of Working Group V's work.

Recent experiences in high-profile enterprise group restructurings further underscore the benefits promised by this new regime. The United States Bankruptcy Court for the Southern District of New York quoted from a working draft of the EGI Model Law in its opinion denying recognition of the Dutch insolvency proceeding of Oi Brasil Holdings Coöperatief UA (Coop).[13] There, the Dutch trustee of Coop sought such recognition notwithstanding that:

a the Oi Group was a Brazilian enterprise that maintained nearly all its operations, management, principal executive offices, customers, assets and employees in Brazil;

b many of the Oi debtors, including Coop, were already subject to restructuring proceedings in Brazil (*recuperação judicial* (RJ));

c an RJ had previously been recognised by the US Bankruptcy Court as foreign main proceedings;

d Coop was merely a special purpose vehicle (SPV) used to finance the Oi Group as a whole; and

e Brazil was the preferred venue of the Oi Group.

The Coop dispute was highly contentious and costly, but had the EGI Model Law existed, the effects of the dispute might have been mitigated. The group representative of a hypothetical Brazilian planning proceeding for the Oi Group could have, among other things, petitioned the Dutch court for (1) recognition of the planning proceeding and (2) relief to support the development and implementation of an insolvency solution for the Oi Group as a whole. The existence and recognition of a planning proceeding might have reduced the likelihood of the contested recognition hearing in the United States. The same may be true for the case of OAS SA and its debtor affiliates, which also involved a COMI determination regarding a European SPV that served as a financing vehicle for a Brazilian enterprise.[14]

As I do each year, I want to thank each of the contributors to this book for their efforts to make *The Insolvency Review* a valuable resource. As each of our authors knows, this book is a significant undertaking because of the current coverage of developments we seek to provide. As in previous years, my hope is that this year's volume will help all of us, authors and readers alike, to reflect on the larger picture, keeping our eye on likely, as well as necessary, developments, on both the near and distant horizons.

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September 2019

13 *In re Oi Brasil Holdings Coöperatief U.A.*, 578 B.R. 169, 243 (Bankr. S.D.N.Y. 2017) (noting that 'the promotion of cooperation between courts and other competent authorities among States involved in cases of cross-border insolvency affecting members of an enterprise group' is a key objective of both the Enterprise Group Insolvency Model Law and reflects current trends in international insolvency law).

14 *In re OAS S.A.*, 533 B.R. 83 (Bankr. S.D.N.Y. 2015).

Chapter 22

RUSSIA

Pavel Boulatov[1]

I INSOLVENCY LAW, POLICY AND PROCEDURE

i Statutory framework and substantive law

The principal statute governing insolvency of legal entities and individuals in Russia is Federal Law No. 127-FZ on Insolvency (Bankruptcy) dated 26 October 2002 as amended (the Insolvency Law). The Insolvency Law contains a detailed description of insolvency proceedings, insolvency criteria and the regulation of the activities of insolvency administrators.

Apart from the Insolvency Law, certain other laws regulate financial rehabilitation and insolvency issues. For example, the Commercial Procedure Code contains rules for the administration of insolvency cases by commercial courts. The Federal Law on Banks and Banking Activities and the Federal Law on the Central Bank of the Russian Federation govern the financial rehabilitation procedures applicable to banks and some matters relating to their insolvency. The Federal Law on Self-Regulated Organisations and the Federal Law on Non-Commercial Organisations are both applicable to the activities of self-regulated organisations operating as insolvency administrators.

The Supreme Court of Russia and the Supreme Commercial Court of Russia (which merged with the Supreme Court in 2014) have issued various interpretations and clarifications.[2] These interpretations and clarifications concern, *inter alia*, such issues as the payment of interest in the course of insolvency, challenging transactions of the insolvent party, the appointment and dismissal of insolvency administrators, the liabilities of the owners of insolvent entities and procedural issues. The lower courts generally follow the legal precedents set by the Supreme Court and the Supreme Commercial Court.

Under the Insolvency Law, the state commercial courts administer all insolvency proceedings.[3] The powers of the courts are described in Section I.v.

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1 Pavel Boulatov is counsel at White & Case LLC. The author would like to thank Daria Scheglova, associate, for her assistance with this chapter.

2 Article 19 of Federal Constitutional Law No. 1-FKZ on Court System of the Russian Federation dated 31 December 1996 and Article 13 of Federal Constitutional Law No. 1-FKZ on Commercial Courts in the Russian Federation dated 28 April 1995 (the version effective prior to 24 June 2014) provide for issuance of the clarifications and interpretations by the plenary sessions of the Supreme Court [SC] and the Supreme Commercial Court [SCC].

3 Articles 32 and 33 of Federal Law No. 127-FZ on Insolvency (Bankruptcy) dated 26 October 2002 as amended [Insolvency Law]. In Russian *arbitrazhnie sudi*, which are state commercial courts and should not be confused with arbitration courts because of consonance.

This chapter discusses the general regulation of the insolvency procedure and priorities applicable to legal entities. For specific types of legal entities and individuals, the regulations may differ, as discussed in Section I.vi.

Russian insolvency law sets distributional priorities for the claims of the creditors of an insolvent party. All claims to an insolvent party are divided into three categories: (1) post-commencement claims that arise after the start of insolvency proceedings; (2) claims that arise prior to the start of insolvency proceedings and must be registered on the register of creditors' claims; and (3) claims that may not be registered on the register of creditors' claims because they were filed late.

Post-commencement claims include court expenses relating to the insolvency of the debtor, the fees and expenses of an insolvency administrator, taxes and utilities, and maintenance payments necessary for the debtor's activities. These claims are to be paid when they become due and ahead of the registered claims with the insolvent's funds. The general purpose for giving priority to such claims is to keep the debtor operating during the course of the insolvency proceedings. There is a separate priority for post-commencement claims that applies if the debtor does not have sufficient funds to make payment of all post-commencement claims.[4]

Claims that must be registered on the register of creditors include monetary claims and claims for specific performance that may be evaluated, such as claims for performance of works or services.[5] These claims may be satisfied only in the course of the insolvency proceedings after they are registered on the register of creditors. (This is discussed in greater detail later in this subsection.)

With a few exceptions,[6] these claims are registered after the court has ruled on the matter of their registration. The hearings at which the court rules whether to register creditors' claims are separate trials within the insolvency proceedings. All registered creditors, creditors that have filed applications for registration of their claims, the insolvency administrator and representatives of the debtor have a right to attend these hearings and contest, or support, the creditors' claims under consideration.[7] The representative of the debtor's employees has a right to contest claims that have higher or equal priority.[8]

If the claims have not been confirmed by a previous court decision, the court must consider the applications and the objections on their merits. This is a similar process to the consideration of claims for collection of debt in an insolvency case. The ruling of the court on the registration of the claims is immediately enforceable and may be appealed.[9] A pending appeal does not suspend the registration of the claims unless the appellate court issues a separate order to that effect upon the request of the appellant.

If the claims have already been reviewed and confirmed by a court in the earlier ordinary proceedings, the court is bound by that court's decision and cannot reconsider it. In such a

4 Article 134(2) of the Insolvency Law.

5 Non-monetary claims, such as proprietary claims and claims for specific performance must be registered at the receivership stage.

6 For example, claims by employees for payment of salary that are registered by the insolvency administrator without a court decision.

7 Insolvency Law, Article 71(2).

8 See Resolution of the Commercial Court for the North-West Circuit in Case No. A70-846/2015, dated 6 December 2017 and Resolution of the Commercial Court for the Povolzhye Circuit in Case No. A12-24436/2013, dated 27 July 2017.

9 Insolvency Law, Article 71(5).

case, however, other creditors or the insolvency administrator have a right to appeal the initial court decision. This appeal must be filed in the relevant court proceedings rather than in the insolvency proceedings.[10] A creditor's right to appeal the initial court decision arises after the court accepts the creditor's application for registration of the claim.[11]

If the claims are confirmed by an arbitration award or foreign judgment that has not been recognised and enforced in separate proceedings, the court may consider only those limited objections relating to the grounds on which the arbitral award or foreign judgment may be denied recognition in Russia.[12] For instance, the creditors may object to registration of the claims confirmed by an arbitration award on the grounds that the claim is fraudulent or artificial and its registration would violate public policy and other creditors' rights.[13] If the court finds one of these objections well-grounded, it may fully reconsider the creditor's claim on the merits.

Other claims, such as for declaratory relief or to request that the debtor returns assets belonging to the creditor (e.g., leased assets), may be considered and granted in separate proceedings rather than in the course of the insolvency case.

The Insolvency Law sets out the following general order of priority for satisfying the claims on the register of creditors:[14]

a claims of compensation for damage to health or loss of life;
b employees' salaries, severance payments and royalties (with certain exceptions for claims by top management);
c all other claims (including taxes and other mandatory payments); and
d claims for contractual and any other penalties, and any lost profits by creditors.

The Insolvency Law provides that lower priority claims against a debtor cannot be satisfied earlier than higher priority claims. If the debtor's assets are insufficient to satisfy the claims of one priority, the claims of that priority will be paid pro rata.

As a general rule, secured claims against a debtor are included in the third priority claims.[15] However, the Insolvency Law stipulates a special order of payment for secured claims. Secured creditors receive 70 per cent of the proceeds from the sale of the pledged assets (80 per cent if the secured claim arose out of a loan agreement with a credit institution) to compensate for the principal debt and any accrued interest. Secured claims for contractual penalties do not have priority over other creditors' claims with respect to principal debt, but they have priority over other creditors' claims with respect to penalties.[16] If there are no claims of the first and second priority, the secured creditor may receive up to 90 per cent of the proceeds from

10 Section 24 of the Guidance on Certain Procedural Issues Related to Insolvency Proceedings adopted by the Plenum of the SCC on 22 June 2012, No. 35. The SC ruled that a creditor may also file an application to reconsider the judgment in view of new facts (Ruling of the SC No. 305-ЭС16-7085, dated 3 October 2016).

11 Ruling of the SC No. 305-ЭС18-19058, dated 27 February 2019.

12 Same objections as set out in Article V of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

13 Resolution of the SCC Presidium dated 2 February 2013 No. 12751/12. Resolutions are decisions on specific cases. In the resolutions, the SCC Presidium expressed its legal positions on specific matters. The courts follow these interpretations of law.

14 For specific types of enterprises the ranking may differ. See Section I.vi.

15 According to recent case law, the retentor that has a right of lien over the assets of the debtor enjoys the rights of a secured creditor (Ruling of the SC No. 301-ЭС19-2351, dated 27 June 2019).

16 Ruling of the SC of the Russian Federation No. 301-ЭС16-17271, dated 30 March 2017.

the sale of the pledged assets (or 95 per cent for claims out of a loan agreement with a credit institution). If the proceeds from the sale of the collateral are insufficient to pay the secured claim, the balance of the claim will be paid under the same priority as an unsecured claim.[17]

With a number of exceptions,[18] claims filed after the register of creditors' claims is closed (i.e., two months after the publication of the judgment to declare the debtor insolvent and to open the receivership procedure (see Section I.iii)) would fall to the lowest priority and would only be satisfied after all registered creditors' claims. Claims by other creditors may also fall to the lowest priority, for example, creditors arising out of the consequences of a transaction aimed at the fraudulent transfer of assets or claims of creditors that aimed to receive undue preference.[19]

As a special remedy, the Insolvency Law provides the insolvency administrator (at the receivership stage) and major creditors of the debtor (those owning 10 per cent or more of the common value of the debt of the insolvent) with a right to challenge certain transactions of the debtor.[20] The following may be challenged in court:

a transactions for unequal consideration (including if the transaction price or other terms deviate materially from those of similar transactions to the detriment of the insolvent), if entered into within the 12 months prior to the registration of the insolvency application by the court or after that date;[21]

b transactions aimed at violating creditors' rights and interests, provided that the other party was aware of such intent by the insolvent entity, if made within the three years prior to the registration of the insolvency application by the court or after that date;[22] and

c transactions leading to preferential treatment of certain creditors.[23]

17 This does not apply to collateral provided by third parties.

18 Despite the strict rule that claims filed late fall to the lowest priority, case law developed a number of *ad hoc* exceptions, such as where application of the strict rule is manifestly unjust or where the claims became due and payable after the time limit for filing claims for registration expired. For example, if a bank makes a payment to a beneficiary under a bank guarantee after the register of creditors of the principal has been closed, the bank may file its redress claims for registration in the register of creditors of the principal within two months of the date they became due. Such claims would not fall to the lowest priority (Ruling of the SC No. 307-ЭС14-100, dated 24 September 2014). Tax inspectorates are given an additional six months after the date the register is closed to file their claims if the decision to collect taxes enters into force after the date the register is closed. The time limit for filing claims for compensation of damage a controlling person caused a legal entity starts running from the date when the limitation period to hold the controlling person liable started running (i.e., from the date the claimant became aware of the grounds to hold the controlling person liable).

19 Accordingly, creditors against the surety may fall to the lowest priority if their claims against the principal debtor arise out of a void transaction and will only be satisfied after all other registered creditors' claims (Ruling of the SC No. 303-ЭС16-6738, dated 8 September 2016).

20 Insolvency Law, Article 61.9(1).

21 ibid., at Article 61.2(1).

22 ibid., at Article 61.2(2).

23 ibid., at Article 61.3. This category includes, among others, transactions intended to secure previously existing obligations of the debtor or a third party to a particular creditor; transactions that have resulted, or may result, in a change in the order of priorities for satisfying creditors' claims; transactions that have resulted, or may result, in the satisfaction of unmatured claims of some creditors while there are unsatisfied matured claims of others; and transactions that have resulted in a particular creditor enjoying more preference than it would enjoy if the statutory order of priorities applied.

The court may refuse to declare a transaction invalid if the value of the property acquired by the debtor under the transaction in question exceeds the value of the property that may be returned to the insolvency estate upon such invalidation or if the transaction counterparty returns everything to the insolvency estate.[24]

The court will not deem a transaction by a debtor invalid as a transaction providing unequal consideration (point (a), above) or a transaction leading to preferential treatment of certain creditors (point (c), above) upon a relevant application, if this transaction has been made in the course of usual business of the debtor and the value of this transaction is less than 1 per cent of the assets of the debtor.[25] This rule does not apply to transactions by a debtor that were aimed at violating the creditors' rights and interests (point (b), above).

Article 61.6 of the Insolvency Law provides for consequences of the invalidity of a transaction of a debtor. All assets transferred by a debtor to its counterparty under an invalid transaction must be returned to the debtor's estate. If the restitution of the debtors' assets is not possible, the counterparty under the invalid transaction is obliged to pay to the debtor the market price of the assets at the moment of the transaction and damages incurred as a result of changes in the market price of the assets, if any. Claims of the counterparty under the invalidated transaction connected with the invalidation are to be satisfied in two ways depending on the basis of invalidation.

Claims of a counterparty under an invalid transaction arising in connection with its invalidation will be registered as third priority claims if this transaction was invalidated because of a provision of unequal consideration (point (a), above) or because of the preferential treatment of a creditor (point (c), above) that was not aware of the signs of the debtor's insolvency. If the transaction was invalidated because of the violation of other creditors' rights and interests (point (b), above) or because of the preferential treatment of a creditor (point (c), above) that was aware of the signs of the debtor's insolvency, the claims arising in connection with invalidation of the transaction will be paid after the third priority claims (lowest priority).

In addition to the special grounds set by the Insolvency Law, fraudulent transfers may violate the rules of Articles 10 and 168 of the Civil Code, which prohibit the abuse of rights and the exercise of civil law rights aimed at evading the law for an illegitimate purpose, as well as other intentional exercise of civil law rights in bad faith.

The Russian courts interpret the concept of abuse of rights very widely and treat as such any exercise of rights in bad faith, including transactions aimed at dissipation of a debtor's assets to make them unavailable to creditors, including gifts or sales below value.[26] Based on this interpretation, the Supreme Commercial Court Presidium declared that the transfer of

24 ibid., at Article 61.7.

25 ibid., at Article 61.4(2).

26 The Plenary Session of the SCC declared that a transaction of a debtor concluded before or after commencement of insolvency proceedings aimed at breach of creditors' rights, e.g., to decrease the value of the insolvency estate by dissipation of the debtor's assets below value to third parties may be declared invalid on the grounds of Article 10 of the Civil Code on request of the insolvency administrator or a creditor (Clause 10 of the Resolution of the Plenary Session of the SCC No. 32, dated 30 April 2009, on certain issues related to challenge of transactions on grounds set by the Federal Law on insolvency (bankruptcy)).

assets by a debtor to a company providing asset management services null and void under Articles 10 and 168 of the Civil Code because the purpose of the transfer was to conceal assets from creditors.[27]

ii Policy

Insolvency legislation and insolvency proceedings in Russia have a tendency to liquidate a failing business rather than restore a debtor's solvency. Accordingly, receivership is the most used insolvency procedure, rather than financial rehabilitation and external management aimed at supporting and restoring a debtor's business (see Section I.iii, 'Receivership').

One of the reasons for this emphasis on receivership is that creditors are granted a wide discretion as to the choice of the insolvency procedure to be applied to the debtor. In practice, the financial rehabilitation procedures are usually introduced only at the creditors' initiative. Thus, in most cases the main aim of insolvency proceedings is the sale of a debtor's assets and the settlement of the creditors' claims.

According to the statistics of the Judicial Department of the Supreme Court, in 2018, financial rehabilitation proceedings were introduced in 0.13 per cent of cases and the debt was repaid in approximately 17 per cent of these cases; in 2017, financial rehabilitation proceedings were introduced in 0.2 per cent of cases (the debt was repaid in none of them); in 2016, financial rehabilitation proceedings were introduced in 0.28 per cent of cases and the debt was repaid in approximately 2 per cent of the cases; in 2015, financial rehabilitation proceedings were introduced in 0.23 per cent of cases (the debt was repaid in none of them); in 2014, financial rehabilitation proceedings were introduced in 0.14 per cent of cases and the debt was repaid in approximately 18 per cent of the cases.[28]

For the purpose of creditors' protection, other measures for which the Insolvency Law provides include:

a the liability of a debtor's management for unpaid creditors' claims if their actions led to insolvency; and

b the right of creditors to challenge a debtor's transactions with respect to fraudulent transfers, undue preferences, transactions at low value and other transactions that aim to cause damage to creditors.

Creditors may also use Russian insolvency proceedings to hold beneficial owners and other controlling persons of a debtor liable for the debts of a subsidiary. For example, creditors may seek to hold controlling persons liable for a company's debts without pursuing a full insolvency procedure. The creditors may file for insolvency, refuse to finance the insolvency proceedings and, after the court terminates the insolvency proceedings, file an application

27 Clause 10 of the Information Letter of the SCC Presidium No. 127, dated 25 November 2008, 'Review of practice of application by courts of Article 10 of the Civil Code of the Russian Federation'. The information letters issued by the SCC Presidium summarised court practice and contained guidelines to lower commercial courts. Russian commercial courts usually follow these guidelines. Formally, however, there is no provision in Russian law that stipulates that the information letters of the SCC Presidium are mandatory.

The SC gave the same interpretation to Articles 10 and 168 of the Civil Code when considering particular cases. See Rulings of the SC No. 309-ЭС14-923, dated 15 December 2014, and No. 305-ЭС18-9309, dated 8 October 2018.

28 See www.cdep.ru/userimages/sudebnaya_statistika/2016/AC1a_2016_svod.xls; www.cdep.ru/userimages/sudebnaya_statistika/2015/AC1a_2015.xls; and www.cdep.ru/userimages/sudebnaya_statistika/2014/Otchet_o_rabote_arbitragnih_sudov_subektov_RF_po_delam_o_bankrotstve.xls.

to hold controlling persons liable. Creditors of non-operating companies excluded from the state register of legal entities pursuant to an administrative procedure may also file an application with the court to hold controlling persons liable.

Another particularity of insolvency proceedings in Russia is that they are frequently used to enforce a judgment debt regardless of the debtor's solvency. The reason for that is that the insolvency legislation provides creditors with more control over the procedure for the sale of a debtor's assets and includes tools to recover assets, including clawback actions, unlike the general enforcement procedure. Further, the general enforcement procedure is run by the state bailiffs, who not infrequently act slowly and inefficiently, unlike the insolvency administrators who are usually selected by creditors, as discussed in Section I.v. Creditors have wide discretion to decide on the procedure for the sale or appropriation of assets and to make it more flexible and respond to their needs. For instance, they may decide to sell the assets in one lot and, if unsold, have them sold piecemeal.

iii Insolvency procedures

The Insolvency Law provides that the following procedures may be applied in the course of the insolvency proceedings: supervision; financial rehabilitation; external management; receivership; and amicable settlement.

Each of these types of insolvency procedures is further explained later in the chapter. The particularities of the procedures applied to the insolvency of individuals and certain types of legal entities are described in Section I.vi.

Supervision

Supervision is an insolvency procedure applied to a debtor with a view to preserving its property, analysing its financial position, preparing a register of creditors' claims and holding the first meeting of creditors. As a general rule, supervision is the first, and mandatory, stage of insolvency proceedings.[29] Supervision should be completed within seven months of the submission of the insolvency petition.[30] Note that the durations of insolvency procedures mentioned herein are for indicative purposes only, and the court may exceed the time limits if necessary and appropriate.

When the court orders the commencement of the supervision procedure, it will appoint an insolvency administrator. The debtor's management will remain in office and continue to perform its functions (although the insolvency administrator is authorised to petition in court for the replacement of the debtor's current management).[31] Once supervision has commenced, the debtor's management is prohibited from making certain types of transactions and decisions.[32] Other matters, such as alienation of assets valued at more than 5 per cent of the balance sheet, granting or receiving loans, issuing guarantees and sureties, and assignments of rights, require prior written consent from the insolvency administrator.[33]

29 In some cases, supervision does not apply and the court commences receivership if it finds that the insolvency application has merit. For example, this happens if the debtor commences voluntary liquidation before the insolvency proceedings or if a debtor is missing from their place of location and no longer operates.

30 Insolvency Law, Article 51.

31 ibid., at Article 69. In this case the shareholders will select a new director according to the general procedure.

32 Such as reorganisation and liquidation of the debtor, establishing or acquiring equity interests in other legal entities, the creation of branches and representative offices, making dividend payments and issuing securities.

33 Insolvency Law, Article 64.

Once the supervision has commenced, creditors' claims for payment – other than post-commencement claims – may only be filed against the debtor pursuant to the procedures outlined in the Insolvency Law. Enforcement proceedings that have already commenced are stayed (with some exceptions). Court proceedings for recovering funds from the debtor are stayed upon a creditor's petition. In addition, upon commencement of the supervision, no contractual interest or penalties shall accrue on any claims that can be registered irrespective of whether or not they are already registered. Rather, a 'moratorium interest' shall accrue on the principal debt at the Russian Central Bank's refinance rate applicable at the date the supervision is introduced. The rate as at 29 July 2019 was 7.25 per cent per annum.[34]

The insolvency administrator must convene the first creditors' meeting no later than 10 days before the end of the supervision. Only those creditors that presented their claims within 30 days of the date of publication of the commencement of supervision, and were registered on the debtor's register of claims, have the right to take part in the first meeting of creditors.[35] Although missing the aforementioned 30-day deadline will preclude a creditor from participating in the first creditors' meeting, it will not preclude the creditor from submitting its claims to the register of creditors' claims at a later stage.

The creditors at the first creditors' meeting are authorised to decide which procedure (financial rehabilitation, external management, or receivership) should be applied, although the court makes the final decision on this matter.[36]

Financial rehabilitation

Financial rehabilitation is an insolvency procedure that is applied to a debtor for the purpose of restoring its solvency and discharging its debts in accordance with an approved debt repayment schedule.[37] Financial rehabilitation lasts for no more than two years.[38]

Financial rehabilitation may only commence once a petition is submitted by a debtor's shareholders or any third party interested in the restoration of the debtor's solvency. The petition must be accompanied by a debt repayment schedule and financial rehabilitation plan, as well as an appropriate security for performance, such as a pledge, a suretyship or a bank guarantee provided by a relevant shareholder or third party. The petition may either be presented at the first creditors' meeting or, under certain circumstances,[39] directly with the court, which may decide to commence financial rehabilitation in the absence of, or contrary to, a decision of the first creditors' meeting.[40]

As with supervision, the management retains control of the debtor but its powers are restricted. The court must appoint an insolvency administrator, who will maintain the register of claims, convene the creditors' meetings, and supervise the implementation of the debt repayment schedule and the financial rehabilitation plan.[41]

34 The refinance rate is published at www.cbr.ru/.

35 Insolvency Law, Article 72, Paragraphs 1 and 2.

36 ibid., at Article 73.

37 ibid., at Article 80(3).

38 ibid., at Article 80(6).

39 If the amount of security exceeds more than 20 per cent the amount of creditors' registered claims, and the schedule provides for first payments to be made to creditors not later than one month after its approval, and complete repayment to creditors within a year. Insolvency Law, Article 75(2).

40 Insolvency Law, Articles 77, 78 and 80.

41 ibid., at Articles 82 and 83.

The consequences of commencing financial rehabilitation are generally similar to those of supervision, where certain actions by the debtor are prohibited, and other actions require the consent of the administrative manager or of the creditors' meeting.[42]

Based on the results of financial rehabilitation, the court will decide either to terminate insolvency proceedings (if the debts have been discharged) or to commence external management (if the debtor may still become solvent) or receivership.[43]

External management

External management is an insolvency procedure applied to a debtor for the purpose of restoring its solvency. As a rule, the court introduces external management on the basis of a decision taken at the creditors' meeting. External management is usually limited to an initial period of up to 18 months and can be extended by a further six months.[44] The aggregate term of external management and financial rehabilitation cannot exceed two years.[45]

Upon commencement of external management, the court must appoint an insolvency administrator, who takes over the management of the debtor's business, may dispose of the debtor's property (subject to a decision made at the creditors' meeting in certain cases, e.g., the alienation of assets valued at more than 10 per cent of the balance sheet value of all assets) and may refuse to perform certain transactions concluded by the debtor if those transactions impede the restoration of the debtor's solvency or their performance would cause loss to the debtor. The insolvency administrator maintains the register of claims, recovers funds due to the debtor, and develops and implements an external management plan that is approved by a decision made at the creditors' meeting and contains measures necessary to restore the debtor's solvency.[46]

The measures for restoring a debtor's solvency may include restructuring the debtor's business, disposing of part of the debtor's estate, assigning the debtor's claims, discharging the debtor's obligations by its shareholders, issuing additional shares to increase the debtor's capital, selling the debtor's entire business or substituting the debtor's assets.[47]

Based on the outcome of the external management plan, the commercial court will either terminate insolvency proceedings (if the debts have been discharged), order settlement with the creditors according to the register of claims (if the debtor's solvency has been restored) or commence receivership.[48]

Receivership

The court introduces receivership by its judgment to declare the debtor insolvent. The aim of receivership is to satisfy the creditors' claims according to the priorities established by law. Receivership lasts for up to six months and may be extended for a further six months.[49]

42 ibid., at Article 81.
43 ibid., at Article 88(6).
44 ibid., at Article 93.
45 ibid., at Article 92(2).
46 ibid., at Article 99.
47 ibid., at Article 109.
48 ibid., at Article 119, Paragraphs 6 and 7.
49 ibid., at Article 124(2).

An insolvency administrator replaces the director general of the debtor.[50] The insolvency administrator draws up an inventory of the debtor's assets and takes measures for their protection, appoints an appraiser to value the debtor's estate, arranges for the sale of the debtor's assets, recovers funds due to the debtor, searches for and returns any of the debtor's assets that are in the possession of third parties, informs the debtor's employees of their prospective dismissal, maintains the register of claims and makes payments to the creditors according to the register.

Pursuant to the Insolvency Law, all a debtor's assets must be included in the insolvency estate. Recently, the courts have ruled that such assets include bitcoins and required the insolvent debtor to disclose to the receiver the access details to a bitcoin wallet.[51]

Based on the results of receivership, the commercial court will rule either to terminate insolvency proceedings (if the debts have been discharged by the debtor's shareholders) or to complete receivership. The receivership is deemed completed when the liquidation of the debtor is registered with the Unified State Register of Legal Entities.[52]

Amicable settlement

A debtor and its creditors may agree on an amicable settlement at any stage of the insolvency proceedings. Third parties may also participate and accept certain rights and obligations according to an amicable settlement. Creditors may reach a decision on amicable settlement at a creditors' meeting. This decision is made by a simple majority of unsecured creditors' votes in existence, provided that all the secured creditors vote for the amicable settlement. A settlement agreement may provide for a discount on the claims of a creditor, a lower applicable interest rate, or settlement of claims by way of transfer of assets (rather than monetary funds) only if the relevant creditor agrees.[53] Any amicable settlement must be approved by the court.

The court may withhold approval for a number of reasons, including a failure to make full payment of claims of the first and second priority, a breach of third parties' rights or breach of the rights of creditors who voted against the settlement or did not agree to it.[54] An amicable settlement is not binding on any creditors whose claims were not registered as of the date it was concluded and who did not participate in it for this reason.

If a debtor fails to comply with an amicable settlement, the creditor may either request the court to issue an enforcement order and request the bailiffs to enforce it, or the creditor (or several creditors) may request the court to terminate the amicable settlement, provided that its (their) claims exceed 25 per cent of all the registered creditors' claims at the time of approval of the amicable settlement, and the breach of the amicable settlement is material.[55] If the court finds that an application to terminate an amicable settlement has merit, it would terminate the amicable settlement for all creditors and reopen the insolvency proceedings. The court would introduce the insolvency procedure in the course of which the amicable

50 ibid., at Articles 127 and 129.

51 Resolution of the Ninth Commercial Appellate Court No. A40-124668/2017, dated 15 May 2018.

52 Insolvency Law, Article 149.

53 ibid., at Article 156.

54 ibid., at Articles 150 to 167.

55 ibid., at Article 164(2).

settlement was approved. The creditors who participated in the amicable settlement may file their claims for registration in the course of the new insolvency in the amount set by the amicable settlement (to the extent that the claims remain unpaid).[56]

iv Starting proceedings

Commencement of insolvency proceedings by the debtor

A debtor may file for insolvency if it anticipates such owing to the circumstances in which it will not be able to discharge its debts at the due time.[57] In certain instances (e.g., if a debtor's funds or assets are insufficient to discharge all its debts), a debtor must file for insolvency.[58] The debtor is required to publish a notice of its intention to file an insolvency petition 15 days in advance.[59]

Commencement of insolvency proceedings by creditors or employees

Creditors, current or former employees (if payments of salary or severance are in arrears), or a tax authority may also file for a debtor's insolvency by submitting a petition to the court at the place of the debtor's location. Creditors are required to publish a notice of their intention to file an insolvency petition 15 days in advance.[60] Creditors must also confirm their claims with a judgment or an arbitral award enforceable in Russia, save for creditors whose claims arise out of banking operations (such as providing loans, mortgages and guarantees).[61] The tax authorities may also file for insolvency of a debtor without prior receipt of a court judgment. Insolvency proceedings will only be initiated if the debtor's liabilities are at least 300,000 roubles and are three months overdue.[62]

The court will consider the merits of the insolvency petition for a period of between 15 and 30 days.[63] Upon the petitioner's request, the court may introduce injunctive measures available under the procedural rules.[64] If the court finds that the petition has merit, it will issue an order to begin the first stage of the insolvency proceedings (i.e., supervision).

Special requirements apply to the commencement of insolvency proceedings of certain types of legal entities and individuals (see Section I.vi).

If two or more insolvency petitions are filed in relation to the same debtor, the court will accept the second and all subsequent applications as applications to participate in the insolvency proceedings.[65] If the petitioner (including the debtor) reaches settlement with the debtor or withdraws its insolvency petition before the court considers it on the merits, or if

56 ibid., at Article 166(1).

57 ibid., at Article 8.

58 ibid., at Article 9.

59 ibid., at Article 7(2.1) (as amended by Federal Law No. 218 FZ dated 29 July 2017).

60 ibid.

61 ibid., at Article 7. The SC interpreted this rule as giving right to any person whose claims arise out of banking operations (as defined in Article 5 of Federal Law No. 395-1 dated 2 December 1990 on Banks and Banking Activities) to file for insolvency of its debtors using the simplified procedure. This may apply to persons who acquired claims from the banks (Ruling No. 306-ЭС16-3611, dated 12 October 2016). The banks, however, cannot use the simplified procedure if their claims do not arise out of banking operations (e.g., claims related to lease or construction agreements) (Ruling No. 305-ЭС16-18717, dated 27 March 2017).

62 ibid., at Articles 3(2) and 6(2).

63 ibid., at Article 42(6).

64 ibid., at Article 42(7).

65 Resolution of the SCC Plenum, No. 35 dated 22 June 2012, Article 7.

the court finds that the application has no merit, the court will consider the next application to have been filed. If no other insolvency applications are filed, the court will terminate the proceedings.[66]

Following the withdrawal of an insolvency petition, the creditor cannot file another insolvency petition based on the same claim; however, it can register this claim if an insolvency procedure is introduced by a petition by another creditor or the debtor.[67]

The court should not accept a withdrawal of an insolvency petition after the supervision stage is introduced. However, the court can terminate insolvency proceedings following the withdrawal of all creditors' claims after the term for filing them has expired.[68]

To prevent insolvency, a debtor has to settle its creditor's claims before the court considers the insolvency petition on the merits and demonstrate to the court that the criteria for introducing supervision are not met.

v Control of insolvency proceedings

The court, the insolvency administrator and the creditors (generally through the creditors' committee or the creditors' meeting) control the insolvency proceedings.

The court's discretion and powers to control the insolvency proceedings are wide. The court takes the final decision on which insolvency procedures would apply, on the matter of removal of the insolvency administrator, the registration of creditors' claims, declaring transactions of the debtor invalid, and resolving any differences between the insolvency administrator and the creditors (such as matters relating to the valuation and sale of assets). Any decisions made by the insolvency administrator, the creditors' meetings[69] and creditors' committee may be challenged in court by the parties to the insolvency proceedings.

The insolvency administrator's powers vary depending on the stage of the insolvency proceedings. In general, their functions include the following:[70]

a to control a debtor's business, assets, accounting and other documents, and related information;

b to request information from third parties regarding a debtor's activities and operations;

c to contest or agree with creditors' applications for registration of claims;

d to hold the register of creditors' claims and distribute the proceeds from the sale of assets;[71]

e to arrange for the sale of assets. For this purpose the insolvency administrator is empowered to draw up an inventory of assets, prepare draft conditions of sale, select the valuer and auctioneer;

f to challenge a debtor's transactions;

g to prepare and file applications to hold a debtor's controlling persons liable for their actions; and

h to call creditors' meetings and arrange them.

66 ibid., at Article 12.

67 ibid., at Article 11.

68 ibid.

69 Insolvency Law, Article 15(4).

70 ibid., at Articles 10(5), 12(1), 20.3(1), 69.9(1), 71(2) and 139.

71 The insolvency administrator generally includes claims to the register upon a court decision. The exceptions include employees' claims.

Further, as has been discussed in Section I.iii, under an external management plan or receivership, the insolvency administrator replaces the debtor's management.

Given these wide powers, the character and the fidelity of the insolvency administrator are important for proper conduct of insolvency proceedings.

As regards supervision, a creditor who files for insolvency selects either a candidate to act as insolvency administrator or the self-regulated organisation to nominate a candidate as an insolvency administrator.[72] If a debtor files for insolvency, it does not select the insolvency administrator. In this case, the court selects a self-regulated organisation, which nominates a candidate, until the Ministry of Economic Development approves a procedure for the selection of insolvency administrators. The court approves the candidate administrator if he or she meets all the criteria required by law.[73] The creditors at their meeting may decide to change the insolvency administrator and to select another for further insolvency procedures (such as financial rehabilitation, external management and receivership).[74] Apart from that, the creditors cannot decide to remove an insolvency administrator at any stage at their discretion in the absence of any misconduct on the part of the insolvency administrator. If the insolvency administrator breaches the law, the creditors may request the court to hold him or her liable and to remove him or her and nominate another insolvency administrator.

The creditors' meeting is a primary body through which the creditors exercise control over the insolvency proceedings. At such meetings the creditors may decide upon the strategy of the proceedings (e.g., to choose the insolvency procedures to be applied for)[75] to enter into a settlement agreement and its conditions.[76] It is through this body that the creditors control the insolvency administrator. For instance, the sale of the debtor's non-encumbered assets by the administrator should be approved by a decision passed at the creditors' meeting.[77] At these meetings, the creditors are also empowered to nominate the administrator or request the court to remove the current administrator (provided that he or she has breached the law).[78]

The rights of creditors to control the proceedings depend on their status, since the secured creditors' voting rights are limited to voting at the supervision and the financial rehabilitation or external management if they decide not to enforce the collateral in the course of these insolvency procedures.[79] However, in general, secured creditors have very limited voting rights at the receivership unless they prefer to waive their secured rights and register their claims as non-secured.[80] Nonetheless, the secured creditors have the right of veto with respect to certain matters (e.g., settlement agreement,[81] sale of pledge or mortgage).[82] Further, secured creditors have voting rights on the matters of nomination of insolvency administrators and their removal.[83]

72 Insolvency Law, Articles 45 and 65(1).

73 ibid., at Article 37(5). The Ministry of Economic Development has not approved the procedure for selection of insolvency administrators.

74 ibid., at Article 12(2).

75 ibid., at Article 12.

76 ibid.

77 ibid., at Article 139(1.1).

78 ibid., at Article 12(2).

79 ibid., at Article 18.1(3).

80 ibid., at Article 12(1).

81 ibid., at Article 150(2).

82 ibid., at Article 138(4).

83 ibid., at Article 12(1).

The role of the creditors' committee is to streamline the creditors' control over the actions of the insolvency administrator. The creditors' meeting may also delegate certain powers to the creditors' committee,[84] such as to request information about the debtor's financial situation and the status of the receivership from the insolvency administrator, to challenge the administrator's actions in court and to approve conditions for a sale of assets.[85]

The managerial bodies of a debtor may also exercise certain functions in the course of the insolvency (depending on the stage of the proceedings, as discussed in Section I.iii).

vi Special regimes

Individuals and certain entities are excluded from the general insolvency regime.

For individuals, a special insolvency regime applies. The following groups of legal entities are treated differently from the general insolvency regime:

a legal entities that may not be declared insolvent;

b legal entities to which special rules apply within the framework of the general regime; and

c financial institutions whose insolvency procedure is governed a special regime that materially differs from the general regime.

A high-level overview of the specific regulations is given below.

Legal entities that may not be declared insolvent

The following legal entities cannot be declared insolvent[86] according to Russian law:

a state-owned enterprises established for special purposes;[87]

b public law legal entities (non-commercial legal entities established by the state to exercise public functions);[88]

c political parties;

d religious organisations;

e state corporations or state companies, if the federal law according to which the relevant entity was established does not permit insolvency; and

f funds, if the federal law according to which the relevant fund was established prohibits insolvency.

The same applies to international organisations with headquarters in Russia that are exempt from Russian domestic regulation and governed by public international law.

84 ibid., at Article 17(1).

85 ibid., at Article 17(4).

86 Russian Civil Code, Article 65(1).

87 Known as *kazennoe predpriatie* in Russian.

88 Article 65 of the Civil Code as amended by Federal Law No. 236 FZ, dated 3 July 2016, on public law companies in the Russian Federation and amendments to certain legal acts of the Russian Federation (effective as of 2 October 2016).

Legal entities to which special insolvency rules apply

The Insolvency Law establishes specific regulations on insolvency[89] of the following types of debtors:

a town-forming enterprises (i.e., enterprises that employ more than 25 per cent of the working population of the relevant community);[90]

b agricultural enterprises (i.e., companies that receive more than 50 per cent of their profit from agricultural business);[91]

c strategic enterprises and enterprises of importance to state security;[92]

d natural monopolies;

e developers dealing with the construction of residential buildings;[93] and

f clearing participants who are professionals in the securities markets and financial institutions participating in clearing.[94]

There are no special insolvency rules relating to corporate groups. However, the courts continue to develop case law in this area. For example, courts have classified inter-group loans as contributions to a debtor's charter capital, and have ruled that such claims must not be registered as ordinary creditors' claims or satisfied in the course of an insolvency.[95]

The Supreme Court also ruled that it is possible to challenge the following types of transactions in the course of a debtor's insolvency on the grounds set by the Insolvency Law: (1) transactions aimed at the disposal of the assets of a subsidiary of the debtor;[96] and (2) fraudulent dilution of shares in a subsidiary of the debtor aimed at causing damage to the creditors.[97]

The most important differences in the insolvency regime include:

a an increased insolvency test: an agricultural enterprise may be declared insolvent if the amount of outstanding claims exceeds 500,000 roubles,[98] and a strategic enterprise[99] or a natural monopoly[100] may be declared insolvent if the amount of creditors' claims exceeds 1 million roubles, and the claims are overdue for more than six months;

89 Insolvency Law, Article 168.

90 ibid., at Article 169.

91 ibid., at Article 177.

92 ibid., at Article 190. A list of strategic enterprises is established by the Decree of the Government of the Russian Federation No. 1226-p dated 20 August 2009 (as amended).

93 ibid., at Article 201(1).

94 ibid., at Article 201(16).

95 SC Rulings No. 308-ЭС17-1556(1) and (2), dated 6 July 2017, No. 305-ЭС17-2110, dated 11 July 2017, No. 305-ЭС15-5734, dated 12 February 2018, No. 305-ЭС17-17208, dated 15 February 2018, No. 310-ЭС17-17994 (1, 2), dated 21 February 2018. SCC Resolution No. 9465/13, dated 10 June 2014. SC Rulings No. ЭС309-ЭС14-923, dated 15 December 2014; No. 305-ЭС15-2572, dated 10 June 2015; No. 305-ЭС16-13167, dated 28 December 2016; No. 305-ЭС16-19572, dated 28 April 2017; No. 309-ЭС17-344(2), dated 25 September 2017; No. 301-ЭС17-4784, dated 11 September 2017; No. 305-ЭС17-2110, dated 11 September 2017; No. 310-ЭС17-8992, dated 17 October 2017.

96 SC Ruling No. 305-ЭС17-17342, dated 12 March 2018.

97 SC Ruling No. 305-ЭС17-12763(1,2), dated 18 December 2017.

98 Insolvency Law, Article 177.

99 ibid., at Article 190(3).

100 ibid., at Article 197(2).

b competent state or municipal authorities participating in the insolvency proceedings of town-forming enterprises,[101] strategic enterprises,[102] natural monopolies[103] and developers;[104]

c the competent state or municipal authorities' ability to request the court to take measures aimed at restoration of solvency of a town-forming enterprise[105] or a strategic enterprise,[106] give a guarantee of repayment of debts of the relevant enterprise and request the court to introduce external management procedure;

d the special requirements to insolvency administrators (e.g., concerning matters relating to state secrets, experience in certain areas, such as construction);

e special procedures that apply to the sale of assets of town-forming,[107] agricultural[108] and strategic enterprises[109] and natural monopolies, which are as follows:[110]

- a debtor's assets necessary for its activities are first sold together as a single lot;
- certain persons may have pre-emptive rights to acquire a debtor's assets; and
- the special requirements applicable to the buyer (e.g., a licence to engage in certain activities) or to its activities after acquisition of the assets (such as preservation of jobs at the town-forming enterprise, continuation of activities of the natural monopoly, etc.), which may be in place; and

f special regimes applicable to specific assets. For example, client assets held by brokers in a special brokerage account or trade account are not included in the broker's insolvency estate. The insolvency administrator cannot dispose of funds the debtor deposited on an escrow account but the insolvency administrator may still challenge the escrow agreement or transfer of the funds to the escrow agent in insolvency. In general, the Insolvency Law provides for the possibility to perform an escrow agreement within six months of the introduction of receivership in respect of the depositor. After the six months have elapsed, the escrow agent shall transfer the escrow funds to the depositor.[111]

There is special detailed regulation of the insolvency of developers aimed at completing the construction of the residential premises and the transfer of the residential premises to the persons who have acquired them.[112] For this reason there is a separate register of the claims of these persons, whose claims have priority with respect to the premises they have acquired and their other unpaid claims are of higher priority than other creditors' claims. There are detailed provisions on the transfer of the unfinished construction to a building society set by the creditors who acquired premises from the debtor.

A new mechanism for rehabilitation of development companies engaged in construction of residential buildings has been established in a public fund for protection of interests of

101 ibid., at Article 170.
102 ibid., at Article 192.
103 ibid., at Article 198.
104 ibid., at Article 201(2).
105 ibid., at Articles 171 to 174.
106 ibid., at Articles 191, 194 and 195.
107 ibid., at Articles 175 and 176.
108 ibid., at Article 179.
109 ibid., at Article 195 and 196.
110 ibid., at Article 201.
111 ibid., at Article 131(2).
112 ibid., at Article 201, Paragraphs 4 and 15-2.

individual buyers of residential premises – the Fund for the Protection of the Rights of Citizens Participating in Shared Construction. Development companies must deposit 1.2 per cent of the value of every contract with an individual to this fund. Receivers of development companies must be accredited with the Fund. The Fund may finance the completion of construction of the residential building.[113]

Constituent units of the Russian Federation may also establish non-commercial funds for completion of construction in their regions. Only an authorised bank may process the payments between a regional fund and its counterparties (legal entities). There is a unified public register containing the information about all residential premises in all regions whose completion is significantly delayed.[114] Currently, this register contains information about 833 developers and 2,318 residential premises in 77 regions.

Legal entities whose insolvency procedure is governed by a special regime

The regulation of insolvency of financial institutions materially differs from the general insolvency regime. 'Financial institutions' include:

a credit institutions;
b insurance companies;
c professional participants of securities markets;
d private pension funds, including pension funds that are engaged in mandatory pension insurance (there is special regulation of insolvency);
e management companies of investment funds, mutual investment funds and private pension funds;
f clearing houses;
g market operators;
h consumer credit cooperatives; and
i micro-finance institutions.[115]

The Insolvency Law provides for a number of special measures aimed at restoring the solvency of financial institutions that may be approved by the Central Bank.[116]

The Central Bank may appoint a temporary administration of a financial institution for three to six months, with the possibility of a three-month extension.[117] The temporary administration consists of an insolvency administrator and other members selected by the Central Bank. Its functions and powers are similar to those of temporary administration of a credit institution (discussed later in this subsection). There are limitations on performing certain transactions; however, there is no general moratorium on payment to creditors.

There is a separate insolvency test for financial institutions.[118] A financial institution may be declared insolvent if it has failed to perform claims confirmed by a court judgment for more than 14 days, irrespective of the amount of the claim or if it did not become solvent

113 Amendments introduced by Federal Law No. 218-FZ, dated 29 July 2017.

114 Amendments to Insolvency Law introduced by Federal Law No. 151-FZ, dated 27 June 2019.

115 Insolvency Law, Article 180.

116 ibid., at Articles 180(4) and 183(1).

117 For example, if a financial institution repeatedly during one month fails to make a payment within 10 days when due, or fails to make a mandatory payment (such as taxes) within 10 days when due, or does not have enough funds to make a payment when due. ibid., at Article 183, Paragraphs 2 and 5.

118 ibid., at Article 183(16).

after temporary administration. There are special requirements applicable to claims against an insurance company based on insurance contracts, and claims do not have to be confirmed by a court judgment.[119] However, some courts decide that such claims must be undisputed.[120] In addition to creditors and the debtor itself, temporary administration and the Central Bank may file for insolvency.[121]

As a general rule, only supervision procedure and receivership are applied to financial institutions. However, the supervision procedure is not applicable to pension funds engaged in mandatory pension insurance,[122] insurance companies or once the temporary administration of the financial institution has been appointed.[123] If the court finds that an insolvency petition filed by a creditor of an insurance company has merit, the insolvency proceedings will be suspended until the Central Bank or the temporary administration files for insolvency of the insurance company.[124]

The Central Bank nominates an insolvency administrator, and there are special requirements applicable to him or her.[125] In the case of an insolvency of a pension fund, which is engaged in mandatory pension insurance[126] or an insurance company,[127] the State Corporation Deposit Insurance Agency (DIA) acts as the insolvency administrator.

There is a special procedure for the registration of creditors' claims. The insolvency administrator includes the creditors' claims on the register unless there are objections to their registration. If there are objections, the court considers whether the claims have merit and rules on the matter of their registration.[128] If the number of creditors of a professional participant of securities markets, a management company or a clearing house exceeds 100, the insolvency administrator is obliged to engage a professional registrar.[129]

Assets belonging to clients of a professional participant of securities markets, a management company or a clearing house held on special accounts are not included in the insolvency estate. The insolvency administrator transfers the relevant assets to the clients if they were duly paid for the services of the debtor.[130]

Special rules regulate the sale of assets belonging to pension funds. Assets aimed at securing pension reserves are not included in the insolvency estate and there is a special regulation regarding their use for payment of compensation to the depositors.[131] In certain cases, obligations to make payment of pensions may be transferred to another pension fund.[132]

119 ibid., at Article 184(2).

120 For example, Resolution of the Ninth Commercial Appellate Court No. 09ЭС-58561/2015, dated 3 February 2016.

121 Insolvency Law, Article 173(19).

122 ibid., at Article 187(6).

123 ibid., at Article 183(17).

124 ibid., at Article 184(4)-3 (as amended by Federal Law No. 222-ЭС dated 23 June 2016, effective as of 21 December 2016).

125 ibid., at Articles 183(19) and 183(25).

126 ibid., at Article 187.8.

127 Insolvency Law introduced by Federal Law No. 222-ЭС dated 23 June 2016, Article 184(4)-1.

128 Insolvency Law, Article 183(26).

129 ibid., at Article 185(3).

130 ibid., at Article 185(6).

131 ibid., at Article 186(5).

132 ibid., at Article 187(10).

The Insolvency Law contains specific rules regulating the sale of assets of an insurance company that include the insurance portfolio and the assets that are supposed to cover insurance reserves. They may be sold in one lot to another insurance company that has the necessary licences and assets to cover them.[133]

There are also specific distributional priorities that depend on the type of insurance (e.g., claims relating to old age and survivors insurance are of the first priority and other claims are of lower priority).[134] As regards pension funds, the distributional priorities depend on whether the pension payments are already due;[135] there are specific priorities applicable in the course of insolvency of pension funds that are engaged in mandatory pension insurance.[136]

The insolvency of credit institutions, such as banks, is governed by very detailed special rules, which differ from the rules regulating the insolvency of other financial institutions.

In general, if a credit institution faces financial difficulties,[137] the Central Bank may decide, before revoking that credit institution's banking licence, to use financial rehabilitation measures, including the appointment of temporary administration headed by a representative of the Central Bank.[138] If the Central Bank appoints temporary administration, it may limit or suspend the powers of the credit institution's management. The temporary administration performs an analysis of the debtor's financial situation to make a decision on whether there are grounds to revoke the banking licence or use rehabilitation measures; it controls the assets of the credit institution and gives consent to some of the transactions by the management of the debtor.[139] If the Central Bank decides to suspend the powers of the debtor's management, the temporary administration assumes its functions. It may ask the Central Bank to introduce a moratorium on payments by the credit institution. The temporary administration may file applications with the court to challenge transactions by the credit institution or to hold the credit institution's controlling persons or chief financial officer liable.[140]

If the Central Bank decides to revoke the banking licence, for any reason relating or unrelating to insolvency,[141] the credit institution must be liquidated. Accordingly, it must appoint temporary administration that generally acts until the date the credit institution is declared insolvent, or until a liquidator is appointed if there is no need for first declaring insolvency.[142]

A credit institution may be declared insolvent if it fails to perform its obligations within 14 days of them becoming due or if its assets are not sufficient to fulfil its financial obligations.[143]

133 ibid., at Article 184(7).

134 ibid., at Article 184(10).

135 ibid., at Article 186(7).

136 ibid., at Article 187(11).

137 Grounds to use financial rehabilitation measures are set by Article 189.10 of the Insolvency Law and include, *inter alia*, failure to meet criteria of liquidity or sufficiency of its assets, failure to make a payment when due.

138 Insolvency Law, Article 189(9).

139 ibid., at Article 189(30).

140 ibid., at Article 189(31).

141 The Central Bank may revoke a banking licence in response to events unrelated to insolvency, such as giving false information while receiving the licence, materially wrong accounting statements and breach of money laundering legislation, etc. See Article 20 of the Law on Banks.

142 Insolvency Law, Article 189(43).

143 ibid., at Article 189(8).

A credit institution or a creditor may file an application to declare the credit institution insolvent only after the Central Bank decides to revoke the banking licence.[144] In any event, if the credit institution meets the insolvency criteria at the date of revocation of the banking licence, the Central Bank must file for insolvency within five days of publication of the revocation of the banking licence, or within five business days of the temporary administration informing the Central Bank about it.[145]

If the court finds that the insolvency petition has merit, the credit institution is declared insolvent and the receivership procedure is commenced. If the credit institution had a licence to engage deposits from individuals, the DIA would act as the insolvency administrator.[146]

There are special rules regulating post-commencement claims of credit institutions, registration of creditors' claims, challenge of transactions and directors' liability. There is also detailed regulation concerning specific issues relevant to financial markets, such as subordinated loans, completion of relations under financial contracts and clearing relations.

There are specific distribution priorities:

a First priority claims: for compensation for damage to health or loss of life; individuals' claims arising from deposit agreements and bank account agreements (except for claims of individuals engaged in commercial activities related to accounts used for such commercial activities); claims by the DIA that it has received as a result of subrogation upon payments of the insurance compensation made to individual depositors; and claims by the Central Bank for amounts it has paid to individuals as compensation for their claims.

b Second priority claims: employees' salaries, severance payments, royalties (with a number of specific exceptions).

c Third priority claims: all other claims.[147]

Secured creditors do not have any priority over first and second priority claims.

Amendments to the law introduced new resolution mechanisms applicable to major banks, insurance companies and construction companies.

The Central Bank established the Fund for Consolidation of the Bank Sector. The Central Bank is the 100 per cent shareholder of the management company of this fund (the Management Company). The Management Company may decide to finance the resolution of major banks and becomes the controlling shareholder of the distressed bank. If the bank has negative net assets, the bank's shareholders must transfer their shares to the Management Company for 1 rouble. The Management Company finances resolution procedures by way of contributions to the bank's charter capital (from the loans it receives from the Central Bank) and acts as the bank's crisis manager. After resolution measures are complete, the Management Company must sell its shares in the bank on the market.[148]

Pursuant to recent amendments to the Insolvency Law, a similar Fund for consolidation of the insurance sector was established. The Management Company manages this fund. The

144 ibid., at Article 189(61).

145 ibid.

146 ibid., at Article 189(77).

147 ibid., at Article 189.92.

148 Federal Law dated 1 May 2017 No. 84-FZ 'On amendment of certain legislative acts of the Russian Federation'.

Management Company is authorised to manage the resolution procedures of insurance companies, similar to those applicable to banks, and finance them from the Fund for Consolidation of the Insurance Sector.[149]

Insolvency of individuals

A creditor may file for insolvency of an individual if the amount of his or her debt exceeds 500,000 roubles and is overdue for more than three months.[150] The individual is obliged to file for insolvency if a payment to a creditor makes it impossible to pay other creditors and the amount due exceeds 500,000 roubles. The debtor has a right to file for insolvency if it is manifestly unable to pay its debts on time or the amount of its debts exceeds the value of its assets (there is no minimum threshold).[151]

In general, the following insolvency procedures may apply: restructuring of debts; a sale of assets; and a settlement agreement.[152]

If the court finds that the insolvency petition has merit, it introduces, as a general rule, the procedure of debt restructuring and appoints an insolvency administrator.[153] In the course of this procedure, the insolvency administrator analyses the financial situation, a moratorium on the payment of debts is introduced, and no interest or penalties accrue on any claims (except for post-commencement claims). The debtor cannot enter into any transactions for a value exceeding 50,000 roubles without the consent of the insolvency administrator.[154] The debtor or the creditors may work out a debt restructuring plan providing for repayment of debts for no more than three years.[155] The court approves this plan if it meets the criteria set by the Insolvency Law, it is realistic and does not breach third parties' rights. In certain cases, the court may approve the debt restructuring plan without the consent of the debtor or the creditors.[156]

If there is no basis for the approval of a debt restructuring plan, the court declares the debtor insolvent and commences the procedure for the sale of assets.[157] The aim of this procedure is to have the debtor's assets sold and the creditor's claims repaid.

Certain assets of an individual do not constitute a part of the insolvency estate.[158] Such assets include the only residential premises of the individual and land plots on which the premises are situated (provided that the land plots are not mortgaged) and the equipment necessary for the debtor to conduct his or her professional activities worth not more than 750,000 roubles.[159]

The distributional priorities applicable in the course of insolvency of individuals differ from the general priorities. The major difference is that the claims of the first priority include

149 Amendments introduced by Federal Law No. 87-FZ, dated 23 April 2018.

150 Insolvency Law, Article 213(3)-2.

151 ibid., at Article 213(4). Clauses 8 to 10 of the Resolution of the Plenary Session of the SC, No. 45, dated 13 October 2015.

152 Insolvency Law, Article 213(2).

153 ibid., at Article 213(6).

154 ibid., at Article 213(11).

155 ibid., at Article 213(14.2).

156 ibid., at Article 213(17.4).

157 ibid., at Article 213(24).

158 ibid., at Article 213(25.3); Civil Procedure Code, Article 446.

159 100 minimum salary rates set by the Russian government, which is 9,489 roubles as of 1 January 2018.

alimony claims and that a secured creditor receives 80 per cent of the proceeds from the sale of the pledged assets and in addition may receive up to 10 per cent of the secured claims if they are not used for payment of court fees or the insolvency administrator's expenses.[160]

Once the sale of assets is complete, the court must rule on the discharge of the debtor from unsettled claims.[161] The court will not release the debtor from obligations if it acted unlawfully or in bad faith while undertaking or performing its obligations, which serve as a ground for the creditor's claims. For instance, the court will not issue a discharge order if it finds that the debtor intentionally gave false information to the insolvency administrator or the court in the course of the insolvency proceedings. If this becomes known after insolvency proceedings have been completed, the decision to release the debtor from its obligations may be set aside.

In any event, the debtor cannot be released from certain types of debts, including post-commencement claims, claims for compensation of harm to life or health, claims for payment of salary or alimony, and claims to hold a debtor liable for his or her actions as a director of a legal entity or for damage caused as an insolvency administrator.[162] Upon completion of insolvency proceedings, the court issues enforcement orders and the creditors may enforce their claims via the general enforcement procedure.

vii Cross-border issues

Russian insolvency law does not contain detailed regulation of cross-border issues. Insolvency of legal entities registered in Russia is subject to the exclusive jurisdiction of the Russian courts.[163]

Both foreign citizens residing in Russia and Russian citizens residing abroad may be declared insolvent in Russia.[164] These proceedings will be treated as plenary insolvency proceedings. In practice, Russian courts have permitted insolvency of German, Chinese and Uzbek citizens residing in Russia. The courts ruled that foreign citizens may be declared insolvent in Russia if (1) their centre of main interests is in Russia, (2) the matter is in accordance with the principle of effective jurisdiction, and (3) the case is closely connected to Russia, for example if the creditor, the debtor and its assets are in Russia, or if the debtor is a registered individual entrepreneur in Russia.[165]

However, there is no publicly available information about any case relating to a foreign legal entity that has been declared insolvent in Russia. A Russian court terminated the insolvency proceedings concerning a Cypriot company, which had a representative office in Russia, on the grounds of lack of jurisdiction. The court also ruled that the Russian Insolvency Law does not apply to foreign companies because their insolvency is governed by foreign *lex personalis*.[166]

160 Insolvency Law, Article 213(27).

161 ibid., at Article 213(28).

162 ibid., at Article 213(28.3, 5 and 6).

163 Commercial Procedure Code, Articles 38 and 248(1.5).

164 Clause 5 of the Resolution of the Plenary Session of the SC No. 45, dated 13 October 2015.

165 Resolution of the Eighth Commercial Appellate Court No. 08AP-5602/2017, dated 5 June 2017; Resolution of the Commercial Court for the Moscow Circuit No. F05-8738/2016, dated 8 July 2016; Resolution of the Commercial Court for the Volgo-Vyatsky Circuit No. F01-3755/2017, dated 24 October 2017; Ruling of the Commercial Court for the Jewish Autonomous Region No. A16-1801/2016, dated 3 April 2017.

166 According to Resolution of the Commercial Court for the Moscow Circuit No. A40-15873/17, dated 15 November 2017, Russian insolvency law does not apply to foreign companies.

The Insolvency Law does not regulate non-main or ancillary proceedings in Russia with respect to a foreign person.

However, a final judgment of a foreign court to declare the debtor insolvent and to appoint an insolvency administrator may be recognised and enforced on the grounds of an international agreement, or absent such agreement, on the grounds of international comity and reciprocity.[167] If the judgment does not require enforcement, it may be recognised without any special procedure. Interested parties may file objections against the recognition with a Russian court within one month of learning about the judgment.[168] Non-final court decisions and preliminary orders (such as orders to appoint a temporary administrator as an interim measure) may not be recognised and enforced.[169] However, powers of the temporary administrator of a foreign entity or individual to act in Russia may arguably be recognised as a part of *lex personalis* or *lex concursus* of the foreign person.[170] However, there is contradictory court practice on this matter.[171]

If the judgment of a foreign court to declare a debtor insolvent and to appoint an insolvency administrator is recognised in Russia, the foreign insolvency administrator may exercise his or her powers to seize assets located in Russia, vote with shares in Russian legal entities, request interim measures in support of foreign court proceedings[172] and file applications with the Russian courts to declare transactions of the debtor invalid, provided that he or she does not exceed his or her powers granted by foreign *lex concursus*. While making requests to declare transactions invalid, the insolvency administrator may either refer to the grounds set by Russian law (Articles 10 and 168 of the Russian Civil Code discussed

167 Insolvency Law, Article 1(6). In the context of insolvency, the Russian courts granted enforcement of the German judgment on the basis of the reciprocity principle. See Resolution of the Federal Commercial Court for the North-West Circuit in Case No. A56-22667/2007, dated 11 January 2008; Ruling of the Commercial Court of Saint-Petersburg and Leningrad Region in Case No. A56-22667/2007, dated 28 May 2008. In a non-insolvency context, the Russian courts granted enforcement of the judgments rendered by the courts of England, Northern Ireland and the Netherlands on the basis of Article 6 of the European Convention of Human Rights, Article 98 of the Agreement on Partnership and Cooperation establishing a partnership between the European Communities and their Member States, of the one part, and the Russian Federation, of the other part, 1994, and international comity and reciprocity. See, e.g., Resolution of the Presidium of the SCC No. 6004/13, dated 8 October 2013, Ruling of the SCC No. VAS-6580/12, dated 26 July 2012 and Resolution of the Federal Commercial Court for the Povolzhye Circuit in Case No. A55-5718/2011, dated 23 January 2012. The Russian courts referred to the Partnership and Cooperation Agreement as a separate basis for enforcement. See Resolution of Presidium of the SCC No. 6004/13, dated 8 October 2013 and Resolution of the Federal Commercial Court for Povolzhye Circuit in Case No. A55-5718/2011, dated 23 January 2012.

168 Commercial Procedure Code, Article 245(1).

169 Clause 33 of Resolution of the Plenary Session of the SCC No. 55, dated 12 October 2006.

170 Resolution of the Federal Commercial Court for North-Western Circuit No. A56-22667/2007, dated 28 August 2008; Resolution of the Federal Commercial Court for the Moscow Circuit No. A40-15723/08-56-129, dated 12 November 2008.

171 Ruling of Federal Commercial Court for the Moscow Circuit No.КГ-А-41/5232-09-Ж, dated 9 September 2009.

172 Ruling of the SCC No. 2860/10 dated 4 May 2010.

in Section I.i (abuse of right)) or foreign insolvency law. The Russian courts have allowed the claimants to seek a declaration of the invalidity of the transactions made by the debtors in violation of foreign insolvency law applicable to the transactions.[173]

Between 2010 and 2014, Russian courts recognised three Kazakh judgments on restructuring proceedings in respect of BTA Bank and Alliance Bank, which provided, among other things, for a stay against creditors' claims and a partial debt write-off.[174] The courts granting such relief relied on the Kiev Treaty on Settling Disputes Related to Commercial Activities (dated 20 March 1992).

However, in a more recent case, Russian courts refused to recognise an Azerbaijani court decision on the restructuring of the International Bank of Azerbaijan upon request from its Russian creditor, Sberbank. The courts focused on procedural deficiencies (e.g., no proper notice to Sberbank concerning the hearing on the restructuring). However, the courts also held that (1) unilateral (even partial) write-off of Sberbank's debt contravened Russian public policy and (2) recognition of foreign judgments on restructuring in Russia required proof of mutual recognition of Russian insolvency judgments in Azerbaijan.[175]

If a foreign person is declared insolvent and the judgment is recognised in Russia, the Russian court may dismiss proceedings against the foreign debtor on procedural grounds.[176]

If the claims of a creditor filed for registration in the course of Russian insolvency proceedings are governed by foreign substantive law (for example, the law of the contract, or law governing statutory interest), the Russian courts must apply the foreign law.[177]

Claims on challenging a Russian debtor's transactions under the Russian Insolvency Law are not arbitrable and fall within the exclusive jurisdiction of the Russian courts. However, when these transactions fall within the scope of the arbitration agreements, a foreign arbitration tribunal may find that it has jurisdiction to consider the claims on their validity and a foreign state court may grant interim measures in support of the arbitration proceedings.[178] Therefore, parallel proceedings may arise in Russia and abroad.

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173 Resolution of the Presidium of the SCC No. 10508/13 dated 12 November 2013, Ruling of the SCC No. VAS-11777/13 dated 17 March 2014. The Twenty-First Commercial Appellate Court has considered this matter (Resolution No. 21AP-864/2016, dated 12 August 2016). One of the creditors of an insolvent Ukrainian company filed a claim with the Commercial Court of the Crimea Republic to declare invalid disposal of lease rights to a land plot located in Crimea by the insolvent company. The court of the first instance satisfied the claim. It recognised the Ukrainian insolvency without a special procedure and referred to Ukrainian rules of insolvency law. The appellate court set this ruling aside and declared the transaction valid. The reason was that the insolvency of the debtor did not *per se* lead to invalidity of the transaction.

174 Ruling of the Moscow Commercial Court in Case No. A40-24334/10-25-170, dated 23 April 2010 (not appealed); Ruling of the Moscow Commercial Court in Case No. A40-108389/2012, dated 15 October 2012 (not appealed); Ruling of the Moscow Commercial Court in Case No. A40-53374/14, dated 24 July 2014 (not appealed).

175 See Resolution of the Commercial Court of the Moscow Circuit dated 8 November 2018 in Case No. A40-185979/2017 (petition for review by the Supreme Court denied).

176 The court dismissed a claim against a Dutch debtor on the grounds that the creditor has already had its claims registered in the course of the foreign insolvency proceedings. Ruling of the SCC No. 14334/07, dated 11 March 2008.

177 Ruling of the Supreme Court of the Russian Federation No. 305-ЭС16-13148(2), dated 23 August 2017.

178 See *Nori Holdings Limited, Centimila Services Limited, Coniston Management Limited v. Bank Otkritie Financial Corporation* [2018] EWHC 1343 (Comm)); Ruling of the Moscow Commercial Court No. A40-204393/17, dated 9 October 2018, upheld by the Ninth Commercial Appellate Court on 10 June 2019.

II INSOLVENCY METRICS

Economic development in development has been slowing down during the past year.

According to a report prepared by the Ministry of Economic Development of the Russian Federation, in April 2019, the dynamics of economic activity for the first quarter of 2019 deteriorated. There was a fall in gross domestic product (GDP) for this period of 0.8 per cent as compared to the first quarter of 2018.[179] Following the increase in VAT, a slowdown in retail sales has had negative effect on economic growth. A decrease in industrial production (2.1 per cent in the first quarter of 2019 after 2.7 per cent in the fourth quarter of 2018 as compared to the same periods in the previous year) was determined by the moderate dynamics in manufacturing industry.

The Bank of Russia lowered its GDP growth forecast for 2019 from between 1.2 per cent and 1.7 per cent to between 1 per cent and 1.5 per cent.[180]

The Federal Service of State Statistics reported that the index of industrial production increased by 4.6 per cent in April 2019 as compared to the relevant period in the previous year. The production of natural resources increased by 4.2 per cent and manufacturing increased by 4.7 per cent.[181]

The economic situation is different in other economic sectors.

Retail sales fell by 1.6 per cent in April and 1.2 per cent in May, which was mainly caused by a decrease in sales of food products.[182]

The unemployment rate was 4.6 per cent in April 2019 and 4.5 per cent in March 2019, excluding seasonal variation.[183]

The data released by the Supreme Court in 2018 shows that 95,820 new insolvency petitions were filed and 83,164 insolvency petitions were accepted for consideration by courts, including 42,440 petitions filed by debtors, 32,538 petitions filed by private creditors and 8,186 petitions filed by tax authorities. These include 49,767 petitions to declare individuals insolvent.

In 10,478 cases, the courts introduced supervision. In 8,672 cases, after the completion of the supervision, the courts declared the debtors insolvent and introduced receivership. In 9,129 cases, receivership was completed, and in 2,182 cases the proceedings were terminated. The courts introduced 254 external management procedures and 18 cases of financial rehabilitation. In 2018, only three cases were terminated as a result of repayment of debts in the course of financial rehabilitation. In most cases, the courts introduced a receivership stage after expiry of the term of the financial rehabilitation or terminated the proceedings upon approval of a settlement agreement. The claims were fully repaid after the external management procedures in nine cases only. In most cases (214), debtors were declared insolvent and receivership was introduced, the receivership procedure was terminated after the sale of the debtors' assets, and the debtors were liquidated following it.

179 Report by the Ministry of Economic Development regarding the current situation in the economy of the Russian Federation: 'Review of business activity. April 2019'. Published on http://economy.gov.ru/minec/about/structure/depmacro/2019050701.

180 See https://www.cbr.ru/eng/press/keypr/.

181 Bulletin of the Bank of Russia's Department of Research and Forecasting, Macroeconomics and Markets, No. 4 (32), May 2019, p. 14 <https://www.cbr.ru/Collection/Collection/File/19803/bulletin_19-04.pdf>.

182 ibid., at p.19.

183 ibid., at p. 22.

In 2018, the courts received 34,434 applications to declare transactions invalid, 2,048 requests to remove insolvency administrators and 4,295 applications to hold debtors' controlling persons liable.

According to statistics published by the Centre of Macro-Economic Planning for the fourth quarter of 2018,[184] the number of insolvencies decreased by 2.3 per cent as compared to the third quarter of 2018 and by 10.7 per cent as compared to the fourth quarter of 2017. However, the total number of insolvencies in the fourth quarter of 2018 was 10.4 per cent higher than the similar (pre-crisis) indicator for the fourth quarter of 2013. There was a significant decrease in insolvencies in non-industrial sectors, in particular in transport and communications. There were also some improvements in retail, business services, construction and development. At the same time, the situation has not changed significantly for companies in the agricultural and industrial sectors, in particular, electric power, food, metal and engineering industries. Two pharmaceutical trade companies are on the list of the top three largest insolvent companies in terms of the proceeds.

As discussed Section I.vii, Russian law does not permit non-main proceedings in respect of foreign debtors. There are no publicly available statistics regarding requests for ancillary proceedings (i.e., requests for interim measures to declare transactions invalid or other).

III PLENARY INSOLVENCY PROCEEDINGS

i Antipinsky Refinery

JSC Antipinsky Refinery is a private refinery with a capacity of more than 9 million tonnes per year. According to the company's website, it 'occupies its rightful place among the largest players of the Russian oil refining industry, forming the Urals and West-Siberian oil refinery market'.[185]

According to publicly available information,[186] the refinery faced financial difficulties because of a decrease in its revenue, growth in cost of sales, currency fluctuations and increase of payments for the use of loans. The total amount of its indebtedness was estimated at US$5 billion, including a US$3 billion debt to Sberbank. In 2018, the refinery breached the covenants to Sberbank. As a result, the bank was entitled to demand early repayment of all debts and to conduct operational control of the plant.

In April 2019, another creditor, VTB Commodities Trading, initiated proceedings against the refinery at the London Court of International Arbitration, seeking €197 million for the failure to deliver petroleum products that had been paid for in advance. The claimant obtained evidence that the refinery sold the pre-paid petroleum products to a third party in breach of agreements.

VTB Commodities Trading applied to the High Court of Justice in England seeking freezing injunctions against the refinery's assets worth €225 million in support of pending arbitration proceedings. The court granted the application and imposed interim measures. As a result, it attached the refinery's property in the Tyumen region and petroleum reserves stored in the port of Murmansk. It also prohibited the respondent from selling its petroleum products.

184 See www.forecast.ru/_ARCHIVE/Analitics/PROM/2018/Bnkrpc-4-18.pdf.

185 See https://www.annpz.ru/en/about/.

186 See https://www.vedomosti.ru/business/articles/2019/05/29/802698-krupneishii-npz.

As part of its claims, VTB Commodities Trading also filed applications for interim measures with the Commercial Court of Murmansk Region[187] and the Moscow Commercial Court.[188] However, the Russian courts refused to grant interim measures.

On 20 May 2019, the refinery filed an insolvency petition. The Commercial Court of the Tyumen Region is considering the insolvency case.[189] Reportedly,[190] the refinery asserts that some traders, including VTB Commodities Trading, stopped making advance payments for oil products, which caused a decrease in the amount of purchased oil and halts in operations. Moreover, the attachment of assets imposed by the High Court of Justice under the application of the VTB Commodities Trading led to the refinery's insolvency.

In June 2019, SOCAR Energoresurs, a joint venture between Sberbank and Azerbaijani state oil company SOCAR, acquired Cyprus-based Vikay Industrial, the owner of an 80 per cent stake in Antipinsky Refinery.[191] Reportedly, the new owner aims to restart the plant.[192]

On 12 July 2019, a criminal case was opened against the former controlling shareholder of Antipinsky Refinery, Dmitry Mazurov, under a claim by Sberbank. The court granted a request by investigators to hold Mr Mazurov in custody until 12 September 2019 pending trial on suspicion of embezzling 1.8 billion roubles.[193]

ii Urban Group

Urban Group was one of the largest developers of the Moscow region. The Group included five subsidiaries: Ivastroy LLC (development projects with an area of 1.7 million square metres), Highgate LLC (two development projects with a total area of 1 million square metres), Continent Project LLC (development project with an area of 460,000 square metres), Ekoquartal LLC (development project with an area of 450,000 square metres) and Vash Gorod LLC (development project with an area of 370,000 square metres).

In spring 2018, Urban Group faced financial difficulties because its management unlawfully disposed of assets. In April 2018, the Federal State Registration Service refused to register its share participation agreements. In May 2018, Sberbank withdrew accreditation for its mortgage programmes.

According to publicly available information,[194] the Group concluded about 14,600 share participation agreements. Around 67.6 billion roubles are needed to complete the construction of about 3.5 million square metres of the problem facilities.

187 Case No. A42-4655/2019, http://kad.arbitr.ru/Card/54c6d21f-57e7-4dd5-89fd-a451fa168688.

188 Case No. A40-117927/19-39-890, http://kad.arbitr.ru/Card/19161694-ec27-47a4-a7be-988c6761bc60.

189 Case No. A70-8365/2019, http://kad.arbitr.ru/Card/e0a069f0-7e35-4bf3-827f-956551e23f0f.

190 See https://www.vedomosti.ru/business/articles/2019/05/20/801830-antipinskii-npz.

191 See https://www.vedomosti.ru/business/articles/2019/06/05/803420-socar-poluchil-dolyu-v-antipinskom-npz.

192 See https://www.vedomosti.ru/business/articles/2019/07/07/806019-krupneishii-nezavisimii-npz-zarabotaet-20-iyulya.

193 See https://www.vedomosti.ru/business/articles/2019/07/15/806545-sud-bivshego-vladeltsa-krupneishego-npz.

194 https://www.kommersant.ru/doc/3860743.

In July 2018, the Commercial Court of the Moscow Region declared insolvent all the Group's subsidiaries (Ivastroy LLC,[195] Highgate LLC,[196] Continent Project LLC,[197] Ekoquartal LLC[198] and Vash Gorod LLC).[199] The applicant in these proceedings was the Fund for the Protection of the Rights of Citizens Participating in Shared Construction (the Fund). Following the introduction of insolvency proceedings, the insolvency administrator challenged a number of transactions concluded with the debtors' business customers.

Participants of shared constructions voted for the Fund's support and passed a decision to use the new mechanism of resolution involving the Fund to complete construction of the residential buildings. The Government of the Moscow Region is going to allocate state resources to the Fund for this purpose.[200]

iii Angstrem-T

JSC Angstrem-T is a company incorporated to implement 'the investment project of establishing a submicron semiconductor manufacture foundry based on 130nm and 90nm technologies, with a prospect to shift to 65nm node'.[201] The chairman of its board of directors is the former Minister of Communications, Leonid Reiman. The total amount of investments in the project is €896 million.

In 2008, Vnesheconombank (State Corporation VEB, now VEB.RF) issued a loan of €815 million for development of the project. According to publicly available information, US sanctions on the delivery of dual-use technologies was one of the reasons that prevented Angstrem-T from repaying its debt.[202]

In January 2019, VEB.RF received 100 per cent of the company and filed for its insolvency. On 19 March 2019, the court granted the insolvency petition and commenced the supervision stage of the insolvency. The court also registered claims by VEB.RF in the amount of 14.3 billion rubles.[203]

The Ministry of Industry and Trade has developed a draft strategy for the electronic industry in Russia until 2030, through which it proposes to implement the production of microelectronics based on Angstrem-T.[204]

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195 Case No. А41-44410/2018, considered by the Commercial Court of the Moscow Region <http://kad.arbitr.ru/Card/3bbbdae2-4257-48e4-82ff-0a8157cd9406>.

196 Case No. А41-44405/2018, considered by the Commercial Court of the Moscow Region <http://kad.arbitr.ru/Card/a3316190-539f-4350-97da-cfe41b78c0be>.

197 Case No. А41-44403/2018, considered by the Commercial Court of the Moscow Region <http://kad.arbitr.ru/Card/35ac5f49-9bdb-4857-ae4f-21980b77580b>.

198 Case No. А41-44407/2018, considered by the Commercial Court of the Moscow Region <http://kad.arbitr.ru/Card/d902ed06-2dd1-4fbb-ad9e-85d2b9d75f90>.

199 Case No. А41-44408/2018, considered by the Commercial Court of the Moscow Region <http://kad.arbitr.ru/Card/c6b91200-2127-4e2f-8676-93ec1f2ebd4e>.

200 Order of the Government of the Moscow Region No. 128-РП/2, dated 19 February 2019. Cooperation agreement between the Moscow Region and the Fund for the Protection of the Rights of Citizens Participating in Shared Construction No. 02 dated 4 February 2019.

201 See https://www.angstrem-t.com/eng/about-us/.

202 See https://www.vedomosti.ru/technology/articles/2019/05/23/802334-minpromtorg-spasti?utm_campaign=newspaper_24_5_2019&utm_medium=email&utm_source=vedomosti.

203 Case No. А40-323/2019, considered by the Commercial Court of the Moscow Region <http://kad.arbitr.ru/Card/10c12e0f-2c0e-4a60-a6ad-2888054d7d05>.

204 See https://www.vedomosti.ru/technology/articles/2019/05/23/802334-minpromtorg-spasti?utm_campaign=newspaper_24_5_2019&utm_medium=email&utm_source=vedomosti.

iv Domashnie Dengi

Domashnie Dengi LLC was one of the largest micro-finance companies that provided retail micro-loans via a network of agents.

At the end of April 2018, Domashnie Dengi refused to redeem the offered bonds for 1.25 billion roubles. In June 2018, the company announced that most of the bondholders supported the proposed restructuring terms. However, in July 2018, it made a new technical default on its obligations under restructured bonds.[205]

In August 2018, the Central Bank excluded Domashnie Dengi from micro-finance organisations because of the violation of professional standards, non-fulfillment of the Central Bank's requirements and submission of false reports.

On 23 August 2018,[206] the DIA, on behalf of the bank Intercommerz, filed an insolvency petition in relation to Domashnie Dengi. On 28 February 2019, the court granted the insolvency petition and introduced the supervision stage of the insolvency. The court registered claims by Intercommerz in the amount of 2.8 billion roubles. The total amount of all creditors' claims is about 10 billion roubles.[207]

The beneficial owners of the company are Evgeny Bernstam and his wife. In August 2018, the DIA initiated insolvency proceedings in relation to Mr Bernstam. In July 2019, Mr Bernstam was arrested in connection with a criminal case on suspicion of fraud.[208]

v E4 Group

OJSC E4 Group was an engineering company controlled by the former Russian minister Mikhail Abyzov. It was incorporated in 2006 during the reform of the Russian energy sector and the launch of large-scale investment projects in the electric power industry. The Group comprised 12 holding companies and more than 50 business units in all federal districts of Russia.[209]

By 2013, E4 had a 20 per cent share in the Russian market of the electric power industry. The Group was involved in the production of equipment for power facilities with a total capacity of almost 7GW and a total cost of 160 billion roubles.[210]

In 2014, according to the company's annual report, deterioration of the financial and economic situation in the country, fluctuations of currency exchange rates, and an increase in bank rates gave rise to the company's problems with payments on loans and contracts.[211] In 2015, more than 200 claims were filed against the company.

205 See https://www.vedomosti.ru/opinion/articles/2018/08/27/779151-kuda-propali.

206 Case No. A40-197447/2018, considered by the Commercial Court of the Moscow Region <http://kad.arbitr.ru/Card/d4a9db33-059c-4dbe-9e7a-01c012b31a8b>.

207 See https://www.vedomosti.ru/opinion/articles/2018/08/27/779151-kuda-propali.

208 See https://www.vedomosti.ru/finance/news/2019/07/05/805962-osnovatel-domashnih-deneg-zaderzhan.

209 See https://www.rbc.ru/business/07/04/2015/54e315829a794700e7d751a4.

210 See https://www.vedomosti.ru/business/articles/2016/10/31/662955-e4-sdalas-kreditoram.

211 See https://www.rbc.ru/society/04/06/2019/5cf4fa539a794745e9479508; https://www.vedomosti.ru/business/articles/2016/10/31/662955-e4-sdalas-kreditoram

On 28 November 2014, the Moscow Commercial Court registered the first insolvency petition by CJSC Axioma Prava. On 17 June 2015, the court granted the insolvency petition and commenced the supervision stage of the insolvency. On 18 November 2016, E4 was declared insolvent and the receivership stage commenced.[212]

In December 2018, Alfa-Bank filed a claim to hold liable Mikhail Abyzov, his ex-wife (from whom Mr Abyzov was divorced in 2016) and former E4 president Andrei Malyshev. Similar claims were filed by Redeliaco Holdings (the E4 insolvency creditor) in February 2019 and by the public joint stock company T Plus (controlled by Viktor Vekselberg) in May 2019. The creditors claim about 34 billion roubles.[213] On 27 March 2019, Mr Abyzov was arrested in connection with a criminal case on suspicion of fraud and organisation of a criminal network.[214]

IV ANCILLARY INSOLVENCY PROCEEDINGS

Russian law does not permit non-main proceedings, as discussed in Section I.vii. There is no information available regarding ancillary proceedings for foreign-registered companies.

V TRENDS

Russian insolvency proceedings generally aim for liquidation of the debtor and enforcement of pledges. Unsecured creditors rarely get any significant amounts from the process.

There are no effective general rehabilitation mechanisms. Long-discussed and expected developments to legislation relating to financial rehabilitation proceedings have not been adopted. The government of the Russian Federation developed a draft law on restructuring proceedings and introduced it to the Duma in August 2017.[215] The Duma proposed amendments to this draft law but, in November 2018, the government did not support the amendments. It is unclear to what extent and when this draft law will be adopted.

In the absence of effective regulation concerning rehabilitation, the legislator has founded *ad hoc* solutions for companies that are too big to fail, are important for the economy, or whose insolvency would otherwise have negative social effects (such as the insolvency of large construction groups dealing with the construction of residential premises). The state has created the funds to finance the resolution of major companies in return for their shares. The state further acts as crisis manager and seeks to restructure the business of the companies to make them profitable or to complete the failed construction projects. Such mechanisms are available for large banks, insurance companies and construction companies. The Central

212 Case No. A40-171885/2014, considered by the Commercial Court of the Moscow Region <http://kad.arbitr.ru/Card/4917fb32-e772-42a3-b998-cc0a46a77af5>.

213 See https://www.rbc.ru/society/04/06/2019/5cf4fa539a794745e9479508?utm_source=yxnews&utm_medium=desktop.

214 See https://www.rbc.ru/society/27/03/2019/5c9b84e69a79473e78505633?from=from_main.

215 According to the draft, a debtor or a creditor is able to file for debt restructuring. If the court grants an application, a debtor and its creditors will have four months to develop a restructuring plan. The plan should provide for the repayment of all debts within the four years of its approval by the court or within up to eight years if the creditors approve it. The restructuring plan may provide for different options for the debtor's management: its shareholders may still appoint the directors, or a court-appointed insolvency administrator may replace them, in addition to the appointment of two directors, one selected by the shareholders, and the other by the creditors.

Bank has applied this mechanism to three major Russian banks (Otkritie, Binbank and Promsvyazbank). The restructuring of Otkritie's business was completed within three and a half months instead of the estimated six months.

At the same time, the Central Bank exercises its control functions very actively, and there have been a large number of cases in which the Central Bank revoked the banking licences of less important banks and filed for their insolvency.

Major insolvency cases are often considered in parallel with criminal investigations. Law enforcement agencies actively exercise their investigative powers in large-scale insolvency-related frauds and arrest the controlling persons.

Trends in court practice include increasing liability and the number of cases in which the beneficial owners of a debtor are held liable for the debtor's debts. In the absence of regulation of inter-group insolvencies, courts attempt to fill the lacuna and develop case law on this matter to prevent the registration of artificial inter-group claims and the dilution of the assets of a debtor's subsidiaries. In almost every significant insolvency case, there are disputes about the registration of claims of creditors affiliated with the debtor, including non-existent or fraudulent claims. Sometimes such claims are confirmed by court judgments or arbitral awards, and the insolvency administrators or other creditors have to object to such claims so as not to lose control over insolvency proceedings. In many cases there are disputes regarding voidable transfers or fraudulent transfers.

Appendix 1

ABOUT THE AUTHORS

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Pavel Boulatov is counsel in the Moscow office of White & Case, focusing on insolvency proceedings, litigation and international arbitration. He represents Russian and foreign companies in a wide range of insolvency proceedings, including advising on the preparation and filing of insolvency petitions and applications to register creditors' claims, resisting the registration of other creditors' claims, participating in creditors' meetings, the evaluation and sale of debtors' assets, and interaction with bankruptcy managers. Pavel has significant expertise in Russian insolvency proceedings and has represented creditors, debtors and administrators in large bankruptcy cases. Pavel also represents clients in disputes during insolvency proceedings and in proceedings concerning the recognition of foreign courts' insolvency judgments in Russia. His clients include Russian and international banks (Bank of Cyprus, Czech Export Bank, UniCredit Bank, Credit Europe Bank, BTA Bank) and large companies and corporations (Samsung, Visteon, Eurocement and PSG International).

Pavel has been included in *Best Lawyers in Russia* in the practice area of litigation and insolvency, and is a member of INSOL International.

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ISBN 978-1-83862-061-5