THE INSOLVENCY REVIEW

EIGHTH EDITION

Editor
Donald S Bernstein

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PREFACE

This eighth 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 globe 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.

This year's book is being published as the world continues to cope with the covid-19 pandemic. Some countries are more affected than others but one thing is clear: in addition to the tragic impact of the pandemic on the lives and health of so many around the world, the economic hardship on individuals and businesses is extensive. This impact goes well beyond those directly affected by the virus. In many countries, lockdowns have affected a number of economic sectors. Airlines, hospitality, entertainment, dining and retail, just to name a few, have seen their revenues collapse and enormous numbers of jobs lost. The impact on employees in these sectors has been tragic, and the effect on consumers has rippled through other sectors as well. Governmental stimulus efforts have cushioned some of this impact but even so we are now seeing record numbers of business failures. These numbers will only grow until the pandemic is under control.

As can be seen in these pages, insolvency professionals and courts are coping with the resulting onslaught of business insolvencies to the best of their ability. Still, efforts to rescue and restructure businesses and save jobs are of no avail if revenues cannot timely be restored. Insolvency proceedings can be a holding action, but they cannot create revenue to allow a business to survive. The insolvency system then becomes merely an orderly means of shutting businesses down and distributing their assets.

One question to ask is whether, where businesses revenues collapse owing to an exogenous event such as a pandemic, the fact that investors and employees in some economic sectors absorb losses and hardships that are disproportionate to those in other sectors is not highly arbitrary. Some cogently argue that these costs, which are imposed by actions taken by governments, businesses and individuals to protect the public's health and wellbeing, should be absorbed by the public sector and allocated through tax policy rather than having them absorbed by the unlucky employees and stakeholders of the affected businesses.

Another question is whether allowing the collapse of these businesses, which were viable before the pandemic, will not also make the return to normal more difficult after the worst is behind us. Rather than idling for a while and then resuming, the affected economic engines are being shut down. Their lights are literally going out. Over the long run, will it be more time-consuming and costly to reconstruct these economic engines anew, and then crank them up and restart them, than it would be to support them so they can idle for a time and then resume in their current form?

Of course, for businesses to remain intact they must be provided with liquidity and capital, and programmes have been adopted in a number of countries to provide this, at least temporarily. Payment moratoria also have played a role in some countries, though these moratoria inevitably force some of the costs onto private sector parties (for example, landlords).

Frankly, there may be no good answers to these questions.

Next year, we may be in a better position to assess the economic damage done by the pandemic and how successful countries have been in preserving their business infrastructure, restoring employment and mitigating the arbitrary impacts described above. In the meantime, it is up to the insolvency system to take up the slack as best it can. I know that insolvency professionals, especially the authors contributing to this volume, are up to the task.

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 challenging undertaking every year, and particularly so in this year of covid-19. As in previous years, my hope is that this year's volume will help all of us, authors and readers alike, reflect on the larger picture, keeping our eye on likely, as well as necessary, developments, on both the near and distant horizons.

Donald S Bernstein
Davis Polk & Wardwell LLP
September 2020

Chapter 19

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 Insolvency Law, Article 134(2).

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] The time within which an appeal may be made begins to run after a creditor becomes aware of the reasons why the decision should be overturned by an appellate court.[12]

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.[13] 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.[14] 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:[15]

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.[16] 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

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 (SC Ruling No. 305-ЭС16-7085, dated 3 October 2016).

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

12 SC Ruling No. 305-ЭС18-5193(3), dated 19 May 2020.

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

14 SCC Presidium Resolution No. 12751/12, dated 2 February 2013. 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.

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

16 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 (SC Ruling No. 301-ЭС19-2351, dated 27 June 2019).

they have priority over other creditors' claims with respect to penalties.[17] 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 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.[18]

A recent amendment to the Tax Code provides that a pledge over a debtor's assets arises by virtue of law as a result of attachments imposed by the tax authorities.[19] This pledge has no priority over any pledge of the attached assets existing as of the date of the attachment. It is unclear whether this amendment entitles the tax authorities to have their claims registered as secured claims in the event of insolvency. According to the Supreme Court's earlier position, a pledge arising out of an attachment imposed by courts or bailiffs gives no priority rights in the event of insolvency.[20] At present, the Supreme Court has not yet had a chance to consider whether this position is still good law and applies to tax claims.

The court may subordinate the claims arising from the financing of the debtor by affiliated creditors to the claims of registered ordinary creditors, as explained in Section I.vi below.[21]

The following ordinary claims have the lowest priority:

a claims arising out of the consequences of a transaction aimed at the fraudulent transfer of assets or claims of creditors that are aimed at receiving undue preference (as discussed below);[22]

b claims arising out of perpetual bonds;[23]

c claims of creditors that are obliged to perform their obligations and to transfer assets to the bankruptcy estate only after the latter performs its obligations in favour of the respective creditors.[24]

17 SC Ruling No. 301-ЭС16-17271, dated 30 March 2017.

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

19 Russian Tax Code, Article 73 (2.1), introduced by Federal Law No. 325-FZ dated 29 September 2019, in force as of 1 April 2020.

20 SC Ruling No. 301-ЭС16-16279, dated 27 February 2017.

21 Review approved by the SC Presidium on 29 January 2020 'Review of Court Practice for Resolution of Disputes Related to Establishment of Requirements to a Debtor's Controlling Persons and Affiliates in Insolvency Proceedings', Clause 3.

22 Insolvency Law, Articles 61.6(2), 134(4).

23 ibid., at Article 134(4).

24 SC Ruling No. 305-ЭС18-11840, dated 26 November 2018.

With a number of exceptions,[25] 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.[26]

Shareholders' claims arising out of participation in the debtor's share capital, including claims for the payment of dividends[27] may only be satisfied after the bankruptcy estate fully repays creditors' claims.

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.[28] 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 12 months prior to the registration of the insolvency application by the court or after that date;[29]

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;[30] and

c transactions leading to preferential treatment of certain creditors.[31]

25 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 (SC Ruling 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).

26 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 (SC Ruling No. 303-ЭС16-6738, dated 8 September 2016).

27 SC Ruling No. 305-ЭС20-16, dated 11 June 2020.

28 Insolvency Law, Article 61.9(1).

29 ibid., at Article 61.2(1).

30 ibid., at Article 61.2(2).

31 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 bankruptcy estate upon such invalidation or if the transaction counterparty returns everything to the bankruptcy estate.[32]

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.[33] This rule does not apply to transactions by a debtor that were aimed at violating the creditors' rights and interests (point (b), above).

The amendments to the Insolvency Law were introduced to limit the grounds for challenging certain financial transactions documented under master agreements (e.g., repurchase agreements, over-the-counter derivatives), including collateral arrangements.[34] These transactions may not be challenged as transactions leading to preferential treatment of certain creditors (point (c), above) if made within one month prior to the registration of the insolvency application by the court unless the other party to the transaction knew about the debtor's inability to pay or the insufficiency of the debtor's assets. Further, certain transactions made on a stock exchange (including financial transactions) may not be challenged on the basis of any of the grounds listed in points (a)–(c), above.[35]

The amendments to the Insolvency Law provide additional protection to close-out netting in respect of financial transactions documented under master agreements. They exclude the grounds for challenging early termination and close-out netting as transactions leading to preferential treatment of certain creditors (point (c), above) unless the relevant master agreement was made within one month prior to the registration of the insolvency application by the court or after that date.[36] If a financial transaction documented under master agreements is declared invalid after early termination and close-out netting have been effected, the net balance is determined in accordance with the procedure set out in the master agreement.[37]

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 bankruptcy 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

32 ibid., at Article 61.7.

33 ibid., at Article 61.4(2).

34 ibid., Article 61.4(5) (introduced by Federal Law No. 507-FZ dated 27 December 2019). The criteria that the financial contracts need to meet to enjoy special treatment are contained in Article 4.1 of the Insolvency Law.

35 ibid., Article 61.4(1).

36 ibid., Article 61.4(6) (introduced by Federal Law No. 507-FZ dated 27 December 2019).

37 ibid., Article 61.4(7) (introduced by Federal Law No. 507-FZ dated 27 December 2019).

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.[38] Based on this interpretation, the Supreme Commercial Court Presidium declared that the transfer of 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.[39]

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 2019 financial rehabilitation proceedings were introduced in 0.17 per cent of cases (the debt was repaid in none of them); 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

38 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 bankruptcy 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 SCC Plenum Resolution No. 32, dated 30 April 2009, on certain issues related to challenge of transactions on grounds set by the Federal Law on insolvency (bankruptcy)).

39 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 SC Rulings No. 309-ЭС14-923, dated 15 December 2014, and No. 305-ЭС18-9309, dated 8 October 2018.

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.[40]

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. Where there is subsidiary or corporate liability of the controlling persons and the debtor is insolvent, a creditor would file a derivative claim against the controlling persons on behalf of the bankruptcy estate.

In some cases, 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 to hold controlling persons liable. Creditors of non-operating companies or insolvent entities 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. In such scenarios, the creditors would file direct claims against the controlling entities.

The case law of the Supreme Court recognises that, in the case of the liability of controlling persons in tort, a creditor may also file a direct claim on its own behalf.[41] The Supreme Court has confirmed the right of a creditor to make a direct claim in tort for the controlling persons' wilful misrepresentation,[42] the use of loaned funds in breach of a loan agreement[43], the depletion of assets,[44] and the unlawful dissipation of assets.[45] The Supreme Court also held that, as a general rule, those who have participated in a scheme through which the assets of a debtor have been depleted, shall bear joint liability in tort against such debtor's creditors.[46] The existence of a claim against a person shall not exempt another person (or other persons) from liability for the same damage.[47]

40 See http://www.cdep.ru/userimages/sudebnaya_statistika/2020/AC1a_svod-2019.xls; http://www.cdep.ru/userimages/sudebnaya_statistika/2019/AC1a-svod-2018.xls; http://www.cdep.ru/userimages/sudebnaya_statistika/2018/AC1a_2017.xls; 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.

41 Insolvency Law, Articles 61.14, 61.20; Civil Code, Article 1064.

42 SC Ruling No. 305-ЭС18-15540, dated 5 March 2019.

43 SC Ruling No. 34-КГ19-12, dated 10 March 2020.

44 SC Ruling No. 305-ЭС19-13326, dated 23 December 2019.

45 SC Ruling No. 301-ЭС17-19678, dated 16 June 2020.

46 ibid.

47 SC Ruling No. 305-ЭС18-15540, dated 5 March 2019.

Further, the Supreme Court explained that there may be two parallel claims filed against a debtor's controlling person – (1) the receiver's derivative claim (filed on behalf of the bankruptcy estate) for the subsidiary liability of the controlling person; and (2) the creditor's direct claim to recover the damage caused by the tort committed by the same controlling person. The Supreme Court held that the *lis alibi pendens* principle must apply to these claims to avoid double recovery to the extent a receiver's claim includes the repayment of the amounts sought by the creditor in parallel.[48]

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.[49] Supervision should be completed within seven months of the submission of the insolvency petition.[50] 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).[51] Once supervision has

48 SC Ruling No. 305-ЭС19-17007(2), dated 3 July 2020.

49 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.

50 Insolvency Law, Article 51.

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

commenced, the debtor's management is prohibited from making certain types of transactions and decisions.[52] Decisions on 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 approval of the insolvency administrator.[53]

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 key rate applicable at the date the supervision is introduced. The rate as at 27 July 2020 was 4.25 per cent per annum.[54]

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.[55] 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.[56]

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.[57] Financial rehabilitation lasts for no more than two years.[58]

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

52 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.

53 Insolvency Law, Article 64.

54 The key rate is published at www.cbr.ru/.

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

56 ibid., at Article 73.

57 ibid., at Article 80(3).

58 ibid., at Article 80(6).

presented at the first creditors' meeting or, under certain circumstances,[59] 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.[60]

As with supervision, the management retains control of the debtor but its powers are restricted. The court must appoint an insolvency administrator, who is authorised to supervise the implementation of the debt repayment schedule and the financial rehabilitation plan.[61]

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 approval of the administrative manager or of the creditors' meeting.[62]

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.[63]

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.[64] The aggregate term of external management and financial rehabilitation cannot exceed two years.[65]

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 reject 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 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.[66]

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 (contributing assets to the newly created company in return for its shares).[67]

59 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).

60 Insolvency Law, Articles 77, 78 and 80.

61 ibid., at Articles 82 and 83.

62 ibid., at Article 81.

63 ibid., at Article 88(6).

64 ibid., at Article 93.

65 ibid., at Article 92(2).

66 ibid., at Article 99.

67 ibid., at Article 109.

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.[68]

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.[69]

An insolvency administrator replaces the director general of the debtor.[70] 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, and makes distributions to the creditors according to the register of creditors' claims.

Pursuant to the Insolvency Law, all of a debtor's assets must be included in the bankruptcy 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.[71]

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.[72]

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.[73] 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.[74] 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.

68 ibid., at Article 119, Paragraphs 6 and 7.

69 ibid., at Article 124(2).

70 ibid., at Articles 127 and 129.

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

72 Insolvency Law, Article 149.

73 ibid., at Article 156.

74 ibid., at Articles 150 to 167.

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.[75] 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 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).[76]

The amendments to the Insolvency Law introduced in response to the covid-19 pandemic provide for a simplified procedure for the approval of settlement agreements if insolvency proceedings of a protected person commence within three months after the termination of the moratorium.

In such cases, settlement agreements must be approved by 50 per cent of the creditors of a protected debtor present at the creditors' meeting and all secured creditors present at the creditors' meeting (rather than 50 per cent of all registered creditors and all secured creditors).[77] Additionally, a creditor may approve specific conditions of a settlement agreement with a protected debtor during the moratorium period, and it will be a valid approval of a settlement in the insolvency of the protected debtor.[78]

The amendments to the Insolvency Law designed to address the covid-19 crisis have also introduced new rules regulating debt restructuring for protected debtors. According to the amendments,[79] a protected debtor that has filed an insolvency petition during the moratorium may apply for approval of a restructuring plan after the court introduces the first insolvency procedure and the first creditors' meeting takes place. There is no need for approval of the debt restructuring plan by the creditors. The court would approve it if the following criteria are met:

a the debtor's income for the accounting period in 2020 has decreased by 20 per cent or more as compared to the relevant accounting period in a previous year (if the accounting period is not yet complete, the court would consider the debtor's income for 2019 and 2018);

b the debtor has no indebtedness on claims of compensation for damage to health or loss of life, or in relation to severance payments and employees' salaries;

c its creditors have not reached a decision on amicable settlement at a creditors' meeting;

d its creditors have not filed pre-moratorium insolvency petitions that have been returned by the court due to the introduction of the moratorium; and

e the debtor files an insolvency petition one month after the introduction of the moratorium or later (i.e., not earlier than 6 May 2020).

The debt restructuring plan must provide for:

75 ibid., at Article 164(2).

76 ibid., at Article 166(1).

a a change of due dates of payments under obligations that were overdue at the date of the initiation of insolvency proceedings, as well as under obligations to be registered on the register of creditors' claims with a due date not later than one year from the date of approval of the debt restructuring plan;

b monthly payments under the above obligations to be made in equal installments within one year;

c creditors with claims exceeding 10 per cent of the amount of registered claims (except for the creditors affiliated with the debtor) to have a right to receive information about the debtors' assets, property rights and obligations during the debt restructuring;

d the debtor's obligation to report to the above group of creditors on the implementation of the debt restructuring plan at least once a quarter;

e the accrual of contractual interest for the period of the debt restructuring that exceeds one year (if the contract does not provide for interest accrual, it still accrues at the the CBR key rate applicable during the debt restructuring period);

f a restriction on the granting of requests by founders (participants) for the payment of the value of their share (participatory interest) in the debtor's assets in connection with the founders' (participants') exit from the debtor; a prohibition on buybacks or the acquisition by the debtor of placed shares, or the payment of the actual value of the founders' share (participatory interest);

g a restriction on the set-off of claims;

h a prohibition on owners of protected debtors that are unitary enterprises on the extraction their assets;

i a restriction on the payment of dividends, income on shares (participatory interests), or the distribution of profits among the founders (participants/ shareholders) of the debtor:

j a prohibition on the accrual of forfeits (fines, penalties) or other financial sanctions for non-performance or improper performance of the obligations by the debtor; and

k termination of enforcement proceedings for claims related to property arising prior to approval of the debt restructuring plan.

A two-year period applies instead of the one-year period specified above in a) and b), if the debtor's income for the accounting period in 2020 has decreased by 50 per cent or more as compared to the relevant accounting period in the previous year (if the accounting period is not yet complete, the court considers the debtor's income for 2019 and 2018) or a three-year period applies if the same decrease of income concerns a debtor that is a strategic enterprise. In both cases, the debtor must provide a bank guarantee or pledge of assets to creditors with non-secured claims.

The debt restructuring plan extends to all creditor's claims including those that are not registered on the register of creditors' claims, irrespective of the contractual provisions that define an event of default.

If the court approves the debt restructuring plan, it terminates the insolvency proceedings.

If the debtor fails to comply with the debt restructuring plan, the creditors may apply for its termination. The court terminates the debt restructuring plan for all creditors and reinstates insolvency proceedings, unless there are new insolvency proceedings pending with respect to the debtor.

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.[80] 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.[81] The debtor is required to publish a notice of its intention to file an insolvency petition 15 days in advance. This notice expires 30 days after the date of its publication.[82]

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. This notice expires 30 days after the date of its publication.[83] Creditors also need to have their claims confirmed by an enforceable Russian court judgment or an arbitral award recognised and enforced in Russia by the Russian court, save for creditors whose claims arise out of banking operations (such as providing loans, mortgages and guarantees).[84] The tax authorities may also file for insolvency of a debtor without prior confirmation of the tax claims by the court judgment. The court may initiate the insolvency proceedings only if the debtor's liabilities are at least 300,000 roubles and are three months overdue.[85]

In order to mitigate the impact of the covid-19 crisis, the government of the Russian Federation has introduced a moratorium on the filing of insolvency petitions from 6 April 2020 to 6 October 2020.[86] The moratorium applies to a person if that person's main commercial activity is in the list of the industries most affected by covid-19,[87] or if the company is included in the list of companies systemically important for the national economy[88] or of strategic enterprises.[89]

80 ibid., at Article 8.

81 ibid., at Article 9.

82 ibid., at Article 7(2.1) (as amended by Federal Laws No. 218 FZ dated 29 July 2017 and No. 377-FZ dated 12 November 2019).

83 ibid.

84 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 (SC 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) (SC Ruling No. 305-ЭС16-18717, dated 27 March 2017).

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

86 This moratorium was introduced by Decree of the Russian Government No. 428 dated 3 April 2020 (on the basis of Article 9.1 of the Insolvency Law enacted by Federal Law No. 98-FZ dated 1 April 2020).

87 Russian Government Resolution No. 434 dated 3 April 2020.

88 The list is made on the basis of the criteria and the order approved by the minutes of the meeting of the Government Commission for Sustainable Development of the Russian Economy No. 7кв dated 10 April 2020 (see https://data.economy.gov.ru/).

89 Presidential Decree No. 1009 dated 4 August 2004 'On Approval of the List of Strategic Enterprises and Strategic Joint-Stock Companies'; Government Directive No. 1226-p dated 20 August 2009 'On Approval of the List of Strategic Enterprises and Federal Executive Authorities in Charge of Implementation of Uniform State Policy in Industries Where Such Enterprises Operate'.

These measures temporarily suspend a protected debtor's obligation to file an insolvency petition and limits the rights of other persons to file insolvency petitions in respect of the protected debtor during the moratorium period. However, a protected debtor can voluntarily waive the benefit of the moratorium by way of a public announcement registered with the Unified Federal Register of Information Regarding Insolvency.[90] Further, courts do not stay insolvency proceedings against protected debtors that were pending before 6 April 2020.

The introduction of the moratorium entails the following legal consequences:[91]

a pledged property cannot be foreclosed (including out of court);

b the set-off of claims is not permitted;

c requests by founders (participants) for the payment of the value of their share (participatory interest) in the debtor's assets in connection with the founders' (participants') exit from the debtor will not be granted; buybacks or the acquisition by the debtor of placed shares, or the payment of the actual value of the founders' share (participatory interest) is also prohibited;

d the payment of dividends, income on shares (participatory interests), or distribution of profits among the founders (participants/shareholders) of the debtor is prohibited;

e owners of protected debtors that are unitary enterprises cannot extract their assets;

f ongoing enforcement proceedings must be stayed; enforcement proceedings in respect of post-moratorium claims are not stayed; and

g no forfeits (e.g., fines, penalties) or other financial sanctions for non-performance or improper performance accrue on the obligations of protected debtors. Interest will continue to accrue but will not be taken into consideration in the event that insolvency proceedings are initiated against the protected debtor within three months after the termination of the moratorium.

The court will consider the merits of the insolvency petition for a period of between 15 and 30 days.[92] Upon the petitioner's request, the court may introduce injunctive measures available under the procedural rules.[93] 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.[94] 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 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.[95]

90 Article 9.1(1)(3) of the Insolvency Law.

91 ibid., at Article 9.1(3).

92 ibid., at Article 42(6).

93 ibid., at Article 42(7).

94 SCC Plenum Resolution No. 35, dated 22 June 2012, Clause 7.

95 ibid., at Article 12.

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.[96]

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.[97]

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 terms of sale of assets). Any decisions made by the insolvency administrator, the creditors' meetings[98] 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:[99]

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;[100]

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.

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 qualifications and integrity of the insolvency administrator are important for proper conduct of insolvency proceedings.

96 ibid., at Article 11.

97 ibid.

98 Insolvency Law, Article 15(4).

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

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

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.[101] If there is evidence sufficient to establish that the insolvency administrator is affiliated with the creditor who has nominated it, the court may either select a self-regulated organisation to nominate a new candidate or consider the candidate nominated by the second creditor in the insolvency case.[102] 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.[103] The creditors[104] 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).[105] 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 these meetings, the creditors may decide upon the strategy of the proceedings (e.g., to choose the insolvency procedures to be applied for),[106] to enter into a settlement agreement.[107] It is through this body that the creditors control the insolvency administrator. For instance, the terms of sale of the debtor's non-encumbered assets by the administrator should be approved by the creditors' meeting.[108] 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).[109]

The voting rights of secured creditors to control the proceedings are limited. They can vote at the supervision stage. At the financial rehabilitation or external management they can vote only if they decide not to enforce the collateral in the course of these insolvency procedures.[110] 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.[111] Nonetheless, the secured creditors have the right of veto with respect to

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

102 SC Rulings No. 301-ЭС19-12957, dated 28 October 2019, and No. 305-ЭС19-26656, dated 29 May 2020.

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

104 Review approved by the SC Presidium on 29 January 2020 'Review of Court Practice for Resolution of Disputes Related to Establishment of Requirements to a Debtor's Controlling Persons and Affiliates in Insolvency Proceedings', Clause 12.

105 ibid., at Article 12(2).

106 ibid., at Article 12.

107 ibid.

108 ibid., at Article 139(1.1).

109 ibid., at Article 12(2).

110 ibid., at Article 18.1(3).

111 ibid., at Article 12(1).

certain matters (e.g., settlement agreement,[112] substitution of the debtor's assets (contribution of assets to the newly created company in return for its shares)).[113] Further, secured creditors have voting rights on the matters of nomination of insolvency administrators and their removal.[114]

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,[115] 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.[116]

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[117] according to Russian law:

a state-owned enterprises established for special purposes;[118]
b public law legal entities (non-commercial legal entities established by the state to exercise public functions);[119]
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.

112 ibid., at Article 150(2).
113 ibid., at Article 138(4).
114 ibid., at Article 12(1).
115 ibid., at Article 17(1).
116 ibid., at Article 17(4).
117 Russian Civil Code, Article 65(1).
118 Known as *kazennoe predpriatie* in Russian.
119 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).

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

Legal entities to which special insolvency rules apply

The Insolvency Law establishes specific regulations on insolvency[120] 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);[121]

b agricultural enterprises (i.e., companies that receive more than 50 per cent of their profit from agricultural business);[122]

c strategic enterprises and enterprises of importance to state security;[123]

d natural monopolies;

e developers dealing with the construction of residential buildings;[124] and

f clearing participants who are professionals in the securities markets and financial institutions participating in clearing.[125]

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.[126] More recently, the Supreme Court has explained that inter-group creditor claims may be subordinated to other registered claims in the following situations:

a a debtor's controlling person provides financing to the debtor when it is in financial distress (i.e., shows signs of insolvency); the financing may take various forms, for example, the granting of a loan, abstaining from debt recovery, or providing favourable payment conditions under the debtor's commercial contracts;[127]

b a creditor affiliated with a debtor's controlling person provides financing to the debtor under the influence of the controlling person;[128]

120 Insolvency Law, Article 168.

121 ibid., at Article 169.

122 ibid., at Article 177.

123 ibid., at Article 190.

124 ibid., at Article 201(1).

125 ibid., at Article 201(16).

126 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 Presidium 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.

127 Review approved by the SC Presidium on 29 January 2020 'Review of Court Practice for Resolution of Disputes Related to Establishment of Requirements to a Debtor's Controlling Persons and Affiliates in Insolvency Proceedings', Clause 3.

128 ibid., at Clause 4.

c a debtor's affiliate or controlling person subrogates in the rights of a third-party creditor during the debtor's financial distress,[129] or upon condition that the debtor compensates its affiliate for the discharge of its obligation;[130]

d a debtor's controlling person is held liable on the grounds that its action or inaction precludes the full satisfaction of creditors' claims;[131]

e a debtor's controlling person grants a loan to the debtor during the initial period of the debtor's business with the sole purpose of allocating risks in the event of insolvency; for these purposes the court may take into account the fact of the intentional thin capitalisation of the debtor's business;[132]and

f a debtor's controlling person grants a loan to the debtor while it is distressed based on an agreement between the controlling person and the debtor's major third-party creditor for the purposes of debt restructuring (except in cases where the debtor's minority creditors are parties to this agreement or their rights and interests are not violated by this agreement).[133]

The Supreme Court articulated rules for the protection of banks and credit institutions if they are deemed to be controlling persons as a result of their security arrangements. For example, banks and credit institutions may become controlling persons in the course of repo transactions or when granting a loan secured by a share pledge that provides for transfer of voting rights. In this context, banks and credit institutions are not considered as inter-group creditors and their claims may not be subordinated unless they aim to participate in the distribution of the debtor's profits.[134]

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;[135] (2) fraudulent dilution of shares in a subsidiary of the debtor aimed at causing damage to the creditors;[136] and the debtor's contributions to its subsidiary's charter capital if such transactions result in the debtor's inability to control the subsidiary and the dilution of its assets.[137]

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,[138] and a strategic enterprise[139] or a natural monopoly[140] may be declared insolvent if the amount of creditors' claims exceeds 1 million roubles, and the claims are overdue for more than six months;

129 ibid., at Clause 6.
130 ibid., at Clause 5.
131 ibid., at Clause 8.
132 ibid., at Clause 9.
133 ibid., at Clause 10.
134 ibid., at Clause 11.
135 SC Ruling No. 305-ЭС17-17342, dated 12 March 2018.
136 SC Ruling No. 305-ЭС17-12763(1,2), dated 18 December 2017.
137 SC Rulings No. 306-ЭС19-2986 (3,4), dated 1 November 2019, and No. 306-ЭС19-19734, dated 6 February 2020.
138 Insolvency Law, Article 177.
139 ibid., at Article 190(3).
140 ibid., at Article 197(2).

b competent state or municipal authorities participating in the insolvency proceedings of town-forming enterprises,[141] strategic enterprises,[142] natural monopolies[143] and developers;[144]

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[145] or a strategic enterprise,[146] 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,[147] agricultural[148] and strategic enterprises[149] and natural monopolies, which are as follows:[150]

- 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 bankruptcy 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.[151]

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.[152] 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.

141 ibid., at Article 170.
142 ibid., at Article 192.
143 ibid., at Article 198.
144 ibid., at Article 201(2).
145 ibid., at Articles 171 to 174.
146 ibid., at Articles 191, 194 and 195.
147 ibid., at Articles 175 and 176.
148 ibid., at Article 179.
149 ibid., at Article 195 and 196.
150 ibid., at Article 201.
151 ibid., at Article 131(2).
152 ibid., at Article 201, Paragraphs 4 and 15-2.

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 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. Insolvency administrators of development companies must be accredited with the Fund. If the Fund revokes or refuses to prolong the accreditation, the court appoints an insolvency administrator nominated by the Fund.[153] Insolvency administrators are accountable to the Fund during the receivership. The Fund may finance the completion of construction of the residential building.[154] The court may allow the Fund to acquire a developer's rights to land plots with uncompleted construction if the Fund pays compensation to the participants of shared construction sites.[155] The transfer of rights of claim from the members of construction cooperatives to the Fund after the Fund has paid them compensation may not be challenged on any grounds in the Insolvency Law.[156]

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.[157] Currently, this register contains information about 1,123 developers and 3,087 residential premises in 72 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.[158]

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.[159]

153 ibid., at Article 201.1(2.3), as amended by Federal Law No. 202-FZ, dated 13 July 2020.
154 Amendments introduced by Federal Law No. 218-FZ, dated 29 July 2017.
155 Insolvency Law, Article 201.15-2-2, introduced by Federal Law No. 202-FZ, dated 13 July 2020.
156 ibid., at Article 201.15-4(3), introduced by Federal Law No. 202-FZ, dated 13 July 2020.
157 Amendments to Insolvency Law introduced by Federal Law No. 151-FZ, dated 27 June 2019.
158 Insolvency Law, Article 180.
159 ibid., at Articles 180(4) and 183.1(4).

The Central Bank may appoint a temporary administration of a financial institution for up to six months, with the possibility of a six-month extension if the total term does not exceed 18 months.[160] The temporary administration consists of an insolvency administrator and other members selected by the Central Bank.[161] 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.[162]

There is a separate insolvency test for financial institutions.[163] 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 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.[164] However, some courts decide that such claims must be undisputed.[165] In addition to creditors and the debtor itself, temporary administration and the Central Bank may file for insolvency.[166]

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,[167] insurance companies or once the temporary administration of the financial institution has been appointed.[168] 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.[169]

The Central Bank nominates an insolvency administrator, and there are special requirements applicable to him or her.[170] In the case of an insolvency of a pension fund that is engaged in mandatory pension insurance[171] or an insurance company,[172] 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

160 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 and it fails to notify the Central Bank about these facts. ibid., at Article 183.2(1), Article 183.5(1), Article 183.12(1).

161 ibid., at Article 183.6.

162 ibid., at Article 183.9.

163 ibid., at Article 183.16.

164 ibid., at Article 184.2.

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

166 Insolvency Law, Article183.2(5), 183.7(2).

167 ibid., at Article 187.6.

168 ibid., at Article 183.17.

169 ibid., at Article 184.4(3) (as amended by Federal Law No. 222-FZ dated 23 June 2016, effective as of 21 December 2016).

170 ibid., at Articles 183.19 and 183.25.

171 ibid., at Article 187.8.

172 ibid., at Article 184.4(1) (introduced by Federal Law No. 222-FZ dated 23 June 2016).

and rules on the matter of their registration.[173] 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.[174]

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 bankruptcy estate. The insolvency administrator transfers the relevant assets to the clients if they were duly paid for the services of the debtor.[175]

Special rules regulate the sale of assets belonging to pension funds. Assets aimed at securing pension reserves are not included in the bankruptcy estate and there is a special regulation regarding their use for payment of compensation to the depositors.[176] In certain cases, obligations to make payment of pensions may be transferred to another pension fund.[177]

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.[178]

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).[179] As regards pension funds, the distributional priorities depend on whether the pension payments are already due;[180] there are specific priorities applicable in the course of insolvency of pension funds that are engaged in mandatory pension insurance.[181]

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,[182] 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.[183] 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; controls the assets of the credit institution and gives consent to some of the transactions by the management of the debtor.[184] If the Central Bank decides to suspend the powers of the debtor's management,

173 Insolvency Law, Article 183.26.

174 ibid., at Article 185.3.

175 ibid., at Article 185.6.

176 ibid., at Article 186.5.

177 ibid., at Article 187.10.

178 ibid., at Article 184.7.

179 ibid., at Article 184.10.

180 ibid., at Article 186.7.

181 ibid., at Article 187.11.

182 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.

183 Insolvency Law, Article 189.9.

184 ibid., at Article 189.30.

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.[185]

If the Central Bank decides to revoke the banking licence, for any reason relating or unrelating to insolvency,[186] 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.[187]

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.[188]

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.[189] 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.[190]

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.[191]

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.[192]

185 ibid., at Article 189.31.

186 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.

187 Insolvency Law, Article 189.43.

188 ibid., at Article 189.8.

189 ibid., at Article 189.61.

190 ibid.

191 ibid., at Article 189.77.

192 ibid., at Article 189.92.

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

Special resolution mechanisms apply 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.[193]

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 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.

In general, the Central Bank may authorise the management company to act as the temporary administration. The management company may invest in a bank or insurance company in return for its shares/participatory interests (not less than 75 per cent with voting rights) or transfer its shares/participatory interests to a mutual investment fund where the management company holds the majority interest. It may acquire a bank's or an insurance company's other assets (including rights of claim) and sell them. It may also act as an auctioneer for the sale of pledged assets.[194]

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.[195] 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).[196]

In general, the following insolvency procedures may apply: restructuring of debts; a sale of assets; and a settlement agreement.[197]

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.[198] 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

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

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

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

196 ibid., at Article 213.4. Clauses 8 to 10 of the SC Plenum Resolution No. 45, dated 13 October 2015.

197 Insolvency Law, Article 213.2.

198 ibid., at Article 213.6.

value exceeding 50,000 roubles without the consent of the insolvency administrator.[199] The debtor or the creditors may work out a debt restructuring plan providing for repayment of debts for no more than three years.[200] 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.[201]

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.[202] 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 bankruptcy estate.[203] 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 1,213,000 roubles.[204]

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 alimony claims and that a secured creditor receives 80 per cent of the proceeds from the sale of the pledged assets. In addition, a secured creditor may receive up to 10 per cent of the secured claims if there are no claims of the first and second priority,[205] and may receive another 10 per cent of the secured claims if they are not used for the payment of court fees or the insolvency administrator's expenses.[206]

Once the sale of assets is complete, the court must rule on the discharge of the debtor from unsettled claims.[207] 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.[208] Upon completion of insolvency proceedings, the court issues enforcement orders and the creditors may enforce their claims via the general enforcement procedure.

199 ibid., at Article 213.11.
200 ibid., at Article 213.14(2).
201 ibid., at Article 213.17(4).
202 ibid., at Article 213.24.
203 ibid., at Article 213.25(3); Civil Procedure Code, Article 446.
204 100 minimum salary rates set by the Russian government, which is 12,130 roubles as of 1 January 2020.
205 SC Ruling No. 307-ЭС19-25735, dated 21 May 2020.
206 Insolvency Law, Article 213.27.
207 ibid., at Article 213.28.
208 ibid., at Article 213.28(3), (5) and (6).

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.[209] Pursuant to Russian court practice, bankruptcy of Russian citizens also falls within the exclusive jurisdiction of the Russian courts.[210]

Both foreign citizens residing in Russia and Russian citizens residing abroad may be declared insolvent in Russia.[211] These proceedings will be treated as plenary insolvency proceedings. In practice, Russian courts have permitted insolvency of German, Chinese, Ukrainian 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.[212]

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*.[213]

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.[214] If the judgment does not require enforcement, it may be recognised

209 Commercial Procedure Code, Articles 38 and 248(1)(5).

210 Resolution of the Commercial Court for the Urals Circuit No. A60-29115/2019, dated 9 October 2019.

211 SC Plenum Resolution No. 45, dated 13 October 2015, Clause 5.

212 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; Resolution of the Commercial Court for the Moscow Circuit No. F05-12224/2018, dated 25 July 2018.

213 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.

214 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., SCC Presidium Resolution No. 6004/13, dated 8 October 2013, SCC Ruling 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

without any special procedure.[215] Interested parties may file objections against the recognition with a Russian court within one month of learning about the judgment.[216] 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.[217] 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.[218] However, there is contradictory court practice on this matter.[219]

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[220] 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 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.[221]

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.[222] The courts granting such relief relied on the multilateral 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

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Cooperation Agreement as a separate basis for enforcement. See SCC Presidium Resolution 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.

215 Resolution of the Ninth Appellate Commercial Court No. A40-8981/2017, dated 17 July 2019.

216 Commercial Procedure Code, Article 245(1).

217 SCC Plenum Resolution No. 55, dated 12 October 2006, Clause 33.

218 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.

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

220 SCC Ruling No. 2860/10 dated 4 May 2010.

221 SCC Presidium Resolution No. 10508/13, dated 12 November 2013; SCC Ruling 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.

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

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.[223]

In addition, Russian courts have recently refused to consider the treaties on mutual legal assistance as a basis for the recognition and enforcement of the insolvency-related judgments of a foreign court on the ground that such treaties do not govern insolvency issues.[224]

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.[225]

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.[226]

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.[227] Therefore, parallel proceedings may arise in Russia and abroad.

II INSOLVENCY METRICS

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

According to a report prepared by the Ministry of Economic Development of the Russian Federation in June 2020, economic activity for the first and second quarters of 2020 significantly deteriorated because of the covid-19 pandemic.[228]

In the period from January to May 2020, there was a decrease in gross domestic product (GDP) of 3.7 per cent as compared to the same period of 2019.[229] The decrease in economic

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

224 Resolution of the Commercial Court for the North-Western Circuit No. A56-27115/2016, dated 14 November 2016; Resolution of the Commercial Court for the Moscow Circuit No. A40-101054/2019, dated 2 September 2019; Resolution of the Ninth Appellate Commercial Court No. A40-279297/2018, dated 23 December 2019.

225 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. SCC Ruling No. 14334/07, dated 11 March 2008.

226 SC Ruling No. 305-ЭС16-13148(2), dated 23 August 2017.

227 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.

228 Report by the Ministry of Economic Development regarding the current situation in the economy of the Russian Federation: 'Review of business activity for May 2020. June 2020'. Published on https://economy.gov.ru/material/file/0a16c1bc10412bb6dcabfc834301154b/200618_.pdf.

229 Report by the Ministry of Economic Development regarding the current situation in the economy of the Russian Federation: 'Review of business activity for May 2020. June 2020'. Published on https://economy.gov.ru/material/file/0a16c1bc10412bb6dcabfc834301154b/200618_.pdf.

activity was observed in both resource-oriented and service-oriented industries. It was caused by a combination of factors, including the introduction of the non-working days regime from 30 March to 11 May in order to minimise the consequences of the covid-19 pandemic in Russia and unfavourable external economic conditions and quarantine measures in countries that are trading partners with Russia.

A significant part of the decline in GDP growth in April was caused by the fall in consumer services. The amount of commercial services provided to the population decreased by 37.9 per cent, which was connected to the restrictions on recreational, cultural and sporting activities and household services. The decline was more moderate in resource-oriented industries. The Federal Service of State Statistics reported that manufacturing showed a decline of 6.6 per cent[230] and the production of natural resources declined by 3.1 per cent.[231] The main reasons for the decline were the reduction in oil production under the OPEC+ deal and a lower demand for coal and non-metallic minerals.

A moderate recovery of the economy after the covid-19 crisis is underway after the removal of quarantine restrictions. The OECD now expects Russia's annual GDP growth to come in at just 1.2 per cent in 2020 – down from the 1.6 per cent it predicted at the end of last year.[232]

The unemployment rate increased to 6.3 per cent in June and 6.2 per cent in May 2020, up from 4.5 per cent a year earlier – an increase of around 1.1 million people.[233] The data released by the Supreme Court in 2019 shows that the number of insolvency petitions filed with the courts has increased significantly compared with 2018. Thus, in 2019, 146,482 new insolvency petitions were filed and 127,719 insolvency petitions were accepted for consideration by courts, including 73,184 petitions filed by debtors, 39,975 petitions filed by private creditors and 14,560 petitions filed by tax authorities. These include 83,760 petitions to declare individuals insolvent.

In 10,082 cases, the courts introduced supervision. In 8,064 cases, after the completion of the supervision, the courts declared the debtors insolvent and introduced receivership. In 8,971 cases, receivership was completed, and in 2,410 cases the proceedings were terminated. The courts introduced 186 external management procedures and 21 cases 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 (352), 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.

In 2019, the courts received 37,690 applications to declare transactions invalid, 2,522 requests to remove insolvency administrators and 5,906 applications to hold debtors' controlling persons liable.

230 See http://www.cbr.ru/collection/collection/file/27931/bulletin_20-03.pdf.

231 See https://www.rbc.ru/newspaper/2020/07/20/5f104e489a7947d0330f948f.

232 See https://www.themoscowtimes.com/2020/03/02/oecd-slashes-russia-growth-forecast-in-stark-coronavirus-warning-a69484.

233 Report by the Ministry of Economic Development regarding the current situation in the economy of the Russian Federation: 'Review of business activity for June 2020. July 2020'. Published on https://economy.gov.ru/material/file/d80f613a522c1bb9b96d7769303f7ace/200717_1.pdf.

According to statistics published by the Centre of Macro-Economic Planning for the first quarter of 2020,[234] there were no significant changes in the intensity of corporate insolvencies. The Centre of Macro-Economic Planning estimates that the number of legal entities that went bankrupt in the economy was 15 to 18 per cent lower than it could have been if the Federal Tax Service had not suspended filing insolvency petitions in March. However, the number of insolvencies in the food industry and machine-building industries increased. In the electricity sector, on the contrary, there was a slight decrease in the number of legal entities that went bankrupt.

As discussed in 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 Otkritie Holding

JSC Otkritie Holding was one of the largest Russian private financial groups, which performed banking, insurance, investment, brokerage and asset management activities.[235] Many individuals and legal entities were shareholders of JSC Otkritie Holding, without any holding a major share in the business.[236] The group included several subsidiaries: Bank Otkritie Financial Corporation PJSC (also Otkritie FC Bank), Bank Tochka JSC, Rosgosstrakh PJSC, Otrkritie Broker JSC, National Bank TRUST PJSC, and others. The headquarters of the entity was located in Moscow. Otkritie FC Bank was the main member of the group as one of the biggest privately owned banks. In October 2015, it was listed among the national systematically important credit institutions by the Central Bank.[237]

In 2016, Otkritie Holding began the process of merging two considerable financial institutions – National Bank TRUST (which was controlled by Otkritie FC Bank due to its financial rehabilitation) and Rosgosstrakh (which also had serious financial difficulties). Reportedly, troubled assets of the new companies worsened the financial situation of Otkritie Holding and its bank.[238]

In July 2017, Otkritie FC Bank experienced a significant outflow of liquidity with a sharp withdrawal of deposits (611 billion roubles, or 20 per cent of its assets)[239] and a fall of shares to a 20-month low.[240] The crisis was related to the downgrade of rating by ACRA (Analytical Credit Rating Agency of Russia).[241] It also deprived the bank of certain sources

234 See http://www.forecast.ru/_ARCHIVE/Analitics/PROM/2020/Bnkrpc-1-20.pdf.

235 See https://quote.rbc.ru/company/713.

236 See http://openholding.ru/common/img/uploaded/PDF-files1/disclosure_ofc/edited2/shareholders_170518.pdf.

237 See https://www.open.ru/en/about_the_bank.

238 See https://www.probonds.ru/posts/474-istorija-defoltov-otkrytie-holdinga-neudachnaja-strategija-neposilnyi-dolg-i-mertvye-obligacii.html.

239 See https://www.ft.com/content/25e88d88-88bf-11e7-8bb1-5ba57d47eff7.

240 See https://www.reuters.com/article/russia-bank-otkritie/update-1-shares-in-russian-bank-otkritie-sink-to-20-month-low-idUSL8N1LB1Y1.

241 See https://www.intellinews.com/russian-bank-otkritie-significantly-reduces-its-holding-of-russia-2030-eurobonds-127401/.

of funding including deposits of the Ministry of Finance and non-state pension funds. According to the business media, senior managers of Otkritie have removed their personal funds from the bank.[242]

In August 2017, the Central Bank decided to apply financial rehabilitation measures to Otkritie FC Bank. In August-December 2017, it bailed Otkritie FC Bank out[243] and became its key shareholder with a 99.9 per cent stake[244].

In November 2018, Otkritie FC Bank transferred distressed assets in the amount of 438 billion roubles to non-core assets bank National Bank TRUST and returned deposits issued by the Central Bank for the purpose of its financial rehabilitation.[245] Therefore, TRUST became the main and the only non-affiliated creditor of Otkritie Holding with a debt of 450 billion roubles (86 per cent of its total debt).[246]

In July 2019, the Central Bank announced the completion of financial rehabilitation measures at Otkritie FC Bank. At the same time, it filed a claim to hold its former owners (including Otkritie Holding) and management liable. It claims about 289.5 billion roubles.[247]

In October 2019, TRUST published a preliminary notice of intention to file for the insolvency of Otkritie Holding. Reportedly, the aim was to prevent third parties acting in bad faith from taking control over the insolvency procedure.[248]

On 20 February 2020, Otkritie Holding filed for its own insolvency.[249] On the same day, TRUST also filed for the holding's insolvency.[250] Disputes arose between the parties regarding the issue of whose petition was first for the purposes of the appointment of an insolvency administrator.

In March 2020, the Moscow Commercial Court accepted the petition of Otkritie Holding. In June 2020, the 9th Commercial Appellate Court dismissed the appeal of TRUST against this decision.[251]

During the financial rehabilitation measures, the Central Bank analysed the Otkritie Holding's purchase of 100 per cent shares in AGD-Diamonds (Arkhangelsk Region) from Lukoil in 2017. The Central Bank discovered that the value of the transaction was

242 See https://www.ft.com/content/25e88d88-88bf-11e7-8bb1-5ba57d47eff7.

243 See https://www.cnbc.com/2017/08/30/russia-in-one-of-biggest-bail-outs-in-its-history-rescues-otkritie-bank.html.

244 https://www.probonds.ru/posts/474-istorija-defoltov-otkrytie-holdinga-neudachnaja-strategija-neposilnyi-dolg-i-mertvye-obligacii.html.

245 See https://www.open.ru/about/press/44000.

246 See https://www.probonds.ru/posts/474-istorija-defoltov-otkrytie-holdinga-neudachnaja-strategija-neposilnyi-dolg-i-mertvye-obligacii.html.

247 Case No. A40-170390/2019, considered by the Moscow Commercial Court <https://kad.arbitr.ru/Card/cf7e2595-39b7-4c15-ab90-748967446d35>.

248 See https://www.kommersant.ru/doc/4133646.

249 See https://www.rbc.ru/business/20/02/2020/5e4e7aa09a794746faa95b06. Case No. A40-32328/2020, considered by the Moscow Commercial Court <https://kad.arbitr.ru/Card/818fd3c8-863d-4908-86f9-b660f09dd6be>.

250 See https://www.rbc.ru/finances/20/02/2020/5e4ea9f99a794763b2aecc4c.

251 See https://www.kommersant.ru/doc/4389304.

twice the value of the target company.[252] In May 2020, based on this report, the Federal Antimonopoly Service challenged this transaction as a transaction violating antimonopoly law.[253] AGD-Diamonds is the main remaining asset of the Otkritie Holding.[254]

ii Ulmart

NJSC Ulmart was a leading Russian private online retailer focused on e-commerce with its headquarters located in Saint-Petersburg. As of 2015, it was ranked third among Russian major online companies, with an estimated value of US$ 1.4 billion[255] and a turnover of 62.7 billion roubles.[256] The company had over 400 infrastructure facilities[257] and even planned to hold an IPO.[258] Its parent company – Ulmart Holdings Limited (registered in Malta) – was indirectly controlled by three shareholders: Dmitry Kostygin (31.6 per cent), August Meyer (29.9 per cent) and Mikhail Vasinkevich (38.5 per cent).[259] The group of companies included Ulmart NJSC, Ulmart RSK LLC, Ulmart PZK LLC, Ulmart Development LLC, and others.[260]

In 2016, a corporate conflict arose between the shareholders of NJSC Ulmart due to disagreements over investments in the company amid a decrease in its revenue. This conflict has not yet been resolved. In 2018, the London Court of International Arbitration ordered Dmitry Kostygin and August Meyer to buy out Mikhail Vasinkevich's share for US$67 million, but the deal fell through. After that, the shareholders initiated legal proceedings in other jurisdictions.[261]

NJSC Ulmart also faced financial difficulties in 2016, when Sberbank, VTB, Uralsib, Credit Europe Bank and some other creditors filed claims in the amount of more than 1.7 billion roubles against the company and its co-owners, who acted as guarantors under the loans.[262] In November 2016, creditors filed for Ulmart's insolvency.[263] In June 2018, the supervision stage was introduced. Finally, in February 2020 NJSC Ulmart was declared insolvent and the receivership stage commenced.

In 2017, all operating activities of the holding were transferred to Ulmarket LLC due to the numerous debts.[264]

252 See https://fas.gov.ru/news/29836.

253 Case No. A05-5600/2020, considered by the Commercial Court of the Arkhangelsk Region <https://kad.arbitr.ru/Card/a65a063f-99da-4b02-91ec-c893b57ae4fa>.

254 https://www.interfax.ru/russia/710183.

255 See https://www.forbes.ru/rating-photogallery/281307-20-samykh-dorogikh-kompanii-runeta-reiting-forbes?photo=3.

256 See https://www.dp.ru/a/2016/03/04/Po_itogam_2015_goda_oboro.

257 See https://www.kommersant.ru/doc/3220673.

258 See https://www.rbc.ru/business/20/01/2015/54be35149a79472b993d528d.

259 See https://www.kommersant.ru/doc/3220673.

260 See https://www.dp.ru/a/2016/02/08/Ljubie_peremeni_nachinajutsja/.

261 See https://www.kommersant.ru/doc/4357159.

262 See https://tass.ru/info/4637125.

263 Case No. A56-78582/2016, considered by the Commercial Court of Saint-Petersburg and the Leningrad Region <https://kad.arbitr.ru/Card/5198f2fa-3126-48ff-878f-8ee79bc953ae>.

264 See https://www.rbc.ru/spb_sz/13/01/2020/5e1c7be29a79476270cf0f92.

In January 2020, LLC Ulmarket filed for insolvency with an estimated debt of 4.4 billion roubles.[265] In May 2020, the supervision stage of insolvency commenced. The creditors are now competing for the remaining assets of the Ulmart group, all of whose companies are at one or another stage of insolvency.[266]

iii Holiday Group

Holiday Group is one of the biggest Novosibirsk-based Siberian retailers, which sells food and non-food products. As of 2018, the network controlled about 350 stores under the brands 'Holdi' and 'Farmer-Centre.rf' in West Siberia and Krasnoyarsk Krai. Holiday Company LLC was included in the list of the 500 largest Russian companies according to RBC, and its net revenue in 2017 amounted to 56 billion roubles.[267]

In November 2016, Alfa-Bank provided Holiday Company LLC with two loans of 1 billion roubles in total, which would have been due in November 2021.

However, during 2017, the financial position of the borrower deteriorated significantly, and it received a net loss of 1.5 billion roubles, having previously been a profitable company.

As a result, in April 2018, the Meshchansky District Court of Moscow satisfied the claim of Alfa Bank and recovered in its favour 347.7 million roubles as joint and several liability of the borrower Holiday Company LLC and its guarantors.[268]

In 2018, creditors filed a number of insolvency petitions, and on 25 July 2018, supervision commenced.[269] In February 2019, Holiday Group was declared insolvent and receivership commenced upon the petition of Alfa-Bank.[270]

In December 2019, creditors filed a number of claims against Nikolay Skorokhodov, the co-owner of NSK Holdi LLC and Company Holiday LLC, on the basis of his alleged subsidiary liability. At the same time, the Commercial Court of the Novosibirsk Region, upon the request of Alfa-Bank, seized the monetary funds and property of the NSK Holdi LLC.[271]

In June 2020, the owner of Holiday Group – Nikolay Skorokhodov – was also declared insolvent, with a total debt to Alfa-Bank of about 14 billion roubles.[272] At present, the receivership stage and sale of the debtor's assets is ongoing.

iv UTair

PJSC UTair is the fourth largest air carrier in Russia behind Aeroflot Group, S7 Airlines, and Ural Airlines. It is included in a list of systemically important companies. Its largest shareholders are AK-invest company (an affiliate of Surgutneftegas) (50.1 per cent), the Khanty-Mansiysk Autonomous District (38.8 per cent) and the Tyumen Region (8.4 per

265 Case No. A56-592/2020, considered by the Commercial Court of Saint-Petersburg and the Leningrad Region <https://kad.arbitr.ru/Card/0cc17a0c-358a-4c76-b741-b06695d6d78b>.

266 See https://www.kommersant.ru/doc/4357159.

267 See https://nsk.rbc.ru/nsk/26/07/2018/5b5956079a7947230674c8fa.

268 See https://www.kommersant.ru/doc/3682429.

269 See https://nsk.rbc.ru/nsk/26/07/2018/5b5956079a7947230674c8fa.

270 See Case No. A45-10393/2017, considered by the Commercial Court of Novosibirsk Region <https://kad.arbitr.ru/Card/864ac12d-7010-433a-99aa-83da83fd058f>.

271 See https://tass.ru/sibir-news/7428187.

272 See Case No. A45-46281/2018, considered by the Commercial Court of Novosibirsk Region <https://kad.arbitr.ru/Card/27743bfe-bc56-4c0e-8aab-8706da65633e>.

cent).[273] The headquarters of UTair is located in Surgut. The airline operates an extensive network of domestic routes out of Moscow's Vnukovo airport, and also offers scheduled flights to CIS, European, and Asian destinations. In 2019, it transported 7.8 million passengers. [274]

The company has been experiencing financial difficulties for several years. In 2015, UTair restructured all of its debts into two syndicated loans – a 12-year loan amounting to 23.7 billion roubles and a seven-year loan amounting to 18.9 billion roubles. The second loan was later reduced to 15.4 billion roubles. In addition, UTair received a 17.4 billion roubles loan from Sberbank to be repaid in 2020. UTair owed a total of 39.1 billion roubles to 11 banks. Accordingly, its banking debt amounted to 56.5 billion roubles. In December 2018, the carrier failed to pay interest amounting to 1 billion roubles under the seven-year loan.[275] UTair negotiated the terms for debt restructuring with its creditors. However, according to its press release on 22 June 2020, it decided not to repay its seven-year and 12-year loans because of the covid-19 pandemic.[276]

In March 2019, four creditors of the company filed for its insolvency for a total amount of approximately 1.5 million roubles.[277] In August 2019, the court also registered claims by Orenburg mortgage commercial bank Rus in the amount of 4.9 million roubles. On 11 June 2020, the Commercial Court of the Khanty-Mansiysk Autonomous District adjourned the hearings until 27 August 2020 owing to motions of creditors in connection with the covid-19 pandemic.[278]

v Igor Mavlyanov (Yitzhak Mavlon)

Igor Mavlyanov (also Yitzhak Mavlon) was the former co-owner of the jewelry network Yashma Gold. In 2014, it was one of the largest jewellery networks in Russia, with 397 shops and revenue of 45 billion roubles.[279] Following the crisis in 2014, the jewellery industry faced financial difficulties and the companies in the group failed to repay their loans.

In 2015, Sberbank sought to recover a debt from Mavlyanov as a guarantor. The bank filed for his bankruptcy with the Moscow Commercial Court. However, by that time, Mavlyanov had already changed its Moscow registration for a registration in a provincial town of the Voronezh Region where a local creditor had filed for his bankruptcy.

In the parallel criminal investigation initiated by the Investigation Committee of Russia, Mavlyanov was accused of tax evasion and fraud on a large scale. In 2016, in order to escape investigation Mavlyanov moved to Israel, where he received Israeli citizenship and changed his name to Yitzhak Mavlon.

In November 2017, the Voronezh Commercial Court introduced the debt restructuring procedure and, in March 2018, it declared Mavlyanov bankrupt.[280] The total amount of

273 See https://www.utair.ru/upload/medialibrary/d54/d54c04045340ee142fec4c08216b08d7.pdf.

274 See https://www.utair.ru/en/about/news/utair-named-best-regional-airline-in-russia-and-the-cis/.

275 See https://tass.ru/ural-news/8553531.

276 See https://www.utair.ru/about/news/yuteyr-pereraspredelyaet-sredstva-v-polzu-operatsionnoy-deyatelnosti/.

277 Case No. A75-5128/2019, considered by the Commercial Court of Khanty-Mansiysk Autonomous District <https://kad.arbitr.ru/Card/f4c3de93-6ab4-42cb-ba25-989e44618dd7>.

278 See https://tass.ru/ural-news/8553531.

279 See https://www.vedomosti.ru/business/articles/2017/02/13/677305-yuvelirnoe-zoloto.

280 Case No. A14-2843/2016, considered by the Voronezh Commercial Court <https://kad.arbitr.ru/Card/d8ef9d19-aaa4-4485-b221-76ca086eed8c>.

creditor's claims arising from the outstanding loans exceeds 23 billion roubles. The largest creditors are Sberbank (with claims of about 9 billion roubles) and VTB Bank (with claims of about 5 billion roubles).

Meanwhile, Sberbank and VTB Bank are separately tracing Mavlyanov's assets in various jurisdictions.

In 2018, upon the request of VTB Bank, the Supreme Court of New York recognised the Russian court decision on debt recovery against Mavlyanov. VTB Bank also applied to the New York and Californian courts seeking to invalidate the debtor's transactions on the transfer of assets to his affiliates.[281]

In 2019, upon the request of Sberbank, the Supreme Court of Israel allowed the initiation of Mavlyanov's insolvency case. This is an unprecedented decision with respect to an Israeli citizen upon the petition of a foreign creditor.[282] This is also the second insolvency case, after that of Kekhman, where a foreign court has allowed insolvency proceedings with respect to a Russian citizen in parallel with the Russian insolvency proceedings.

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 tend to liquidate the debtor and secure the enforcement of pledges. Unsecured creditors rarely get any significant amounts from the insolvency 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.[283] 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

281 See https://www.kommersant.ru/doc/3536042?from=doc_vrez.

282 See https://www.kommersant.ru/doc/4006164.

283 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.

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 Bank has applied this mechanism to a number of major Russian banks (for example, Otkritie, Binbank and Promsvyazbank). In 2019, Otkritie merged with Binbank; by the end of 2018, their profitability was restored and both of them were compliant with all regulatory requirements. As a result of the resolution measures, the solvency of Asian-Pacific Bank was also restored and its profitability became stable. As part of the resolution mechanism, a special bank dealing with distressed assets from National Bank TRUST, ROST BANK and Bank AVB was established.[284] 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.

The first half of 2020 was marked by the introduction of a moratorium on the filing of insolvency petitions and other legislative developments designed to mitigate the impact of the covid-19 crisis. As a part of the response to the covid-19 crisis, the Russian courts started holding hearings by video conferencing where possible.[285]

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 particular, the Supreme Court has developed a consistent approach that allows the creditors to make direct claims in tort to hold the controlling persons liable.

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. An important development at the end of 2019 is the Supreme Court's review of the case law regarding the subordination of debtors' affiliates' claims that arise from financing made during the debtor's financial distress.

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. In particular, there is a trend for the invalidation of a debtor's contributions to its subsidiary's charter capital if this is followed by the dilution of its assets and the debtor's inability to control the subsidiary.

284 See http://www.cbr.ru/collection/collection/file/27873/ar_2019.pdf; https://cbr.ru/collection/collection/file/15746/cbr_ir_0219.pdf.

285 Currently, 93 courts are capable of holding online hearings. See https://my.arbitr.ru/#help/4/56.

Appendix 1

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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).

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