THE INSOLVENCY REVIEW

Fifth Edition

Editor
Donald S Bernstein

THE LAWREVIEWS

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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 activities of insolvency administrators.

Apart from the Insolvency Law, other laws regulate financial rehabilitation and insolvency issues. For example, the Commercial Procedure Code contains rules on administration of the insolvency cases by commercial courts. The Federal Law on Bank 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 related 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 of 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, appointment and dismissal of insolvency administrators, liability of owners of the insolvent entity and procedural issues. The lower courts generally follow the legal precedent of the Supreme Court and the Supreme Commercial Court.

Under the Insolvency Law the Russian state commercial courts administer all insolvency proceedings.[3] The powers of the court are described in Section V.

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 regulation may differ, as discussed in Section I.vi.

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1 Pavel Boulatov is counsel at White & Case LLC. The author would like to thank Daria Scheglova 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 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 the Insolvency Law. In Russian 'arbitrazhnie sudi', which are in fact state commercial courts and should not be confused with arbitration courts because of consonance.

Russian insolvency law sets distributional priorities among the claims of the creditors of an insolvent party. All claims to the insolvent party are divided into two categories: claims that arose prior to the start of insolvency proceedings and are subject to registration in the register of creditors' claims; and post-commencement claims that arose after the start of insolvency proceedings.

Post-commencement claims include claims for court expenses relating to the insolvency of the debtor, 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 enough funds to make payment of all post-commencement claims.[4]

Claims subject to registration in 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 in the register of creditors. This is discussed in greater detail below.

With a few exceptions,[6] these claims are registered after the court decides on the matter of their registration. The hearings at which the court decides whether to register creditors' claims are separate trials within the insolvency proceedings. All registered creditors, creditors that 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]

If the claims are not confirmed by the previous court decision, the court must consider the applications and the objections of other creditors and the administrator on their merits. This is a similar process to the consideration of claims for collection of debt out of an insolvency case. The ruling of the court on the registration of the claims is immediately enforceable and may be appealed.[8] 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 the relevant court decision and cannot reconsider it. In

4 Article 134(2) of the Insolvency Law provides five ranges of priority of the post-commencement claims:
- *a* claims for court expenses and for fees and expenses of an insolvency administrator;
- *b* employees' claims arising after start of insolvency;
- *c* claims for fees for services of contractors involved by the insolvency administrator for purposes of insolvency proceedings (e.g., evaluators, experts, auditors);
- *d* claims for payments for utilities and maintenance of the insolvent; and
- *e* other post-commencement claims.

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

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

7 Article 71(2) of the Insolvency Law.

8 Article 71(5) of the Insolvency Law.

such a case, however, other creditors or the insolvency administrator have a right to appeal the initial court decision. Such appeals must be filed in the relevant court proceedings rather than in the insolvency proceedings.[9]

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.[10] 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.[11] 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 claims for declaratory relief and claims to request the debtor to return 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 of the debtor's creditors that are subject to registration in the register of creditors:[12]

a claims of compensation for damage to health or loss of life;

b employees' salaries, severance payments and royalties (with certain exceptions for the top management's claims);

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 could not be satisfied earlier than the higher priority claims. In case the debtor's assets are insufficient to satisfy claims of one priority, the claims of this priority will be paid *pro rata*.

As a general rule, secured claims against a debtor are included into the third priority claims. However, the Insolvency Law stipulates a special order of payment for the secured claims. Secured creditors get 70 per cent (80 per cent if the secured claim arose out of a loan agreement with a credit institution) of all proceeds of sale of the pledged assets to compensate for the principal debt and any accrued interest. Contractual penalties are not repaid from the proceeds of sale of pledged assets in insolvency. If there are no claims of the first and second priority, the secured creditor may get up to 90 per cent of all proceeds of sale of the pledged assets (or 95 per cent for claims out of a loan agreement with a credit institution). If the proceeds of the sale of the collateral are insufficient to pay out the secured claim, the balance of the claim will be paid in the same priority as an unsecured claim.[13]

9 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 Supreme Court decided that a creditor may also file an application to reconsider the judgment in view of new facts (Ruling of the Supreme Court No. 305-ЭС16-7085 dated 3 October 2016).

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

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

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

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

With a few exceptions,[14] claims filed after the register of creditors' claims is closed (i.e., two months after the publication of the judgment to declare the debtor insolvent and to open the receivership procedure (see Section I.iii)) would fall to the lowest priority and would only be satisfied after all registered creditors' claims. Claims of other creditors may also fall to the lowest priority, for example, claims of creditors arising out of consequences of a transaction aimed at the fraudulent transfer of assets or claims of creditors that aimed to receive undue preference.

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 an opportunity to challenge certain transactions of the debtor.[15]

The following transactions may be challenged in court:

a transactions for unequal consideration (including if transaction price or other terms deviate materially from those of similar transactions to the detriment of the insolvent) – if entered into within one year prior to the registration of the insolvency application by the court or after this date;[16]

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 three years prior to the registration of the insolvency application by the court or after this date;[17] and

c transactions leading to preferential treatment of certain creditors.[18]

The court may refuse to declare a transaction invalid if the value of the property acquired by the debtor under the transaction in question exceeds the value of the property that may be returned to the insolvency estate upon such invalidation or if the transaction counterparty returns everything to the insolvency estate.[19]

The court will not deem a transaction of a debtor invalid as a transaction providing unequal consideration (item (a) above) or a transaction leading to preferential treatment of certain creditors (item (c) above) upon a relevant application, if this transaction has been

14 The exceptions include the following: if a transaction is declared invalid as undue preference after the register was closed, but before a payment to all creditors of the relevant priority was made, the creditor's claims may be registered and satisfied according to the relevant priority (Article 61.6(4) of the Insolvency Law); and if a bank makes a payment to a beneficiary under a bank guarantee after the register of creditors of the principal had been closed, the bank may file its redress claims for registration in the register of creditors of the principal within two months from the date they became due. In this case these claims would not fall to the lowest priority (Ruling of the SC No. 307-ЭС14-100 dated 24 September 2014). Tax inspectorates also have 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.

15 Article 61.9(1) of the Insolvency Law.

16 Article 61.2(1) of the Insolvency Law.

17 Article 61.2(2) of the Insolvency Law.

18 Article 61.3 of the Insolvency Law. 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.

19 Article 61.7 of the Insolvency Law.

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.[20] This rule does not apply to transactions of a debtor that were aimed at violating the creditors' rights and interests (item (b) above).

Article 61.6 of the Insolvency Law provides consequences of the invalidity of a transaction of a debtor. All assets transferred by the debtor to its counterparty under the invalid transaction must be returned to the debtor's estate. If the restitution of the debtors' assets is not possible, the counterparty under the invalid transaction is obliged to pay to the debtor the market price of the assets at the moment of the transaction and damages incurred owing to the change of 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 provision of unequal consideration (item (a) above) or because of the preferential treatment of the creditor (item (c) above) that was not aware of the signs of insolvency of the debtor. If the transaction was invalidated because of the violation of other creditors' rights and interests (item (b) above) or because of the preferential treatment of the creditor (item (c) above) that was aware of the signs of insolvency of the debtor, 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 abuse of rights and exercise of the civil law rights aimed at evading the law for an illegitimate purpose, as well as other intentional exercise of the 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 the debtor's assets to make them unavailable to creditors, including gifts or sales below value.[21] 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.[22]

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20 Article 61.4(2) of the Insolvency Law.

21 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, for example, to decrease the value of the insolvency estate by dissipation of the debtor's assets below value to third parties may be declared invalid on the grounds of Article 10 of the Civil Code on request of the insolvency administrator or a creditor (Clause 10 of the Resolution of the Plenary Session of the SCC No. 32 dated 30 April 2009 on certain issues related to challenge of transactions on grounds set by the Federal Law on insolvency (bankruptcy)).

22 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 informational letters issued by the SCC Presidium summarises court practice and contained guidelines to lower commercial courts. Russian commercial courts usually follow the guidelines set out in the informational letters. Formally, however, there is no provision of Russian law, which stipulates that the informational letters of the SCC Presidium are mandatory.

The SCC gave the same interpretation to Articles 10 and 168 of the Civil Code when considering particular cases. See Resolutions of the Presidium of the SCC No. 6526/2010 dated 2 November 2010 and No. 15756/07 dated 20 May 2008.

ii Policy

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

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 on the debtor. In practice, the financial rehabilitation procedures are usually introduced only at the creditors' initiative. Thus, in most cases the main aim of the insolvency proceedings is the sale of the debtor's assets and the settlement of the creditors' claims.

According to the statistics of the Judicial Department of the Supreme Court, in 2016, the financial rehabilitation proceedings were introduced in 0.28 per cent of cases and the debt was repaid approximately in 2 per cent of such cases; in 2015, the financial rehabilitation proceedings were introduced in 0.23 per cent of cases and 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 approximately in 18 per cent of such cases.[23]

Among other measures with a view to the creditors' protection, the Insolvency Law provides for:

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

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

According to the World Bank Group 'Doing Business 2016' research Russia has improved its insolvency legislation following the introduction of amendments aimed at accelerating the liquidation procedure and protecting the rights of the creditors with the secured claims.[24]

Russia improved its insolvency legislation following introduction of amendments aimed at strengthening liability of controlling persons of insolvent companies including non-operating ones. According to the amendments, creditors may seek to hold controlling persons liable for the 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 excluded from the state register of legal entities pursuant to an administrative procedure may also file an application with the court to hold controlling persons liable.

Another particularity of insolvency proceedings in Russia is that they are frequently used to enforce a judgment debt regardless of the debtor's actual solvency. The reason for that is that the insolvency legislation provides creditors with more control over the procedure of sale of the 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

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

24 See: www.doingbusiness.org.

administrators who are usually selected by creditors as discussed in Section I.v. Recent amendments to the law gave creditors additional rights to decide on the procedure of sale or appropriation of assets and to make it more flexible and respond to their needs. Namely, they may decide to sell the assets in one lot and, if unsold, have them sold piecemeal. The amendments also aim at making the procedure for appropriation of unsold assets of the debtor faster and more transparent.

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 are further explained below. The particularities of the insolvency procedures applied to 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 preserve its property, analyse its financial position, prepare a register of creditors' claims and hold the first meeting of creditors. As a general rule, the supervision is the first, and mandatory, stage of insolvency proceedings.[25] Supervision should be completed within seven months of the submission of the insolvency petition.[26] It should be noted that duration of insolvency procedures mentioned here and below is 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 for the replacement of current debtor's management in court).[27] Once supervision has commenced, the debtor's management is prohibited from making certain types of transactions and decisions.[28] Other matters, such as alienation of assets valued at more than 5 per cent of the balance sheet, granting or receiving loans, issuing guarantees and sureties and assignments of rights, require prior written consent from the insolvency administrator.[29]

Once the supervision has commenced, the 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

25 In some cases the 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 the debtor is missing at their place of location and no longer operates.

26 Article 51 of the Insolvency Law.

27 Article 69 of the Insolvency Law. In this case the shareholders will select a new director according to the general procedure.

28 Including, among others, 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.

29 Article 64 of the Insolvency Law.

stayed upon a creditor's petition. In addition, upon commencement of the supervision no contractual interest and penalties shall accrue on any claims subject to registration (both registered or not). Rather, a 'moratorium interest' shall accrue on the principal debt at the Russian Central Bank's refinance rate applicable at the date the supervision is introduced. As of 14 June 2016 the rate is 10.5 per cent per annum.[30]

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 making the publication on the commencement of supervision, and were registered in the debtor's register of claims, have the right to take part in the first meeting of creditors.[31] 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 their 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. The court is to take the final decision on this matter, though.[32]

Financial rehabilitation

Financial rehabilitation is an insolvency procedure that is applied to a debtor with a view to restore its solvency and to discharge its debts in accordance with an approved debt repayment schedule.[33] Financial rehabilitation lasts for no more than two years.[34]

Financial rehabilitation may only commence once a petition of the debtor's shareholders or any third party interested in the restoration of the debtor's solvency is submitted. 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 a third party. The petition may either be presented at the first creditors' meeting or, under certain circumstances,[35] 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.[36]

As with supervision, the management retains control of the debtor but its powers are restricted. The court must appoint an insolvency administrator who will maintain the register of claims, convene the creditors' meetings and supervise the implementation of the debt repayment schedule and the financial rehabilitation plan.[37]

The consequences of commencing financial rehabilitation are generally similar to those of supervision, where certain actions by the debtor are prohibited, and where other actions require the consent of the administrative manager or of the creditors' meeting.[38]

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

31 Article 72(1) and 72(2) of the Insolvency Law.

32 Article 73 of the Insolvency Law.

33 Article 80(3) of the Insolvency Law.

34 Article 80(6) of the Insolvency Law.

35 If the amount of security exceeds for 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. Article 75(2) of the Insolvency Law.

36 Articles 77, 78 and 80 of the Insolvency Law.

37 Articles 82 and 83 of the Insolvency Law.

38 Article 81 of the Insolvency Law.

Based on the results of financial rehabilitation, the court will decide either to terminate insolvency proceedings (if the debts have been discharged), or commence external management (if the debtor may still become solvent) or receivership.[39]

External management

External management is an insolvency procedure applied to a debtor with a view to restore its solvency. As a rule, external management is introduced by a court 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.[40] The aggregate term of external management together with financial rehabilitation cannot exceed two years.[41]

Upon commencement of external management, the commercial court must appoint an insolvency administrator. The insolvency administrator takes over the management of the debtor's business, may dispose of the debtor's property (subject to decision taken at the creditors' meeting in certain cases, e.g., the alienation of assets valued at more than 10 per cent of the balance sheet value of all assets) and may refuse to perform certain transactions concluded by the debtor if such transactions impede the restoration of the debtor's solvency or their performance would cause loss to the debtor. The insolvency administrator maintains the register of claims, recovers funds due to the debtor, and develops and implements an external management plan that is approved by a decision taken at the creditors' meeting and contains measures necessary to restore the debtor's solvency.[42]

The measures for restoring the 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.[43]

Based on the results of external management, 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.[44]

Receivership

The court introduces receivership by the 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.[45]

The insolvency administrator replaces the director general of the debtor.[46] The insolvency administrator takes inventory of the debtor's assets and takes measures for their protection, appoints an appraiser to value the debtor's estate, arranges for sale of the debtor's assets, recovers funds due to the debtor, searches for and returns any of the debtor's assets

39 Article 88(6) of the Insolvency Law.
40 Article 93 of the Insolvency Law.
41 Article 92(2) of the Insolvency Law.
42 Article 99 of the Insolvency Law.
43 Article 109 of the Insolvency Law.
44 Article 119(6) and 119(7) of the Insolvency Law.
45 Article 124(2) of the Insolvency Law.
46 Articles 127 and 129 of the Insolvency Law.

that are in the possession of third parties, informs the debtor's employees of their prospective dismissal, maintains the register of claims and makes payment to the creditors according to the register.

Based on the results of receivership, the commercial court will decide 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.[47]

Amicable settlement

The 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 take a decision on amicable settlement at a creditors' meeting. This decision is taken 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 claims of a creditor, lower applicable interest rate or settlement of claims by way of transfer of assets (rather than monetary funds) only if the relevant creditor agrees.[48] Any amicable settlement is subject to approval 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.[49] An amicable settlement is not binding on any creditors whose claims were not registered as of the date it was concluded and who did not participate in it for this reason.

If the debtor fails to comply with the 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.[50] If the court finds that an application to terminate the amicable settlement has merit, it would terminate the amicable settlement for all creditors, and would 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 the claims remain unpaid).[51]

iv Starting proceedings

Commencement of insolvency proceedings by the debtor

The debtor may file for insolvency if it anticipates such owing to the circumstances in which it will not be able to discharge its debts on time.[52] In certain instances (e.g., where the

47 Article 149 of the Insolvency Law.
48 Article 156 of the Insolvency Law.
49 Articles 150–167 of the Insolvency Law.
50 Article 164(2) of the Insolvency Law.
51 Article 166(1) of the Insolvency Law.
52 Article 8 of the Insolvency Law.

debtor's funds or assets are insufficient to discharge all of its debts), the debtor must file for insolvency.[53] The debtor is required to publish a notice of its intention to file an insolvency petition 15 days in advance.[54]

Commencement of insolvency proceedings by creditors or employees

Creditors, current or former employees (if salary or severance payments to them are in arrears) or a tax authority may also file for the debtor's insolvency by submitting a petition to the court at the place of the debtor's location. Creditors must confirm their claims with a judgment or an arbitral award enforceable in Russia, save for creditors whose claims arise out of banking operations (such as providing loans, mortgages and guarantees) that are allowed to initiate insolvency proceedings after giving a public notice of their intention to file an insolvency petition in advance.[55] The tax authorities may also file for insolvency of a debtor without prior receipt of a court judgment. Insolvency proceedings will only be initiated if the debtor's liabilities are at least 300,000 roubles and are overdue for three months.[56]

The court will consider the merits of the insolvency petition for a period of between 15 and 30 days.[57] Upon the petitioner's request, the court may introduce injunctive measures available under the procedural rules.[58] If the court finds that the petition has merit, it will issue an order to begin the first stage of the insolvency proceedings: supervision.

Special requirements apply to the commencement of insolvency proceedings of certain types of legal entities and individuals. They are described in Section I.vi.

If two or more insolvency petitions are filed in relation to the same debtor, the court will accept the second one and all subsequent applications as applications to participate in the insolvency proceedings.[59] 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 filed. If no other insolvency applications are filed, the court will terminate the proceedings.[60]

Following the withdrawal of an insolvency petition, the creditor cannot file another insolvency petition based on the same claim. It can, however, register this claim if the insolvency procedure is introduced upon another creditor's or the debtor's petition.[61]

53 Article 9 of the Insolvency Law.

54 Article 37(4) of the Insolvency Law.

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

56 Articles 3(2) and 6(2) of the Insolvency Law.

57 Article 42(6) of the Insolvency Law.

58 Article 42(7) of the Insolvency Law.

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

60 Article 12 of the Resolution of the SCC Plenum, No. 35 dated 22 June 2012.

61 Article 11 of the Resolution of the SCC Plenum, No. 35 dated 22 June 2012.

The court should not accept a withdrawal of an insolvency application after the supervision stage is introduced. However, the court can terminate the insolvency proceedings following the withdrawal of all creditors' claims after the term for filing them has expired.[62]

To prevent insolvency, the debtor has to settle the 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 related to valuation and sale of assets). Any decisions taken by the insolvency administrator, the creditors' meetings[63] 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:[64]

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

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

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

d to hold the register of creditors' claims and distribute the proceeds of sale of assets;[65]

e to arrange for the sale of assets. For this purpose the insolvency administrator is empowered to make the inventory of assets, prepare draft conditions of sale, select the valuer and auction organiser;

f to challenge the debtor's transactions;

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

h to call creditors' meetings and arrange them.

Further, as discussed in Section I.iii, at the external management and receivership the insolvency administrator replaces the debtor's management.

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

For the supervision, the creditor who filed for insolvency selects a candidate insolvency administrator or the self-regulated organisation to nominate a candidate as an insolvency administrator.[66] If the debtor files for insolvency, it does not select the insolvency

62 Ibid.

63 Article 15(4) of the Insolvency Law.

64 Articles 10(5), 12(1), 20.3(1), 69.9(1), 71(2) and 139 of the Insolvency Law.

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

66 Articles 65(1) and 45 of the Insolvency Law.

administrator. In this case, the court selects a self-regulated organisation that nominates a candidate insolvency administrator, until the Ministry of Economic Development approves a procedure for selection of insolvency administrators. The court approves the candidate administrator if he or she meets all the criteria required by law.[67] The creditors at their meeting may decide to change the insolvency administrator and to select another insolvency administrator for further insolvency procedures (such as financial rehabilitation, external management and receivership).[68] Apart from that, the creditors cannot decide to remove an insolvency administrator at any stage at their discretion in the absence of any misconduct on the part of the insolvency administrator. If the insolvency administrator breaches the law, the creditors may request the court to hold him or her liable and to remove him or her and nominate another insolvency administrator.

The creditors' meeting is a primary body through which the creditors exercise control over the insolvency proceedings. At such meetings the creditors may decide upon the strategy of the proceedings (e.g., to choose the insolvency procedures to be applied for)[69] to enter into a settlement agreement and its conditions.[70] It is through this body that the creditors control the insolvency administrator. For instance, the sale of the debtor's non-encumbered assets by the administrator should be approved by a decision passed at the creditors' meeting.[71] At the meetings the creditors are also empowered to nominate the administrator or request the court to remove the current administrator (provided that they have breached the law).[72]

The rights of creditors to control the proceedings depend on their status since the secured creditors' voting rights are limited to voting at the supervision and the financial rehabilitation or external management if they decide not to enforce the collateral in the course of these insolvency procedures.[73] However, generally 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.[74] Nonetheless, the secured creditors have the right of veto with respect to certain matters (e.g., settlement agreement,[75] sale of pledge or mortgage).[76] Further, according to the amendments to the Insolvency Law, secured creditors have voting rights on the matters of nomination of insolvency administrators and their removal.[77]

The role of the creditors' committee is to streamline control of the creditors over the actions of the insolvency administrator. The creditors' meeting may also delegate certain powers to the creditors' committee[78] such as to request information on 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.[79]

67 Article 37(5) of the Insolvency Law. The Ministry of Economic Development has not approved the procedure for selection of insolvency administrators.
68 Article 12(2) of the Insolvency Law.
69 Article 12 of the Insolvency Law.
70 Ibid.
71 Article 139(1.1) of the Insolvency Law.
72 Article 12(2) of the Insolvency Law.
73 Article 18.1(3) of the Insolvency Law.
74 Article 12(1) of the Insolvency Law.
75 Article 150(2) of the Insolvency Law.
76 Article 138(4) of the Insolvency Law.
77 Article 12(1) of the Insolvency Law.
78 Article 17(1) of the Insolvency Law.
79 Article 17(4) of the Insolvency Law.

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

vi Special regimes

Individuals and certain entities are excluded from the general insolvency regime (discussed further below).

For individuals, the special insolvency regime applies materially differs. 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 that are subject to the general regime (however, specific rules apply); and
c financial institutions that are subject to a special insolvency regime that is materially different from the general regime.

A high-level analysis of the specific regulation is given below.

Legal entities that may not be declared insolvent

The following legal entities cannot be declared insolvent according to Russian law:[80]

a state-owned enterprises established for special purposes;[81]
b public law legal entities (non-commercial legal entities established by the state to exercise public functions);[82]
c political parties;
d religious organisations;
e state corporations or state companies if the federal law according to which the relevant entity was established does not permit insolvency; and
f funds, if the federal law according to which the relevant fund was established prohibits insolvency.

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

Legal entities that are subject to special insolvency rules

The Insolvency Law establishes specific regulations on insolvency of the following types of debtors:[83]

a town-forming enterprises (i.e., enterprises that employ more than 25 per cent of the working population of the relevant community);[84]
b agricultural enterprises (i.e., companies that receive more than 50 per cent of their profit from agricultural business);[85]

80 Article 65(1) of the Russian Civil Code.
81 'Kazennoe predpriatie' in Russian.
82 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 (will become effective on 2 October 2016).
83 Article 168 of the Insolvency Law.
84 Article 169 of the Insolvency Law.
85 Article 177 of the Insolvency Law.

c strategic enterprises and enterprises important for state security;[86]
d natural monopolies;
e developers dealing with construction of residential buildings;[87] and
f clearing participants that are professionals in the securities markets and financial institutions participating in clearing.[88]

There are no special insolvency rules relating to corporate groups. However, the Supreme Court has rendered a number of decisions on this matter. In two cases the Supreme Court decided that inter-group loans were sham transactions aimed to conceal contributions to share capital, and, thus the claims of the creditors affiliated with the debtors should not be registered as ordinary creditors' claims and have the same priority.[89] In another case it decided that if a party affiliated with the debtor makes a payment of the debtor's debts, it is presumed that it did this as a gift, and, thus, the creditor' claims are not transferred to this affiliated party by virtue of law.[90] The Supreme Court also decided that if the borrower, the surety and the mortgagor are affiliated parties, it is presumed that they gave mutual security to the creditor. Therefore, if the surety or the mortgagor performs the borrower's obligations, the creditor's claim against other sureties and mortgagors does not transfer to this person by virtue of law. Each of the co-sureties and co-mortgagors responds for its own share in the mutual debt. If a surety or a mortgagor made a payment to the creditor in an amount exceeding its share, it receives the creditor's claims for the relevant amount against the borrower only, and it acquires new recourse claims against other sureties and mortgagors. However, such affiliated party cannot use its claims to detriment the creditor, and it cannot enforce its claims until the creditor receives the full payment. Thus, these recourse claims are subordinated to the original creditor's claims.[91]

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,[92] a strategic enterprise[93] or a natural monopoly[94] may be declared insolvent if the amount of creditors' claims exceeds 1 million roubles, and the claims are overdue for more than six months;
b competent state or municipal authorities participating in the insolvency proceedings of town-forming enterprises,[95] strategic enterprises,[96] natural monopolies[97] and developers;[98]

86 Article 190 of the Insolvency Law. A list of strategic enterprises is established by the Decree of the Government of the Russian Federation No. 1226-p dated 20 August 2009 (as amended).
87 Article 201.1 of the Insolvency Law.
88 Article 201.16 of the Insolvency Law.
89 Ruling of the Supreme Court No. 308-ЭС17-1556(1) dated 6 July 2017 and No. 305-ЭС17-2110 dated 11 July 2017.
90 Rulings of the Supreme Court No. 306-ЭС16-17647(1) and No. 306-ЭС16-17647(7) dated 30 March 2017.
91 Rulings of the Supreme Court No. 306-ЭС16-17647(2) and 306-ЭС16-17647(6) dated 30 March 2017.
92 Article 177 of the Insolvency Law.
93 Article 190(3) of the Insolvency Law.
94 Article 197(2) of the Insolvency Law.
95 Article 170 of the Insolvency Law.
96 Article 192 of the Insolvency Law.
97 Article 198 of the Insolvency Law.
98 Article 201.2 of the Insolvency Law.

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[99] or a strategic enterprise,[100] 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); and

e the special procedures, which apply to the sale of assets of town-forming,[101] agricultural,[102] strategic enterprises[103] and natural monopolies. They are as follows:[104]

- the debtor's assets necessary for its activities are first sold together as a single lot;
- certain persons may have pre-emptive rights to acquire the debtor's assets; and
- the special requirements applicable to the buyer (e.g., a licence to engage into 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.

There is special detailed regulation of 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.[105] 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.

Legal entities that are subject to special insolvency regime

Regulation of insolvency of the financial institutions materially differs from the general insolvency regime. The financial institutions include:[106]

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 microfinance institutions.

99 Articles 171–174 of the Insolvency Law.

100 Articles 191, 194 and 195 of the Insolvency Law.

101 Articles 175 and 176 of the Insolvency Law.

102 Article 179 of the Insolvency Law.

103 Article 195 and 196 of the Insolvency Law.

104 Article 201 of the Insolvency Law.

105 Article 201.4 and 201.15-2 of the Insolvency Law.

106 Article 180 of the Insolvency Law.

Insolvency of credit institutions, such as banks, is governed by very detailed rules. In general, if a credit institution faces financial difficulties,[107] the Central Bank may decide, before withdrawing its banking licence, to use financial rehabilitation measures, including an appointment of temporary administration headed by an official of the Central Bank.[108] If the Central Bank appoints temporary administration, it may limit or suspend the powers of the management of the credit institution. The temporary administration performs analysis of the debtor's financial situation to make a decision on whether there are grounds to revoke the banking licence or use rehabilitation measures; it controls the use of assets by the credit institution and gives consent to some of the transactions by the management of the debtor.[109] If the Central Bank decides to suspend the powers of the debtor's management, the temporary administration assumes its functions. It may request the Central Bank to introduce a moratorium on making any payments by the credit institution. The temporary administration may file applications with the court to challenge transactions of the credit institution or to hold the controlling persons or the chief accountant of the credit institution liable.[110]

If the Central Bank decides to revoke the banking licence for whatever reason related or unrelated to insolvency,[111] the bank must be liquidated and 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 insolvency.[112]

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 perform the obligations.[113]

The 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.[114] 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 in five days after the publication of information about the revocation of the banking licence, or in five business days after the temporary administration informs the Central Bank about it.[115]

If the court finds that the insolvency petition has merit, the credit institution is declared insolvent and receivership procedure is introduced. If the credit institution had a licence to engage deposits from individuals, the state corporation Deposit Insurance Agency (DIA) would act as the insolvency administrator.[116]

There are special rules regulating post-commencement claims of credit institutions, registration of creditors' claims, challenge of transactions and liability of directors. There

107 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, etc.

108 Article 189.9 of the Insolvency Law.

109 Article 189.30 of the Insolvency Law.

110 Article 189.31 of the Insolvency Law.

111 The Central Bank may revoke the banking licence in 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.

112 Article 189.43 of the Insolvency Law.

113 Article 189.8 of the Insolvency Law.

114 Article 189.61 of the Insolvency Law.

115 Article 189.61 of the Insolvency Law.

116 Article 189.77 of the Insolvency Law.

is also detailed regulation of some specific issues relevant to the financial markets such as subordinated loans, completion of relations under financial contracts and clearing relations, etc.

There are specific distributional priorities:

a first priority claims: The claims of compensation for damage to health or loss of life; claims of individuals 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 of the DIA that it has received as a result of subrogation upon payments of the insurance compensation made to individual depositors; and claims of the Central Bank for amounts it has paid to individuals as a compensation for their claims;

b second priority claims: employees' salaries, severance payments, royalties (with a number of specific exceptions); and

c third priority claims: all other claims.[117]

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

Even though the regulation of insolvency of other financial institutions is similar to the insolvency of credit institutions, they differ in some respects.

The Insolvency Law provides a number of measures aimed at restoring the solvency of financial institutions that may be approved by the Central Bank.[118]

In certain events, the Central Bank may appoint a temporary administration of a financial institution for three to six months with a possibility of a three-month extension.[119] The temporary administration consists of an insolvency administrator and other members selected by the Central Bank. Its functions and powers are similar to the powers of temporary administration of a credit institution already discussed in this subsection. There are limitations on performing certain transactions; however, there is no general moratorium on payment to creditors.

There is a separate insolvency test for financial institutions.[120] A financial institution may be declared insolvent if it has failed to perform claims confirmed by a court judgment for longer 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.[121] However, some courts decide that such claims must be undisputed.[122] In addition to creditors and the debtor itself, temporary administration and the Central Bank may file for insolvency.[123]

117 Article 189.92 of the Insolvency Law.

118 Articles 180(4) and 183.1 of the Insolvency Law.

119 For example, if the financial institutions repeatedly during one month fails to make a payment in ten days when due, or fails to make a mandatory payment (such as taxes) in ten days when due, or does not have enough funds to make a payment when due. Articles 183.2 and 183.5 of the Insolvency Law.

120 Article 183.16 of the Insolvency Law.

121 Article 184.2 of the Insolvency Law.

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

123 Article 173.19 of the Insolvency Law.

Only the supervision procedure and receivership are applied to financial institutions. If temporary administration was appointed, the supervision does not apply.[124] It does not apply to pension funds engaged in mandatory pension insurance either.[125] According to the amendments to the Insolvency Law, it does not apply to insurance companies. 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.[126]

The Central Bank nominates an insolvency administrator, and there are special requirements applicable to him or her.[127] In the case of an insolvency of a pension fund, which is engaged in mandatory pension insurance[128] or an insurance company,[129] the DIA acts as the insolvency administrator.

There is a special procedure for the registration of the creditors' claims. The insolvency administrator includes the creditors' claims to the register unless there are objections to such registration. If there are objections, the court considers whether the claims have merit and decides on the matter of their registration.[130] 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.[131]

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 to the insolvency estate. The insolvency administrator transfers the relevant assets to the clients if they were duly paid for the services of the debtor.[132]

Special rules regulate sale of assets belonging to pension funds. Assets aimed at securing pension reserves are not included in the insolvency estate and there is a special regulation regarding their use for payment of compensation to the depositors.[133] In certain cases obligations to make payment of pensions may be transferred to another pension fund.[134]

The Insolvency Law contains specific rules regulating the sale of assets of an insurance company that include the insurance portfolio and the assets aimed 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.[135]

There are also specific distributional priorities that depend on the type of insurance (e.g., claims related to old age and survivors insurance are of the first priority while other

124 Article 183.17 of the Insolvency Law.
125 Article 187.6 of the Insolvency Law.
126 Article 184.4 (3) of the Insolvency Law (as amended by Federal Law No. 222-ФЗ dated 23 June 2016, effective as of 21 December 2016).
127 Articles 183.19 and 183.25 of the Insolvency Law.
128 Article 187.8 of the Insolvency Law.
129 Article 184.4-1 of the Insolvency Law introduced by Federal Law No. 222-ФЗ dated 23 June 2016.
130 Article 183.26 of the Insolvency Law.
131 Article 185.3 of the Insolvency Law.
132 Article 185.6 of the Insolvency Law.
133 Article 186.5 of the Insolvency Law.
134 Article 187.10 of the Insolvency Law.
135 Article 184.7 of the Insolvency Law.

claims are of lower priority).[136] As to the pension funds, the distributional priorities depend on whether the pension payments are already due;[137] there are specific priorities applicable in course of insolvency of pension funds that are engaged in mandatory pension insurance.[138]

Insolvency of individuals

On 1 October 2015, long expected provisions regarding insolvency of individuals (consumer insolvency) became effective. Now an individual may be declared insolvent whether he or she is engaged in commercial activities or not.

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.[139] 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).[140]

In general, the following insolvency procedures may apply:[141] restructuring of debts; a sale of assets; and a settlement agreement.

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.[142] In the course of this procedure, the insolvency administrator analyses the financial situation, a moratorium on the payment of debts is introduced, no interest and penalties accrue on any claims (except for post-commencement claims). The debtor cannot enter into any transactions for a value exceeding 50,000 roubles without the consent from the insolvency administrator.[143] The debtor or the creditors may work out a debt restructuring plan providing for repayment of debts for no more than three years.[144] 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.[145]

If there is no basis for the approval of a debt restructuring plan, the court declares the debtor insolvent and commences the procedure of sale of assets.[146] The aim of this procedure is to have the debtor's assets sold and the creditor's claims repaid.

Certain assets of an individual do not constitute a part of the insolvency estate.[147] Such assets include the only residential premises of the individual and land plots on which the

136 Article 184.10 of the Insolvency Law.
137 Article 186.7 of the Insolvency Law.
138 Article 187.11 of the Insolvency Law.
139 Article 213.3(2) of the Insolvency Law.
140 Article 213(4) of the Insolvency Law, clauses 8–10 of the Resolution of the Plenary Session of the SC, No. 45 dated 13 October 2015.
141 Article 213.2 of the Insolvency Law.
142 Article 213.6 of the Insolvency Law.
143 Article 213.11 of the Insolvency Law.
144 Article 213.14(2) of the Insolvency Law.
145 Article 213.17(4) of the Insolvency Law.
146 Article 213.24 of the Insolvency Law.
147 Article 213.25 (3) of the Insolvency Law, Article 446 of the Civil Procedure Code.

premises are situated (provided that the land plots are not mortgaged) and the equipment necessary for the debtor to conduct his or her professional activities worth not more than 750,000 roubles.[148]

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 gets 80 per cent of the proceeds of sale of the pledged assets and in addition may receive up to 10 per cent of the secured claims if they are not used for payment of court fees and expenses of the insolvency administrator.[149]

In the end of the sale of assets, the court is to decide on the discharge of the debtor from unsettled claims.[150] 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 course of the insolvency proceedings. If this became known after the insolvency proceedings are complete, 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, alimony claims and claims to hold the debtor liable for his or her actions as a director of a legal entity or for damage caused as an insolvency administrator.[151] Upon completion of insolvency proceedings the court issues enforcement orders and the creditors may enforce their claims via the general enforcement procedure.

vii Cross-border issues

Russian insolvency law does not contain detailed regulation of cross-border issues.

Insolvency of legal entities registered in Russia is subject to exclusive jurisdiction of the Russian courts.[152]

Foreign citizens residing in Russia may be declared insolvent in Russia, as well as Russian citizens residing abroad.[153] These proceedings will be treated as plenary insolvency proceedings. In practice, Russian courts permitted insolvency of German and Uzbek citizens residing in Russia. The courts decided that foreign citizens may be declared insolvent in Russia if: (1) their centre of main interests is in Russia, (2) it 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.[154]

148 100 minimum salary rates set by the Russian government, which is 7,500 roubles as of 1 July 2016.

149 Article 213.27 of the Insolvency Law.

150 Article 213.28 of the Insolvency Law.

151 Article 213.28 (3, 5 and 6) of the Insolvency Law.

152 Articles 38 and Article 248(1.5) of the Commercial Procedure Code.

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

154 Resolution of the Eighth Commercial Appellate Court No. 08AP-5602/2017 dated 5 June 2017; Resolution of Commercial Court for the Moscow circuit No. F05-8738/2016 dated 8 July 2016; Resolution of the Second Commercial Appellate Court No. 02AP-398082017 dated 22 June 2017.

However, there is no publicly available information about a case where a foreign legal entity has been declared insolvent in Russia. Although insolvency of foreign legal entities is not expressly prohibited by Russian law, it is unlikely to be possible because the Insolvency Law is targeted at Russian legal entities.

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.[155] If the judgment does not require enforcement, it may be recognised without any special procedure. Interested parties may file objections against the recognition with a Russian court within one month of learning about the judgment.[156] Non-final court decisions and preliminary orders (such as orders to appoint a temporary administrator as an interim measure) are not subject to recognition and enforcement.[157] 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.[158] There is, however, contradictory court practice on this matter.[159]

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[160] 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

155 Article 1(6) of the Insolvency Law. In the context of insolvency, the Russian courts granted enforcement of German judgement 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 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 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 for example, Resolution of Presidium of the SCC No. 6004/13 dated 08 October 2013, Ruling of the SCC No. VAS-6580/12 dated 26 July 2012 and Resolution of the Federal Commercial Court for the Povolzhye Circuit in case A55-5718/2011 dated 23 January 2012. The Russian courts referred to the Partnership and Cooperation Agreement as to a separate basis for enforcement. See Resolution of Presidium of the SCC No. 6004/13 dated 08 October 2013 and Resolution of the Federal Commercial Court for Povolzhye Circuit in case A55-5718/2011 dated 23 January 2012.

156 Article 245.1 of the Commercial Procedure Code .

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

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

159 Ruling of Federal Commercial Court for the Moscow Circuit No. КГ-А41/5232-09-ж dated 9 September 2009.

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

in Section I.i (abuse of right)) or foreign insolvency law. The Russian courts have allowed the claimants to seek the declaration of the invalidity of the transactions made by the debtors in violation of foreign insolvency law applicable to the transactions.[161]

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.[162]

II INSOLVENCY METRICS

Currently, the Russian economy is in the period of recovery. According to Fitch Ratings, Russia implemented a coherent and credible policy response to the sharp fall in oil prices.[163]

According to a report prepared by the Ministry of Economic Development of the Russian Federation, in 2017 the economy was recovering. In May 2017, the increase of the GDP was 3.5 per cent as compared to the relevant period of the previous year; in June 2017 the GDP increased by 2.9 per cent. The increase in the second quarter of 2017 was 2.7 per cent as compared to the relevant period of the previous year.[164]

The Federal Service of State Statistics reported that the index of industrial production increased by 2 per cent in the first six months of 2017 as compared to the relevant period of the previous year. The production of natural resources increased by 3.1 per cent, and manufacturing increased by 1.2 per cent.[165]

The economic situation is different in various sectors of economy. According to the Ministry of Economic Development. the most productive sectors were engineering (with an increase of 2.8 per cent in the first half of 2017), chemical industry (with an increase of 7.2 per cent in the first half of 2017) and production of charred coal and oil products (with an increase of 0.4 per cent in the first half of 2017).[166]

The increase in the engineering industry was because of the increase in production of cars and machinery (by 29.9 per cent in June 2017 as compared to June 2016). This can be explained by government support to the car-building industry. The increase in the automobile industry is explained by an increase in the production of cars (by 16.9 per cent in

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

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

163 https://www.fitchratings.com/site/pr/1021502.

164 Report by the Ministry of Economic Development regarding current situation in the economy of the Russian Federation on results of the first half a year of 2016 ('Ministry of Economic Development Report'), p. 3. Published on http://economy.gov.ru/minec/about/structure/depmacro/20160728.

165 See footnote 163, pp. 6-7.

166 See footnote 166, pp. 3-4.

June 2017 as compared to June 2016), buses (by 32.1 per cent in June 2017 as compared to June 2016) and trucks (by 9.4 per cent in June 2017 as compared to June 2016). Metallurgic production decreased by 4.9 per cent during the first six months of 2017.[167]

The chemical industry increased, especially because of the demand for mineral and chemical fertilisers, ammonia, charred coal and oil products. There was a decrease of production in the food manufacturing industry by 2.5 per cent in June 2017 as compared to June 2016, with a slight general increase by 0.6 in the first half of 2017.[168] Consumer goods manufacturing increased by 6.3 per cent during the first six months of 2017.[169]

The export of goods increased in the first six months of 2017 by 29.2 per cent, and imports increased by 27.4 per cent.[170]

Real salaries increased in the first six months of 2017 by 2.7 per cent.[171] Real income, however, decreased by 1.4 per cent.[172] Retail turnover decreased by 0.5 per cent during the first six months of 2017.[173]

The unemployment rate in June 2017 calculated under the ILO standards remained equal to 5.4 per cent of the labour power. [174]

The Central Bank reports that in the first half of 2017, credit availability terms remained harsh. Banks slightly softened non-price lending terms but maintained high requirements of financial stability of borrowers. However, interest rates continued to decrease. The main factors that influenced credit policy were competition between banks, decrease of the key interest rate, and decrease in cost of funds at the internal market.[175]

The data released by the Supreme Court show that in 67,744 new insolvency petitions were filed, including 26,299 petitions filed by debtors, 36,595 petitions filed by private creditors and 4,850 petitions filed by tax authorities. Those include 28,911 petitions to declare individuals insolvent.

In 11,008 cases, the courts introduced the supervision. In 14,127 cases, after the completion of the supervision, the courts declared the debtors insolvent and introduced the receivership. In 10,225 cases, the receivership was completed, and in 15,392 cases the proceedings were terminated. The courts introduced 365 external management procedures and financial rehabilitations in 41 cases. In 2016, there was no case that was terminated as a result of repayment of debts in course of financial rehabilitation. In most cases, the courts introduced a receivership stage after the expiration 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 12 cases only. In most cases (208), debtors were declared insolvent and receivership was introduced and the receivership procedure was terminated after sale of the debtors' assets, and the debtors were liquidated following it.

167 See footnote 163, p. 10.
168 See footnote 166.
169 See footnote 163.
170 See footnote 163, p. 16.
171 See footnote 166, p. 6.
172 See footnote 166.
173 See footnote 166.
174 See footnote 166, p. 8.
175 www.cbr.ru/dkp/iubk/ubk_comment_2Q2017.pdf.

In 2016, the courts received 18,979 applications to declare transactions invalid, 1,286 requests to remove insolvency administrators and 2,882 applications to hold debtors' controlling persons liable.

According to statistics published by the Centre of Macro-Economic Planning for the second quarter of 2017,[176] the number of insolvencies increased by 2.8 per cent as compared to the first quarter of 2017 and by 5.4 per cent as compared to the second quarter of 2016. Such increase concerned almost all industries. This is also apparently because of a significant increase in number of insolvencies of individuals. As to the volume of business, 90 per cent of insolvencies concern companies with yearly revenues less than 400 million roubles, 6 per cent concern medium companies (yearly revenues of 401 million to 1 billion roubles), and 4 per cent relate to companies with revenues exceeding 1 billion roubles. More than 25 per cent of insolvencies concern companies that operated for less than five years.

Most insolvent companies used to operate in construction and commercial services. There is a material increase in the number of insolvencies in electric energy and metallurgy industries that suffered from the crisis most, as well as the machinery and food production. The number of insolvencies is also high in the retail, agriculture and transport sectors.

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

III PLENARY INSOLVENCY PROCEEDINGS

i Mr Oleg Mikheev and Mrs Tatyana Mikheeva

Oleg Mikheev was the beneficial owner of Diamant, a Volgograd-based group of companies, engaged in development, construction, commercial real estate, hotel, restaurant and retail business. He was also a beneficial owner of Volgoprombank before its merger to Promsvyazbank in 2010. In 2007 and 2011, he was elected as a member of the Russian parliament (the Duma) being a member and the head of the Volgograd branch of the Spravedlivaya Rossiya (Fair Russia) political party. Mrs Tatyana Mikheeva is Mr Oleg Mikheev's wife.

Mr Mikheev's businesses got into financial difficulties and owed substantial amounts to a number of banks including Promsvyazbank, BTA Bank, Otkrytie, Moskommertz Bank, AMT Bank and Renaissance Credit. The loans were secured by personal suretyship of Mr Mikheev and his wife; some of the loan agreements were concluded directly with them. The amount of creditors' claims against Mr Mikheev is approximately 9.5 billion roubles.

In October 2015, creditors allegedly related to Mr Mikheev filed for his and his wife's insolvency. It is reported in the media that Mr Mikheev filed for bankruptcy to have his debts written off. Mr Mikheev and Mrs Mikheeva were declared insolvent in December 2015; however, the insolvency proceedings are still ongoing because registration of creditors' claims and sale of the debtors' assets is not complete.

To receive more control over insolvency and to reduce the share of independent creditors, persons related to Mr Mikheev tried to have their claims registered in the course of his insolvency proceedings. The courts satisfied these applications because there were no formal grounds to refuse. Finally, the matter of inter-group debts came up to the Supreme Court of the Russian Federation. This made the Supreme Court develop a number of

176 Published at www.forecast.ru.

approaches discussed in Section I.vi. Namely, the Supreme Court decided that the courts may refuse registration of claims of related parties, if such claims may be qualified as gifts or sham transactions.

ii Mr Poymanov

Mr Sergey Poymanov was a beneficial owner of one of the largest European producers of crushed granite stone OJSC 'Pavlovskgranit'.

In 2008, CJSC Pavlovskgranit-Invest received a loan from Sberbank to buy out 48 per cent of shares in OJSC Pavlovskgranit in favour of Mr Poymanov. The loan was secured by pledge of the shares in OJSC Pavlovksgranit and suretyship of Mr Poymanov. The borrower failed to repay the loan to Sberbank, and it levied execution on the pledged shares.

On 2 October 2015, a Sberbank successor fils an application to declare Mr Poymanov insolvent with the Moscow Region Commercial Court. The court satisfied it and introduced the restructuring of debts on 8 February 2016. On 27 July 2016, the court started the sale of assets.

Mr Poymanov's assets include claims against Sberbank Capital, Mr Herman Gref (the president of Sberbank) and a number of other respondents for US$750 million damages allegedly caused by unlawful appropriation of the shares in OJSC Pavlovskgranit and corporate raiding.

Mr Poymanov assigned these claims to a US company PPF Management. PPF Management further filed a claim against Sberbank Capital and other respondents with a New York court to recover the damages.

The receiver of Mr Poymanov filed an application to declare the assignment of the claims to PPF Management invalid with the Moscow Region Commercial Court. The court satisfied this application on 31 July 2017. The court decided that this transaction caused damage to the creditors' rights.

The receiver also filed an application with a court in New York to recognise his powers as a foreign insolvency administrator. On 31 July 2017, the Bankruptcy Court for the Southern District of New York recognised the Russian insolvency proceedings as foreign main proceedings under Chapter 15 of the US Bankruptcy Code, concluding that a retainer deposited with the debtor's attorneys in the US was sufficient property within the United States to establish jurisdiction over a debtor under section 109(a) of the Code and the Russian insolvency proceedings were not 'manifestly contrary to public policy of the United States'.

This is likely to impair the proceedings for recovery of damages because PPF Management no longer possesses the claims.

iii Tatfondbank

As of 1 October 2016, Tatfondbank was the 43rd largest Russian bank by way of assets. It was one of the largest banks of Republic of Tatarstan, and the Republic of Tatarstan held 41.68 per cent of its shares. It was serving approximately 20,000 legal entities and 500,000 individual clients.

In 2014, international rating agency Standard & Poor's assigned to Tatfondbank long-term and short-term credit ratings of B/B and a national scale rating of A-; the outlook was stable.

However, on 15 December 2016, the Central Bank appointed temporary administration in Tatfondbank on the grounds that the bank failed to make a payment to its creditors. On 3 March 2017, the Central Bank withdrew the Tatfondbank's banking licence.

According to the analysis made by the Central Bank and the Deposit Insurance Agency, the amount of obligations of the bank exceeded the value of its assets by approximately 118 billion roubles.

These events happened because the management of the bank did not accurately estimate loan risks, and, as a result, its assets were of low quality and were overestimated. The bank also failed to comply with a number of regulations of the Central Bank, including those related to sufficiency of assets.

For these reasons, the Central Bank decided that the financial rehabilitation of the bank was not possible and filed for insolvency. On 11 April 2017, Tatfondbank was declared insolvent and the receivership procedure was introduced. The Deposit Insurance Agency was appointed as the receiver.[177]

According to the Deposit Insurance Agency, the amount of the claims filed against the bank is 537 billion roubles and the amount of the registered claims is 134.7 billion roubles. More than half of the claims are claims of small creditors. The bank has more than 11,000 individual creditors with claims exceeding 70 billion roubles.

The Deposit Insurance Agency filed claims for recovery of debts of the bank for 3.8 billion roubles and filed applications to challenge transactions worth 10 billion roubles.

iv TsentrObuv

JSC Trading House TsentrObuv was one of the biggest Russian retailers of shoes existing since 1992. As of June 2014, it had more than 1500 stores in 300 towns and its turnover was 34.1 billion roubles.

It was expanding aggressively, made material borrowings and was preparing for IPO. However, it appeared not to be ready to the financial crisis and decrease of profits of consumers. According to publicly available accounting documents, by the end of 2014 its obligations exceeded 25.5 billion roubles, and in 2015 it faced approximately 500 claims for 5.9 billion roubles, and in 2016, 135 claims for 438 million roubles. Finally, the company became unable to service its debts. The management tried to negotiate restructuring; however, this was unsuccessful.

In October 2015, creditors filed a number of insolvency applications, and on 29 March 2016 the supervision stage of insolvency commenced. On 14 March 2017, Tsentrobuv was declared insolvent and the receivership stage commenced. The amount of registered claims is 23.5 billion roubles.

The inventory of assets is ongoing. Once it is complete the company's assets will be sold, and the proceeds will be distributed between its creditors.

A criminal investigation was initiated in respect to one of the shareholders of Tsenrobuv. He is suspected of intentional failure to repay the loans.

v Razgulay Agricultural Holding

Razgulay Group was one of the largest agricultural holdings dealing with sugar, agricultural and grain production. It had 12 elevators, 10 sugar plants, six milling plants, a milk factory and other factories. The holding controlled over 300,000 hectares of agricultural land and 10 per cent of the Russian market of sugar.

177 Case No. A65-5821/2017 considered by the Commercial Court for the Republic of Tatarstan.

In 2006, the company raised US$144 million as a result of IPO. It also issued bonds. However, in 2009 it was in default on the bonds for 8 billion roubles. One of the largest creditors of Razgulay was Vneshekonombank (VEB) with claims of approximately 34 billion roubles. In 2009 VEB received 19.97 per cent of shares in Razgulay.

In 2015, VEB assigned the claims against Razgulay and shares in Razgulay to Rusagro Group, another major producer of sugar. As a result, Rusagro became the owner of 32 per cent of shares in Razgulay.

In 2016, Rusagro decided to enforce its claims and have the assets of Razgulay sold. In 2016, assets for 15 billion roubles were sold. Rusagro acquired some of the assets, including three sugar plants and 90,000 hectares of agricultural land.

Finally, in June 2016 Rusagro filed for insolvency of Razgulay. On 28 October 2016, the Moscow Commercial Court satisfied the insolvency application and introduced the supervision stage of insolvency. On 24 April 2017, the company was declared insolvent and the receivership stage commenced. Rusagro is the major creditor of Razgulay. As of June 2017, its claims for 2.5 billion roubles were registered. At the day of writing, the receivership stage and sale of the debtor's assets is ongoing.

vi Marine Gardens

Marine Gardens was a company to build a seaquarium in Moscow.

In 2004 it entered into a long-term lease of a 4 hectare land plot in the west of Moscow. The project involved construction of 215,000 square meters of a seaquarium, hotel, apartments and office buildings.

According to the business media, a beneficial owner of the company was Mr Mukhtar Ablyazov, ex-beneficial owner of Kazakh BTA Bank. The construction of the seaquarium was suspended in 2008 while a criminal investigation in respect to Mr Ablyazov related to alleged fraudulent withdrawal of assets of BTA Bank was pending.

In August 2015, the federal tax inspectorate filed for insolvency of the company. Further, BTA Bank filed an insolvency application as well. The supervision stage was introduced on 19 April 2016. On 11 October 2016, the company was declared insolvent and the receivership stage commenced. BTA Bank was the major creditor with claims of 8.2 billion roubles arising out of a loan agreement.

Finally, BTA Bank and Marine Gardens reached a settlement. On 20 July 2017, the court terminated the insolvency proceedings and approved a settlement agreement. Pursuant to its conditions, claims of minor creditors must be repaid by 1 September 2017. Claims of BTA Bank and another major creditor (with claims of 300 million roubles) must be repaid by 1 July 2022. The parties agreed that no interest will accrue on these amounts. The creditors also waived their claims for penalties and moratorium interest for the period of insolvency. There are no other conditions of settlement approved by the court and no restructuring plan.

There may be some confidential restructuring agreement. According to information published in the media, the company plans to raise additional investment of 12 billion roubles and to complete the construction.

IV ANCILLARY INSOLVENCY PROCEEDINGS

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

V TRENDS

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

The new developments in the law include increasing liability and the number of cases where beneficial owners of the debtor are held liable for the debtor's debts.

In almost every significant insolvency there are disputes related to registration of claims of creditors related to 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 in order not to lose control over insolvency proceedings. In many cases there is litigation over voidable transfers or fraudulent transfers.

Another trend is strengthening protection of the interests of tax authorities in the course of an insolvency. The legislator gave tax authorities additional time to file their claims for registration in the course of receivership and introduced certain limitations to challenge payments of taxes as preference transactions. Courts tend to interpret the law in a way to give priority to tax claims over other creditors' claims if there is an uncertainty in this respect.[178]

As for insolvency of financial institutions, the Central Bank exercises its control functions very actively, and there have been a large number of cases where the Central Bank withdrew banking licences and filed for insolvency of credit institutions.

Long-discussed and expected legislation developments relate to financial rehabilitation proceedings. The government of the Russian Federation developed a draft law on restructuring proceedings and introduced it to the Duma. According to the draft, the debtor or a creditor is able to file for debt restructuring. If the court satisfies this application, the creditors and the debtors would have four months to develop a restructuring plan. The plan should provide for repayment of debts during the four years after its approval by the court or during up to eight years if the creditors approve it. The restructuring plan may provide for different options for management of the debtor: 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. It is unclear to what extent and when the Duma will approve this draft law; however, it may be considered on an expedited basis because the government introduced it.

178 For example, the Supreme Court decided that the claims related to ongoing business activities of the debtor fall in the lowest priority of post-commencement claims rather than to the third priority (utilities and maintenance). Thus, such claims do not have priority over post-commencement tax claims. The claims for payment for utilities include only costs necessary to maintain the debtor's assets and keep them secure until they are sold (clause 8 of the Review of case law on issues related to participation of tax authorities in insolvency cases, approved by the Presidium of the Supreme Court on 20 December 2016). The courts also decided that the claims for income tax and pension insurance claims have the same priority as employees' claims for salary (which are of higher priority than ordinary creditors' claims (including tax claims) (clauses 8 and 14 of the Review of case law approved by the Presidium of the Supreme Court on 20 December 2016).

Appendix 1

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Pavel 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 creditor's 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 represented creditors, debtors and administrators in large bankruptcy cases. Pavel also represents clients in disputes during insolvency proceedings and in proceedings concerning the recognition of foreign courts insolvency judgments in Russia. His clients include Russian and international banks (Bank of Cyprus, Czech Export Bank, UniCredit Bank, Credit Europe Bank, BTA Bank) and large companies and corporations (Samsung, Visteon, Eurocement and PSG International). Pavel has been included in *Best Lawyers* in Russia in the practice area of litigation and insolvency, and is a member of the INSOL International.

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