The Insolvency Review

Fourth Edition

Editor
Donald S Bernstein

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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 Organizations and the Federal Law on Non-Commercial Organizations are both applicable to the activities of self-regulated organizations 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

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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 Commerical Court (SCC).

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, *infra*.

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 subsection vi, *infra*.

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 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, 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 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,

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.

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.

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 such a case, however, other creditors or the insolvency administrator have a right to appeal the initial court decision if it has not been appealed before. 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 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.

7 Article 71(2) of the Insolvency Law.

8 Article 71(5) of the Insolvency Law.

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.

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 subsection vi, *infra*.

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]

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, *infra*)) 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 the court:

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

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

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). According to amendments to the Insolvency Law introduced by Federal Law 23 June 2016 No. 222-Ф, tax inspectorates have 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.

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 made in 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 violation of 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 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).

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.

20 Article 61.4(2) of the Insolvency Law.

In addition to special grounds set by the Insolvency Law, fraudulent transfers may violate rules of Articles 10 and 168 of the Civil Code, which prohibit the abuse of rights and the 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 the 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]

ii Policy

Insolvency legislation and insolvency proceedings in Russia have the 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, *infra*).

One of the reasons for this emphasis on receivership is because 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 2015 the financial rehabilitation proceedings were introduced in 0.23 per cent of cases and

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.

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 in respect of 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 2015' research Russia has improved its insolvency legislation following the introduction of amendments aimed at the acceleration of the liquidation procedure and the protection of the rights of the creditors with the secured claims.[24]

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 because 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, compared with the general enforcement procedure. Further, the general enforcement procedure is run by the state bailiffs who not infrequently act slowly and inefficiently as compared to insolvency administrators who are usually selected by creditors as discussed in Section I.v, *infra*.

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 subsection vi, *infra*.

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

23 See: 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.

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.

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 the 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 supervision has commenced, creditors' claims for payment other than post-commencement claims may only be filed against the debtor pursuant to the procedures outlined in the Insolvency Law. Enforcement proceedings that have already commenced are stayed (with some exceptions). Court proceedings for recovering funds from the debtor are stayed upon a creditor's petition. In addition, upon commencement of 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 from 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]

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.

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.

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 appropriate security for performance, such as pledge, suretyship or bank guarantee provided by the 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]

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 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

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.

39 Article 88(6) of the Insolvency Law.

40 Article 93 of the Insolvency Law.

41 Article 92(2) of the Insolvency Law.

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 another 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 the debtor's assets that are in the possession of third parties, informs the debtor's employees of their prospective dismissal, maintains the register of claims and makes 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)

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.

47 Article 149 of the Insolvency Law.

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, 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 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. Creditors who participated in the amicable settlement may file their claims for registration in the course of the new insolvency in the amount as 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 insolvency owing to circumstances in which it will not be able to discharge its debts on time.[52] In certain instances (e.g., where the 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 financial institutions (such as banks including foreign banks) 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 receiving 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]

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.
53 Article 9 of the Insolvency Law.
54 Article 37(4) of the Insolvency Law.
55 Article 7 of the Insolvency Law.
56 Articles 3(2) and 6(2) of the Insolvency Law.

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 subsection vi, *infra*.

If two or more insolvency petitions are filed in relation to the same debtor, the court accepts the second 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 the court finds that the application has no merit, the court considers the application filed next. If no other insolvency applications are filed, the court terminates 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]

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 the claims by all creditors after the term for filing creditors' claims 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 the introduction of 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, registration of creditors' claims, declaring transactions of the debtor invalid, 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 and 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;

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.

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.

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, *supra*, at the external management and receivership the insolvency administrator replaces the debtor's management.

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

For the supervision, the creditor who filed for insolvency selects a candidate insolvency administrator or the self-regulated organisation to nominate the candidate insolvency administrator.[66] If the debtor files for insolvency, it does not select the insolvency administrator. In this case until the Ministry of Economic Development approves a procedure for selection of insolvency administrators, the court selects a self-regulated organisation that nominates a candidate insolvency administrator. The court approves the candidate administrator if he or she meets all 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 of the insolvency administrator. If the insolvency administrator breaches the law, 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

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.

67 Article 45(5) of the Insolvency Law.

68 Article 12(2) of the Insolvency Law.

69 Article 12 of the Insolvency Law.

70 Ibid.

by the administrator should be approved by the 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 rather limited. Secured creditors have the right to vote at the supervision as well as at the financial rehabilitation or external management if they decide not to enforce the collateral in 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 in respect of certain matters (e.g., settlement agreement,[75] sale of pledge or mortgage).[76] Further, according to 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 the control of the creditors over the actions of the insolvency administrator. The creditors' meeting also may 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 sale of assets.[79]

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 subsection iii, *supra*).

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 are groups of legal entities whose treatment is different 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.

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.

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]

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.

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.

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.

The most important differences in the insolvency regime include:

a increased insolvency test: an agricultural enterprise may be declared insolvent if the amount of outstanding claims exceeds 500,000 roubles,[89] a strategic enterprise[90] or a natural monopoly[91] 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 participate in the insolvency proceedings of town-forming enterprises,[92] strategic enterprises,[93] natural monopolies[94] and developers;[95]

c the competent state or municipal authorities may request the court to take measures aimed at restoration of solvency of a town-forming enterprise[96] or a strategic enterprise,[97] give a guarantee of repayment of debts of the relevant enterprise and request the court to introduce external management procedure;

d special requirements to insolvency administrators may apply (e.g., concerning matters relating to state secrets); and

e the special procedures apply to the sale of assets of town-forming,[98] agricultural,[99] strategic enterprises[100] and natural monopolies. They are as follows:[101]
- 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
- special requirements applicable to the buyer may be in place (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.).

There is special detailed regulation of insolvency of developers aimed at completion of construction of residential premises and transfer of the residential premises to the persons who acquired them.[102] For this reason there is a separate register of the claims of these persons whose claims have priority in respect of the premises they 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.

89 Article 177 of the Insolvency Law.
90 Article 190(3) of the Insolvency Law.
91 Article 197(2) of the Insolvency Law.
92 Article 170 of the Insolvency Law.
93 Article 192 of the Insolvency Law.
94 Article 198 of the Insolvency Law.
95 Article 201.2 of the Insolvency Law.
96 Articles 171–174 of the Insolvency Law.
97 Articles 191, 194 and 195 of the Insolvency Law.
98 Articles 175 and 176 of the Insolvency Law.
99 Article 179 of the Insolvency Law.
100 Article 195 and 196 of the Insolvency Law.
101 Article 201 of the Insolvency Law.
102 Article 201.4 and 201.15-2 of the Insolvency Law.

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:[103]

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.

Insolvency of credit institutions, such as banks, is governed by very detailed rules. In general, if a credit institution faces financial difficulties,[104] the Central Bank may decide, before withdrawing its banking licence, to use financial rehabilitation measures, including appointment of temporary administration headed by an official of the Central Bank.[105] 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 whether there are grounds to revoke the banking licence or to use rehabilitation measures; it controls use of assets by the credit institution, gives consent to some of the transactions by the management of the debtor.[106] 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.[107]

If the Central Bank decides to revoke the banking licence for whatever reason related or unrelated to insolvency,[108] 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.[109]

103 Article 180 of the Insolvency Law.

104 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.

105 Article 189.9 of the Insolvency Law.

106 Article 189.30 of the Insolvency Law.

107 Article 189.31 of the Insolvency Law.

108 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.

109 Article 189.43 of the Insolvency Law.

A credit institution may be declared insolvent if it fails to perform its obligations in 14 days after they become due or if its assets are not sufficient to perform its obligations.[110]

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.[111] 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 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.[112]

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) acts as the insolvency administrator.[113]

There are special rules regulating post-commencement claims of credit institutions, registration of creditors' claims, challenge of transactions and liability of directors. There 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:[114]

a First priority claims: 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 it 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 paid to individuals as a compensation for their claims.

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

c Third priority claims – all other claims.

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

The regulation of insolvency of other financial institutions is similar to the insolvency of credit institutions; however, it differs in some respects.

The Insolvency Law provides a number of measures aimed at restoration of solvency of financial institutions that may be approved by the Central Bank.[115]

In certain events, the Central Bank may appoint a temporary administration of a financial institution for a period from three to six months with a possible three-month extension.[116] The temporary administration consists of an insolvency administrator and other

110 Article 189.8 of the Insolvency Law.

111 Article 189.61 of the Insolvency Law.

112 Article 189.61 of the Insolvency Law.

113 Article 189.77 of the Insolvency Law.

114 Article 189.92 of the Insolvency Law.

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

116 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.

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.[117] 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 there is no need to have such claims confirmed by a court judgment.[118] However, some courts decide that such claims must be undisputed.[119] In addition to creditors and the debtor itself, temporary administration and the Central Bank may file for insolvency.[120]

Only the supervision procedure and receivership are applied to financial institutions. If temporary administration was appointed, supervision does not apply.[121] The supervision procedure does not apply to pension funds engaged in mandatory pension insurance.[122] According to the amendments to the Insolvency Law, the supervision procedure would not apply to insurance companies as well. If the court finds that an insolvency petition filed by a creditor of an insurance company has merit, the insolvency proceedings would be suspended until the Central Bank or the temporary administration files for insolvency of the insurance company.[123]

The Central Bank nominates an insolvency administrator, and there are special requirements applicable to him or her.[124] In the case of insolvency of a pension fund, which is engaged in mandatory pension insurance[125] or an insurance company,[126] the DIA acts as the insolvency administrator.

There is a special procedure for the registration of creditors' claims. The insolvency administrator includes 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.[127] 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.[128]

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117 Article 183.16 of the Insolvency Law.

118 Article 184.2 of the Insolvency Law.

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

120 Article 173.19 of the Insolvency Law.

121 Article 183.17 of the Insolvency Law.

122 Article 187.6 of the Insolvency Law.

123 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).

124 Articles 183.19 and 183.25 of the Insolvency Law.

125 Article 187.8 of the Insolvency Law.

126 Article 184.4-1 of the Insolvency Law introduced by Federal Law No. 222-ФЗ dated 23 June 2016.

127 Article 183.26 of the Insolvency Law.

128 Article 185.3 of the Insolvency Law.

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.[129]

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.[130] In certain cases obligations to make payment of pensions may be transferred to another pension fund.[131]

The Insolvency Law contains specific rules regulating sale of assets of an insurance company that include the insurance portfolio and assets aimed to cover insurance reserves. They may be sold in one lot to another insurance company that has necessary licences and assets to cover them.[132]

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 claims are of lower priority).[133] As to pension funds, the distributional priorities depend on whether the pension payments are already due,[134] and there are specific priorities applicable in course of insolvency of pension funds that are engaged in mandatory pension insurance.[135]

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 no matter if he or she engages into 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.[136] 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 when due or the amount of its debts exceeds the value of its assets (there is no minimum threshold).[137]

In general, the following insolvency procedures may apply:[138] restructuring of debts; sale of assets; and 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.[139] In course of this procedure the insolvency administrator analyses the financial situation, a moratorium

129 Article 185.6 of the Insolvency Law.
130 Article 186.5 of the Insolvency Law.
131 Article 187.10 of the Insolvency Law.
132 Article 184.7 of the Insolvency Law.
133 Article 184.10 of the Insolvency Law.
134 Article 186.7 of the Insolvency Law.
135 Article 187.11 of the Insolvency Law.
136 Article 213.3(2) of the Insolvency Law.
137 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.
138 Article 213.2 of the Insolvency Law.
139 Article 213.6 of the Insolvency Law.

on payment of debts is introduced, no interests 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 consent from the insolvency administrator.[140] The debtor or the creditors may work out a debt restructuring plan providing for repayment of debts for no more than three years.[141] The court approves this plan if it meets the criteria set by the Insolvency Law, 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.[142]

If there is no basis to approve a debt restructuring plan, the court declares the debtor insolvent and commences the procedure of sale of assets.[143] 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.[144] Such assets include the only residential premises of the individual and land plots on which the premises are situated (provided that the land plots are not mortgaged) and equipment necessary for the debtor to conduct his or her professional activities worth not more than 750,000 roubles.[145]

The distributional priorities applicable in course of insolvency of individuals differ from the general priorities. The major difference is that the claims of the first priority include alimony claims, 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 a payment of the court fees and expenses of the insolvency administrator.[146]

In the end of the sale of assets the court is to decide on discharge of the debtor from unsettled claims.[147] 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 a 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, 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.[148] Upon completion of insolvency proceedings the court issues enforcement orders and the creditors may enforce their claims using the general enforcement procedure.

140 Article 213.11 of the Insolvency Law.

141 Article 213.14(2) of the Insolvency Law.

142 Article 213.17(4) of the Insolvency Law.

143 Article 213.24 of the Insolvency Law.

144 Article 213.25 (3) of the Insolvency Law, Article 446 of the Civil Procedure Code.

145 100 minimum salary rates set by the Russian government, which is 7,500 roubles as of 1 July 2016.

146 Article 213.27 of the Insolvency Law.

147 Article 213.28 of the Insolvency Law.

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

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.[149] In the insolvency case of *Vladimir Kehman* discussed in Section III.v, *infra*, the Russian court decided that the Russian courts have exclusive jurisdiction over insolvency of Russian citizens and refused recognition of an English High Court judgment to declare the Russian citizen insolvent on this ground.[150]

Foreign citizens residing in Russia may be declared insolvent in Russia, as well as Russian citizens residing abroad.[151] These proceedings will be treated as plenary insolvency proceedings. In practice, Russian courts permitted insolvency of German and Ukrainian citizens residing in Russia.[152]

However, there is no publicly available information about a case where a foreign legal entity has been declared insolvent in Russia. In one of the cases, a Russian person requested the court to declare a Turkish legal entity insolvent, however, it withdrew the insolvency petition before the court took any decision.[153] 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 in respect of 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.[154] If the judgment does not require enforcement, it may be recognised

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

150 Ruling of the Commercial Court of Saint Petersburg and Leningrad Region in case A56-27115/2016dated 3 August 2016. As of the time of writing of this book, the time period for filing appeals has not expired.

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

152 Resolution of the Commercial Court for the Moscow Circuit No. A40-186978/2015dated 8 July 2016 and Ruling of the Commercial Court for Yamalo-Nenetsk Circuit No. A81-6187/2015dated 30 June 2016.

153 Ruling of Commercial Court for Yamalo-Nenetsk Circuit No. A81-5911/2015dated 25 November 2015.

154 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

without any special procedure. Interested parties may file objections against recognition with a Russian court within one month after they learn of the judgment.[155] 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.[156] 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.[157] There is, however, contradictory court practice on this matter.[158]

If a foreign court judgment 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[159] 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 grounds set by the Russian law (Articles 10 and 168 of the Russian Civil Code discussed in Section I.i, *supra* (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.[160]

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.[161]

II INSOLVENCY METRICS

Currently, the Russian economy is in the period of recession. The major reasons for this include the collapse of the oil price and the economic sanctions.

According to a report prepared by the Ministry of Economic Development of the Russian Federation, in 2016 the recession has gradually decreased. In the first quarter of

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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.

155 Article 245.1 of the Commercial Procedure Code (applies since 1 September 2016).

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

157 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.

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

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

160 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.

161 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.

2016, the decrease of the GDP was 1.2 per cent as compared to the relevant period of the previous year; in the second quarter of 2016 the GDP decreased by 0.6 per cent. The decrease in the first half of the year 2016 was 0.9 per cent as compared to the relevant period of the previous year.[162]

The Federal Service of State Statistics reported that the the index of industrial production increased by 0.4 per cent in the first six months of 2016 as compared to the relevant period of the previous year.[163] The production of natural resources increased by 2.6 per cent while manufacturing decreased by 0.9 per cent.[164]

The economic situation is different in various sectors of economy. The sectors most affected by the recession are construction, metallurgic industry, automobile production and sales.

Fitch rating considered metals and mining, oil and gas and chemicals to be the sectors most exposed to foreign-currency debt, all of which generate significant dollar revenues. Domestic-focused consumer, retail and utilities companies on average have less than 20 per cent of their debt in foreign currencies.[165]

The Ministry of Economic Development calls the situation in construction 'dramatic', with a decrease of 9.7 per cent in June 2016.[166] The decrease in the automobile industry also continues with a fall of car sales of 12.5 per cent in June 2016 as compared to June 2015[167] and decrease of 5.3 per cent in the production of cars as compared to June 2015.[168] There is, however, an increase in the production of buses and trucks. The metallurgic production decreased by 1.0 per cent in June 2016 and by 1.7 per cent during the first six months of 2016.[169]

The chemical industry is more or less stable.[170] There is an increase of production in the food manufacturing industry. For certain goods it is material, for example, cooking oil production increased by 33 per cent in June 2016 as compared to June 2015.[171] The light industry also increased by 4 per cent in June (however, there was a slow-down in comparison with its increase by 10.2 per cent in May) and by 3.8 per cent during the first six months of 2016 including growth in production of materials of 20.6 per cent in June 2016.[172]

Export of goods reduced in the first six months of 2016 by 29.7 per cent, imports reduced by 9.5 per cent.[173]

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162 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.

163 See footnote 163 *supra*, p. 6.

164 See footnote 163 *supra*, pp. 6-7.

165 www.fitchratings.com/site/pr/1005802

166 See footnote 163 *supra*, pp. 7-8.

167 See footnote 163 *supra*, p. 8.

168 See footnote 163 *supra*, p. 9.

169 See footnote 163 *supra*, p. 10.

170 See footnote 163 *supra*, pp. 10-11.

171 See footnote 163 *supra*, pp. 11.

172 See footnote 163 *supra*.

173 See footnote 163 *supra*, p. 16.

The real salary in the first six months of 2016 remains the same as the previous period.[174] Real income, however, decreased by 4.8 per cent in June and by 5 per cent in the first six months of 2016.[175] The retail turnover decreased by 5.7 per cent during the first six months of 2016.[176]

The unemployment rate in June 2016 calculated under the ILO standards decreased and is equal to 5.4 per cent of the labour power.[177]

The World Bank stated that the adjustment to the worsening external environment caused an estimated 10 per cent drop in gross domestic income, which sapped consumer demand and discouraged investment. The decline in real income had a significant impact on poverty – the number of those living in poverty increased by 3.1 million to 19.2 million in 2015. The World Bank expects the Russian economy to undergo a long journey to recovery. While the conditions that pushed Russia's economy into recession may be gradually abating, the World Bank's current baseline scenario anticipates a further contraction of 1.9 percent in 2016, before growth is expected to resume at a modest rate of 1.1 percent in 2017.[178]

The Central Bank reports that in the first quarter 2016, the credit availability terms for legal entities are harsher than in the fourth quarter of 2015. Banks increased requirements to financial stability of corporate borrowers and security provided. However, interest rates decreased because of competition on the market. The interest rate of the 30 largest Russian banks for loans for legal entities excluding financial institutions for the first five months of 2016 is approximately 13 per cent.[179] The consumer mortgage loans market is stable.[180]

The data released by the Supreme Court show that in 50,779 new insolvency petitions were filed, including 8,322 petitions filed by debtors, 32,103 petitions filed by private creditors and 10,354 petitions filed by tax authorities. Those include 6,082 petitions to declare individuals insolvent.

In 12,074 cases the courts introduced the supervision. In 12,013 cases after the completion of the supervision, the courts declared the debtors insolvent and introduced the receivership in 9,390 cases, terminated the proceedings in 2,085 cases and introduced 362 external management procedures and financial rehabilitation in 35 cases. In 2015 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 14 cases only. In most cases (290) 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.

In 2015, the courts received 15,443 applications to declare transactions invalid, 13,257 requests to remove insolvency administrators and 2,676 applications to hold debtors' controlling persons liable.

174 See footnote 163 *supra*, p. 12.

175 See footnote 163 *supra*.

176 See footnote 163 *supra*, p. 42.

177 See footnote 163 *supra*, p. 3.

178 www.worldbank.org/en/country/russia/overview#1.

179 www.cbr.ru/statistics/?PrtId=int_rat.

180 www.cbr.ru/dkp/iubk/iubk_16-1.pdf.

According to statistics published by the Centre of Macro-Economic Planning for the first quarter of 2016,[181] the number of insolvencies was 10 per cent less than in the beginning of 2015; however, it was 20 per cent higher than in 2013.

As to the volume of business, 90 per cent of insolvencies are 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, real estate and services, and retail. There is a material increase in the number of insolvencies in the machinery and construction areas that suffered from the crisis most, as well as the food production industry. The number of insolvencies is also high in the energy sector and forest production.

As discussed Section I.vii, *supra*, 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 Transaero

Transaero was the Russia's second-largest airline and the largest privately owned airline. The airline adopted an aggressive expansion strategy and for this reason entered into a number of loan agreements and lease agreements to modernise its aircraft. The company's obligations were in foreign currency and its income was mainly in roubles. As a result of the crisis and rouble freefall, the payments increased at least twice, and it became difficult for Transaero to service its debt. The company's income also decreased because of the crisis in the tourist services market caused by political instability and sliding of consumers' incomes and travel expenses. Transaero tried to negotiate a settlement with its creditors; however, it did not succeed. The company's estimated debts amount to 250 billion roubles.[182]

On 19 October 2015, Russian major state-owned bank Sberbank filed for insolvency of Transaero. On 16 December 2016 the supervision stage of insolvency was introduced.[183] In parallel, insolvency of a number of related companies was commenced.[184]

Transaero's creditors include major banks such as Sberbank (claims for 5.3 billion roubles); Rosselkhozbank (6.7 billion roubles); VTB (11.05 billion roubles); Alfa Bank (0.9 billion roubles); and Commercial Bank International Financial Club (2.2 billion roubles). Transaero also owes the major Russian airline Aeroflot 5.3 billion roubles on the grounds of a loan agreement.

There are also material debts to suppliers, such as Gazpromneft-Aero (6.02 billion roubles), claims on the grounds of lease agreements including claims from Pegasus Aviation VI (1 billion roubles), Aero Leasing 113 Limited (0.5 billion roubles) and others.

181 Published at www.forecast.ru/.

182 See www.economist.com/blogs/gulliver/2015/10/russian-aviation and www.vedomosti.ru/business/articles/2015/09/13/608509-kak-pleshakovi-poteryali-transaero.

183 Case No. A56-75891/2015considered by the Commercial Court of Saint Petersburg and Leningrad region.

184 Such as *Transaero Tours Yugra* (Case No. A75-4554/2016).

At the time of writing, the insolvency proceedings are at the stage of supervision. The court is considering the issues of registration of creditors' claims and there are disputes on this matter.

The first preliminary issue related to control over insolvency proceedings. Sberbank filed the insolvency application first and selected an insolvency administrator. Alfa Bank, which filed the insolvency petition second, requested the court to dismiss Sberbank's insolvency petition on procedural grounds. Alfa Bank argued that the claims of Sberbank were not due and payable because Sberbank gave Transaero an extension in making the payment. Further, Sberbank could use its rights to unilaterally withdraw funds from Transaero's accounts to compensate for a part of its claims. It also argued that the insolvency administrator lacked necessary qualification and access to state secrets. The court decided that Sberbank could file for insolvency because it was not obliged to withdraw the funds and in any event such withdrawal could be further challenged as a preference transaction. The court introduced supervision procedure and appointed an insolvency administrator selected by Sberbank. Alfa Bank challenged the ruling to the appellate court and further to the cassation court. On 26 July 2016 the cassation court left the ruling to introduce the supervision procedure in force.

ii Vneshprombank

As of 1 October 2015, Vneshprombank was the 34th largest Russian bank by way of assets. It was serving a number of important clients including major Russian companies such as Rosneft (which kept more than 10 billion roubles in its bank accounts), Rosneftgas (6 billion roubles), Transneft (9 billion roubles), the Russian Olympic Committee and even the Russian Orthodox Church (1.5 billion roubles).

A number of high-wealth individuals and family members of high-ranking Russian officials including the wife of a vice-prime minister kept deposits in the bank worth 27 billion roubles.

In 2014 the rating of stability of the bank was A++ according to RAEX; the national rating agency estimated the rating as AA. Standard & Poor's confirmed the long-term rating as B+ and short-term as B- because of the macroeconomic conditions.

However, on 18 December 2015, the Central Bank appointed temporary administration in Vneshprombank on the grounds that the bank's own capital decreased by more than 30 per cent and the bank breached mandatory regulations. On 21 January 2016 the Central Bank withdrew the Vneshprombank'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 187.5 billion roubles.

These events happened because of the following reasons. During a long period of time the management of the bank exercised numerous fraudulent transfers. The accounting documents of the bank contained false information regarding its assets and obligations. *Inter alia*, statements of correspondent accounts in foreign banks, loan dossiers of the bank's clients and statements of clients' accounts were forged and indicated non-existent assets. Vneshprombank also failed to comply with legislation prohibiting money laundering.[185]

185 The decision of the Central Bank is published at www.cbr.ru/press/pr.aspx?file=21012016_085112ik2016-01-21T08_48_34.htm.

For these reasons the Central Bank decided that financial rehabilitation of the bank is not possible and filed for insolvency. On 14 March 2016, Vneshprombank was declared insolvent and the receivership procedure was introduced. The Deposit Insurance Agency was appointed as the receiver.[186]

According to the Deposit Insurance Agency, the amount of claims against the bank is 226.4 billion roubles, while the estimated value of its assets is 36.5 billion roubles. Almost half of the claims are claims of large creditors and the Deposit Insurance Agency, which acquired first priority claims after making a payment to individuals who kept their deposits in the bank.

Criminal proceedings against beneficial owners of the bank are ongoing.[187] One of the creditors of Vneshprombank VTB-24 filed for insolvency of the ex-president of the Central Bank, Larisa Markus.[188]

Further actions of the Deposit Insurance Agency are likely to include challenge of fraudulent transfers, challenge of preference transfers made before insolvency proceedings, bringing applications to hold the debtor's beneficial owners liable for the debts of the bank and actions aimed at asset tracing.

iii SU-155

The SU-155 group of companies was one of the largest and oldest developers engaged in construction of residential buildings.

According to the company's website, the group existed since 1993 and included 85 entities engaged in production and construction. The companies operated in 40 regions in Russia and employed more than 40,000 people. In 2013, the turnover was 114.2 billion roubles. The group used to complete construction of 1.5 million square meters of residential and commercial premises per year.

However, the company faced problems in the course of the 2008 crisis and overcame them by way of receiving loans from a number of banks and issuing bonds. However, in 2015 the company failed to repay the loans it received in 2008 and the banks started proceedings for the enforcement of their claims.[189] It was also in default of payment of interest due according to bonds.[190] Furthermore, SU-155 faced claims from the state authorities related to the failure to construct residential premises on time.

As a result, separate insolvency proceedings were commenced in respect of the members of the group of companies.

The insolvency proceedings are very complicated because of the material number of separate insolvency proceedings and a very large number of creditors including individuals who acquired apartments from the companies of the group. Furthermore, there are allegations of fraudulent transfers of funds received from individuals.

186 Case No. A40-17434/16considered by the Moscow Commercial Court.

187 https://rg.ru/2016/07/11/ugolovnoe-delo-v-otnoshenii-sovladelca-vneshprombank a-priznali-zakonnym.html.

188 Case No. A40-90960/2016 considered by the Moscow Commercial Court; www.vedomosti.ru/finance/articles/2016/06/08/644508-vtb-24-bankrotit-vladelitsu-vneshprombanka.

189 https://lenta.ru/articles/2015/03/25/su/.

190 www.rusbonds.ru/ank_obl.asp?tool=74411.

The government committee approved the plan for the completion of construction of the buildings unfinished by SU-155. The assets of the group of companies and its obligations towards the individuals who acquired premises would be transferred to a company controlled by Bank Russian Capital. The bank would finance completion of construction, and would receive remuneration as a result of the sale of remaining premises in the buildings. This matter is still ongoing.

iv Mostovik

OJSC Scientific and Production Enterprise Mostovik operated since 1984 and was one of the top 10 Russian construction companies. It was engaged in a number of state construction projects including construction of a bridge in Vladivostok for the Asia-Pacific Economic Cooperation summit in 2012, ice arena and bobsleigh and luge track in Sochi for the Olympics and the Omsk metro. The revenue of the company in 2013 was 36 billion roubles and it was engaged in construction projects worth 100 billion roubles. The company employed more than 20,000 people.

However, some of these projects appeared to cause losses to the contractor (including the construction for the Olympics), and the company became unable to service its loans. The total amount of the creditors' claims was 57 billion roubles including debts to Sberbank amounting 19 billion roubles, Alfa-Bank (3.4 billion roubles) and Gazprombank (3.4 billion roubles).

Mostovik filed for insolvency itself because it wanted to seek debt restructuring. On 3 February 2015, the Commercial Court for Omsk Region introduced external management of the company. Interestingly, the court did so on request of the debtor and absent a decision taken by the creditors. The insolvency administrator requested the court to declare the debtor insolvent. The court did not agree and decided to commence the external management procedure. It referred to the fact that the debtor signed a memorandum of intent to engage in new projects that were likely to generate material profit. These projects allegedly included reconstruction of railways in North Korea.

On 8 May 2015, the creditors held a meeting at which they decided to dismiss approval of the debt restructuring plan. For this reason the insolvency administrator requested the court to declare the debtor insolvent and to introduce the receivership stage. The court granted this request on 2 June 2015. Currently the receivership stage and sale of the debtor's assets is ongoing.

v Vladimir Kehman

Vladimir Kehman used to be the beneficial owner of the largest Russian importer of fruit. He was also the director of Mikhailovsky Theatre in Saint Petersburg and Novosibirsk State Opera and Ballet Theatre. Mr Kekhman's businesses were funded by loans from a number of banks and financial institutions, many of which were backed by personal guarantees. At all relevant times he was a Russian citizen residing in Russia.

In 2011 Mr Kehman's businesses got into financial difficulties. Negotiations and restructuring attempts failed, and a number of lending banks took steps to enforce their securities and called in their guarantees.

In 2012 Mr Kehman filed an insolvency petition with an English court on the grounds that the Russian law at that time did not permit personal insolvency. The High Court of Justice made a bankruptcy order on 5 October 2012 in Case No. 4893-2012.

However, on the day the Russian legislation regulating insolvency of individuals entered into force (1 October 2015), Sberbank, Mr Kehman's major creditor (with claims amounting 4.3 billion roubles), filed an insolvency petition with the Commercial Court for Saint Petersburg and Leningrad Region. Mr Kehman objected to the insolvency petition on the grounds that he had already been declared bankrupt by the High Court order, and the order must be recognised without any special proceedings.

The Russian court dismissed this argument on the grounds that the relevant English court order had not been recognised and enforced in Russia in special proceedings. The English court order could not be recognised in Russia because the Russian courts had exclusive jurisdiction over insolvency of a Russian individual residing in Russia and there was no international agreement providing for recognition and enforcement of court judgments or evidence of reciprocity. This ruling was left in force by the appellate and the cassation court resolutions.[191] Mr Kehman filed an appeal with the Supreme Court, which may consider the case if it grants a leave for appeal.

Mr Kehman also filed a separate application for recognition of the English court order; however, the Commercial Court for Saint Petersburg and Leningrad Region dismissed it referring to the grounds mentioned above. The court also decided that there was no evidence that the order was final.[192]

Therefore, on 17 December 2015[193] the court introduced the first procedure of insolvency. On 2 August 2016 the court declared Mr Kehman insolvent and commenced the procedure of sale of his assets.

IV ANCILLARY INSOLVENCY PROCEEDINGS

Russian law does not permit non-main proceedings as discussed in Section I.vii, *supra*. 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 for insolvency administrators and increasing 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.

191 Resolution of the Commercial Court of the North-Western Circuit in Case No. A56-71378/2015 dated 6 July 2016.

192 Ruling in Case No. A56-27115/2016 dated 3 August 2016.

193 Case No. A56-71378/2015.

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. However, it is unclear whether and when the Parliament will approve these laws.

Appendix 1

ABOUT THE AUTHORS

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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 is a member of the INSOL International.

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