

Russian bankruptcy changes to protect creditors' rights



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The ongoing crisis in the Russian economy has had a significant impact on the practice of applying bankruptcy law and on its development.

This is amply demonstrated by the increase of around a 30% growth in bankruptcy cases in 2014.

Against this backdrop, a number of regulations have been adopted to enhance the guarantees for both creditors and debtors in connection with the latter going bankrupt.

Federal Law No. 476-FZ dated December 29 2014 has introduced the institution of individual bankruptcy for the first time in Russian history. These provisions take effect on July 1 2015. For a creditor to initiate a bankruptcy procedure against an individual, the debt must be no less than RUB 500,000 (\$9,827). Some types of obligations, such as those arising out of credit relationships, do not require the applicant to obtain a

court decision to confirm the debt. However, should the debtor file for bankruptcy, no minimum amount of obligations is established.

Establishing the institute of individual bankruptcy has a certain impact on consumer credits. It became evident that borrowers under foreign currency loans from a number of banks have already warned the banks that, after July 1 2015, they intend to use the bankruptcy procedure because they are not able to meet their obligations.

However, there are a number of other aspects that are relevant to foreign companies. Legal entities are especially prominent in failing to meet their obligations towards banks. Where such pledgers and sureties initiate their own bankruptcy, this will substantially weaken the creditors' guarantees.

The last two years saw an important surge in the number of disputes in which claimants seek

to recover losses from the directors and collective executive bodies of business entities. A 69% increase has also been seen in the number of lawsuits seeking to have controlling persons held liable based on article 10 of the Federal Law on insolvency (bankruptcy). Bankruptcy may prove to be the tool which controlling persons use to terminate their obligations to recover losses or reduce the amount of liability.

For the time being, there are no grounds to anticipate individuals initiating bankruptcy proceedings on a wide scale, since the legislation has become quite cumbersome; in addition, to implement the relevant procedures would require substantial expenditures. Moreover, about 80% of the amounts in arrears with individuals are classified as unrecoverable. However, even at this early stage, companies should keep in view the risk that individuals they are dealing with may go bankrupt.

Important changes have occurred in the regulation of the bankruptcy of credit institutions. The separate Federal Law on insolvency (bankruptcy) of credit institutions has now ceased to be effective. Instead, detailed provisions regulating the bankruptcy of this category of debtors have been included in the general bankruptcy law. The main changes aim in the first place to protect creditors' interests. For instance, special attention is given to early reaction and to preventing unlawful actions committed by the bank's executive bodies from having negative consequences.

Legislators have strengthened the protection of pledged creditors' rights. For instance, independently of the procedure implemented in bankruptcy proceedings, pledged creditors have obtained the right to vote to elect a court-appointed administrator or a self-regulating organization, or to suspend the receiver.

An important factor in the development of law enforcement practices with regard to bankruptcy matters is the abolition of the Russian Supreme Commercial Court. The Supreme Court has assumed its responsibilities, becoming a single body for both commercial and general jurisdiction courts. Positions previously stated by the Supreme Commercial Court may see significant changes.

Based on our experience of providing support in bankruptcy cases, the company, its contracting parties and controlling persons could avoid many adverse consequences by paying heed to bankruptcy legislation in their day-to-day operations. As things stand, one of the most important ways to minimise risks for anyone doing business is to ensure they comply with the requirements of the Federal Law on insolvency (bankruptcy).



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