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Russia:
Directors of insolvent companies to face increased liability risks

Russian insolvency law provides that directors (and other controlling persons) can be held liable for the failure to file for insolvency in a timely manner and for actions (or inaction) that prevented full repayment of the creditors' claims.

The amendments to the insolvency law, introduced by the Federal Law No. 266-FZ on 29 July 2017 further systematise rules on directors' liability, elaborate them and provide for effective tools to fight abusive and opportunistic managerial behavior.

The number of claims filed against directors of failed companies in Russia has been on the rise in recent years. While in 2014 there were only 2,090, in 2016 their quantity exceeded 2,800. The rate of satisfied liability claims has also increased from just 4% at the end of 2014 to 20% in the first half of 2017. Despite this trend, the general insolvency recovery rate remains incredibly low, barely surpassing 3%. The need to stimulate efficient resolution of insolvency cases has triggered the reform of rules on directors' liability, which is now specifically addressed in a new Chapter III.2 of the Russian insolvency law.

Controlling person

Chapter III.2 introduces the term "*controlling person*" (CP), which encompasses any legal or natural person who has the right to give mandatory instructions to the debtor or otherwise determines its actions.

Apart from CEOs, majority shareholders (50%+) and board members, the notion of CP may include persons acting on the basis of a power of attorney, chief accountants, CFOs and those benefitting from illegal or bad faith actions of the mentioned persons. Thus, the law expands the category of potentially liable persons. As part of the reform, Chapter III.2 targets real, as opposed to nominal directors. The latter are given a chance to escape or decrease liability, if they help reveal a real CP (who usually has deeper pockets).

> THE NEED TO STIMULATE EFFICIENT RESOLUTION OF INSOLVENCY CASES HAS TRIGGERED THE REFORM OF RULES ON DIRECTORS' LIABILITY

Liability presumption

In certain scenarios, it is presumed that insolvency has resulted from actions (inaction) of CPs. For instance, such a presumption exists when a CP concluded fraudulent or preferential transactions, or when the debtor's accounting information is missing or otherwise distorted.

Under the amended law, in addition to these, the liability presumption has been extended to cover situations of missing documentation (mandatory under securities or corporate law) and incomplete information about the debtor in federal registers. The last point is particularly topical, as the amended insolvency law obliges CEOs to publish a notification in the public register (Fedresurs), whenever the signs of insolvency appear. This new obligation should inform creditors on the debtor's financial difficulties.

Procedural guarantees

Chapter III.2 provides additional procedural guarantees to creditors, who can now file their claims against CPs at any stage of insolvency.

The time limit for bringing such claims is three years (instead of one year) after the discovery of liability grounds, but maximum three years after the end of insolvency proceedings. Such claims can be launched outside formal insolvency proceedings provided that the latter ended or were terminated due to lack of funding ("*insolvent insolvencies*"). ■