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**Extrajudicial Personal Bankruptcy in Russia**

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*Introduction*

In Russia, Federal Law No. 289-FZ dated 31 July 2020[[1]](#footnote-1) has introduced a procedure for the extrajudicial bankruptcy of natural persons. Pursuant to this law, as from 1 September 2020, individuals can enter a bankruptcy process and can obtain a bankruptcy discharge without paying any fees, outside of court proceedings and without the appointment of an insolvency practitioner being necessary.

*Background*

Personal or consumer bankruptcy is a relatively new phenomenon in Russian bankruptcy law. Unlike companies, prior to 1 October 2015, individuals who were not entrepreneurs could not file for bankruptcy in Russia. Occasionally, they even resorted to a “bankruptcy tourism” to benefit from a discharge granted in a foreign jurisdiction.[[2]](#footnote-2) This changed in 2015 with the addition of Chapter X (Personal Bankruptcy) to the Russian Bankruptcy Act.[[3]](#footnote-3) Since then, the number of personal bankruptcy cases has been steadily on the rise. While in 2016 around 19,600 people were declared bankrupt, in 2019, this figure surged to around 69,000. In the first half of 2020, as a result of negative economic conditions caused by the pandemic and due to high unemployment (> 6,3%), more than 42,700 people went through personal bankruptcy, more than twice as many as in the previous year.

Why a new law? The explanatory note, accompanying the law, outlined that, in 70-80% of cases, there had been no assets available for sale or distribution.[[4]](#footnote-4) Of the creditors, 65-75% received nothing at the end of bankruptcy proceedings. In total, 96.3% of personal debts could not be repaid and were written off. This made court-supervised bankruptcy unnecessary in the majority of cases. Moreover, a problem arose where IPs refused to engage in personal bankruptcy cases for a simple reason that there were no assets to cover their fees.[[5]](#footnote-5) In order to address the problem of insolvent insolvencies, a simplified out-of-court bankruptcy procedure was proposed and put into law in the summer of 2020.

*Access to Extrajudicial Personal Bankruptcy*

Under the new law, a person whose debts range from RUB 50,000 (c. EUR 550) to RUB 500,000 (c. EUR 5,500) may apply for the extrajudicial bankruptcy procedure.[[6]](#footnote-6) The debts could arise from loans, guarantees, taxes, etc. The extrajudicial procedure begins with an application to the Multifunctional Centre for the Provision of State and Municipal Services (MFC), a special state or municipal organization offering public services. No fees need to be paid and no courts or IPs are involved at any stage.

In addition to the total amount of debt, another entry criterion includes the completion of the enforcement procedure (*исполнительное производство*) against the debtor on the grounds that there is no property which may be foreclosed. This should act as a confirmation that insolvency is indeed “insolvent” and that opening a regular (or full-scale) bankruptcy proceeding is pointless. Together with his or her application, the debtor must attach a complete list of creditors.

If all these conditions are satisfied, the MFC makes a publication about the proceeding in the Unified Federal Register of Data on Bankruptcy (<https://bankrot.fedresurs.ru/>). In September 2020 (i.e. in the first month of operation of the new law), 413 notifications about the opening of extrajudicial bankruptcy proceedings have been published there.[[7]](#footnote-7)

*The Effects of Opening Extrajudicial Personal Bankruptcy*

The publication of the note about the opening of extrajudicial bankruptcy procedure triggers a general enforcement moratorium or a stay.[[8]](#footnote-8) This moratorium is binding on all creditors, except those which have not been included in the list of creditors by the debtor or those falling under an exception (e.g. claims in revendication, compensation for moral damages, alimony payments etc.). The opening of the bankruptcy proceeding also freezes the accrual of penalties and other financial sanctions. The effect is to grant the debtor a breathing space. However, as a limitation, during the bankruptcy procedure, the debtor is not permitted to enter into any loan or credit agreements or to provide guarantees or collateral for any transactions.[[9]](#footnote-9)

Since there is no oversight or control by the court or an IP, creditors are granted additional rights related to the investigation of debtor’s assets. In particular, they may send information requests to a number of state authorities, include those responsible for the registration of real estate and automobiles.

*Completion of Extrajudicial Personal Bankruptcy*

The law states that, should the debtor’s financial situation improve in the course of bankruptcy (e.g. due to transaction avoidance, inheritance or receipt of a gift), making it possible to fully or largely satisfy the claims of creditors, the debtor must inform the MFC. As a result, the bankruptcy process is terminated.[[10]](#footnote-10) If he or she fails to do so, creditors may initiate regular bankruptcy proceedings in a court. They can also do so if the debtor has not included them in the list of creditors or if property subject to state registration has been discovered during the procedure.

The procedure of extrajudicial bankruptcy lasts for six months and leads to a discharge of debts.[[11]](#footnote-11) However, bankruptcy imposes certain post-procedural limitations, including a prohibition on taking a managerial position in companies (3 years for non-financial companies and 10 years for banks) and a requirement to notify credit institutions of any previous bankruptcy when applying for a loan.

*Comment*

The regular personal (consumer) bankruptcy proceedings, available since 2015, turned out to be too complex, cumbersome and expensive for individuals who could not afford them in the first place (so called no-income-no-asset debtors). This is why simplification of the bankruptcy procedure for natural persons (consumers) is a positive development that aims at establishing an expedient track for getting a fresh start.

Accessibility to a personal bankruptcy process becomes even more topical in light of the current economic situation, characterised by falling GDP, rising business insolvency rates and growing unemployment. The bankruptcy reform is also in line with recommendations of such standard-setting organizations as INSOL International[[12]](#footnote-12) and the World Bank.[[13]](#footnote-13) Nevertheless, commentators have noted that the entry requirement to access the new extrajudicial bankruptcy procedure (maximum EUR 5,500 of debt) can make it underinclusive as it will result in many debtors remaining ineligible.[[14]](#footnote-14) It also remains to be seen whether the lack of court and IP control and involvement will lead to a spike in instances of abuse by debtors.

1. Federal Law from 31 July 2020 No. 289-FZ “On Amending the Federal Law “On Insolvency (Bankruptcy)” and Other Laws of the Russian Federation Regarding Extrajudicial Personal Bankruptcy”. [↑](#footnote-ref-1)
2. See I. Kokorin, “The Curious Case of Vladimir Kekhman, and Treatment of Foreign Insolvencies in Russia” INSOL Europe Inside Story (November 2016). [↑](#footnote-ref-2)
3. Federal Law from 26 October 2002 No. 127-FZ “On Insolvency (Bankruptcy)”. [↑](#footnote-ref-3)
4. Explanatory Note to the Bill № 792949-7, available (in Russian) at: <<https://sozd.duma.gov.ru/bill/792949-7>>. [↑](#footnote-ref-4)
5. In the Decision from 28 January 2019 No. 301-ЭС18-13818, the Russian Supreme Court emphasised that individuals should not be deprived of the access to personal bankruptcy procedures for a reason that no IP, willing to be appointed, has been found. This underscores the social (rehabilitation) function of personal bankruptcy law. [↑](#footnote-ref-5)
6. Bankruptcy Act, Article 223.2(1). [↑](#footnote-ref-6)
7. Fedresurs, The Number of Personal and Business Bankruptcies in 9 months of 2020, available (in Russian) at:

<<https://fedresurs.ru/news/8b77432d-3823-415d-8127-8d9cb71953f7?attempt=1>>. [↑](#footnote-ref-7)
8. Bankruptcy Act, Article 223.4(1). [↑](#footnote-ref-8)
9. Ibid., Article 223.4(4). [↑](#footnote-ref-9)
10. Ibid., Article 223.5(1). [↑](#footnote-ref-10)
11. Ibid., Article 223.6(1). [↑](#footnote-ref-11)
12. INSOL International, *Consumer Debt Report II, Reports of Findings and Recommendations* (2011), favouring extra‐judicial and delegalized approaches to consumer debtors. [↑](#footnote-ref-12)
13. World Bank, *Report on the Treatment of the Insolvency of Natural Persons* (2014), highlighting that costs of insolvency procedures may limit access for eligible debtors. [↑](#footnote-ref-13)
14. A. Zanina and E. Volkova, “Bankrupts in the first five-year period. The path of bankrupt persons since 2015” (*Kommersant No. 179*, 1 October 2020), available (in Russian) at:

<<https://www.kommersant.ru/doc/4511802?fbclid=IwAR3VJkP8MliC-dL5yqdgeQjiIbq_t9UkvtJNL-nHXfpxOkA50wNkFK_gnWU>>. [↑](#footnote-ref-14)