



Russia: Rapid jump in insolvency applications

Following the economic downturn in the aftermath of the 2008 financial crisis, the number of insolvency applications in Russia has been fluctuating, but remained relatively stable with approx. 40,000 insolvency applications per year.

However, immediately after the imposition of Western sanctions in 2014 and the oil price drop, this number jumped by 20%, resulting in more than 50,000 insolvency applications filed, with approximately 41,000 accepted by Russian courts in 2015.

Like never before, the Russian insolvency framework had to take the efficiency test, the results of which did not look optimistic. According to the World Bank, the general recovery rate in Russia remains fairly low – 41.3 cents on the dollar (in Moscow) in contrast to 72.3 cents on the dollar in the OECD (High-Income). In reality, the figure for Russia may be even lower, as the recently published

statistics indicate that creditors of 70% of the Russian debtors received nothing as a result of liquidation proceedings completed in 2015.

Apart from the low recovery rate, another distinct characteristic of the Russian insolvency regime is that rehabilitation procedures are practically uncommon or absent. In 2015, 80% of insolvency cases ended with a debtor's liquidation, in around 15% of cases insolvency ceased due to the lack of money to fund it, 1.6% resulted in settlement agreements, whereas only 3% entered into one of the rehabilitative procedures (external administration or financial rehabilitation). However, in the vast majority of cases such procedures ultimately ended up with liquidation. Unpopularity of rehabilitation might be explained by a variety of factors, including late insolvency filings (too late to rehabilitate), unprofessional management and unwillingness of secured creditors to vote for rehabilitation (no cram down). This can change in the future, as proposals for introducing a Chapter-11-like restructuring procedure into Russian law are constantly discussed.

Not everything about the Russian insolvency situation is as grim as we may have pictured it. For instance, recent bankruptcy reforms and supporting case law created useful tools for creditors, allowing them to take a pro-active role in defending and restoring insolvency estate. One of these tools is the possibility to challenge pre-insolvency transactions; last year 3,136 transactions were challenged with around half of them successfully. Another tool in the creditors' belt is the right to bring controlling persons to liability for their bad faith or unreasonable actions, which caused harm to the creditors.

Russian insolvency law is constantly changing, transposing many developments from other jurisdictions. For example, previously impossible personal insolvency was introduced into the insolvency law in 2015. But when considering the above figures, Russian and foreign creditors should keep in mind that their success stays primarily in their own hands. Timely actions (filings to be included in the register of creditors, challenging transactions, bringing controlling persons to liability, etc.) together with pre-emptive protective measures (getting security from the debtor and third parties, linking transfer of ownership with payment) and vigilance are crucial in protecting creditors' rights and guaranteeing the effective handling of otherwise counter-productive insolvency proceedings in Russia.

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