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Russia, France, Italy

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Russia: Bankruptcies in the banking sector

At the end of 2013 and the beginning of 2014 a number of Russian banks had their licenses revoked.

According to the website of the Central Bank of the Russian Federation, in the course of the fourth quarter of 2013 and the beginning of 2014, banking licenses have been withdrawn from over 25 banks conducting operations within the territory of the Russian Federation. The total assets of these banks amounted to 100 billion rubles. In accordance with the laws of the Russian Federation, revocation of the banking license of a credit institution in most cases leads to such an institution being declared bankrupt.

Numerous revocations of banking licenses are not indicative of the increase in number of ailing banks. The Central Bank is conducting a sort of "cleansing", being proactive in its attempt to prevent large-scale bank bankruptcies in the future. Banking licenses have been withdrawn from banks with highly risky lending policies and those with inflated assets.

The laws currently in force provide that the Deposit Insurance Association, having paid out the compensation of up to 700,000 rubles to private individuals who had deposits with the bank, becomes a bankruptcy creditor on par with those people who had deposits in excess of 700,000 rubles and are making claims for the difference. The claims of such individuals and that of the Association are satisfied out of the asset pool of the bankrupt bank proportionally, according to their stated claims. As following the payment of compensations, the Deposit Insurance Association ends up with a significantly larger claim, the repayment to private individuals whose deposits exceeded the maximum level of compensation provided by law takes longer and the percentage of the amount owed that they can recover becomes significantly smaller. Legal persons don't have such protection, therefore the bankruptcy of a bank inevitably causes the bankruptcy of some of its clients.

Leading analysts do not expect large-scale bankruptcies in the Russian banking sector and regard recent events as the elimination of unscrupulous players in order to strengthen the Russian

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France: Commercial code or the civil procedure code?

The French commercial code gives a specialised judge called "juge commissaire" most of the duties and formalities required by insolvency proceedings.

This judge is appointed by the Commercial Court at the very beginning of insolvency proceedings. Among other things, he decides about pending contracts whose continuation or termination seems necessary for the needs of the insolvent company. (C. Comm, Art. L 622-13).

In spite of this rule, the civil procedure judge or the judge in charge of expedited procedures ("juge des référés") may still be in charge of some aspects of the continued contracts. For instance, the treatment of a contract in which the co-contractor requires the annulment of the contract for a reason posterior to the insolvency opening procedure, as this does not enter the special litigation within the insolvency proceedings. The "juge des référés" can decide in this case, if no serious contestation exists. (C. proc.civ. Art. 872). The advantage for the co-contractor is that such a judge may especially condemn the debtor or the liquidator to give the premises back to their owner without any delay. (Cass. Com. 17th Sept. 2013, n° 12-21.653).

Another example is available when an expert may become necessary in the course of insolvency proceedings. Only the specialised judge ("juge commissaire") has jurisdiction for appointing such an expert (C. Comm. Art. L 621-9). For example, concerning facts anterior to the insolvency proceedings, such a measure may be ordered for the purpose of individual actions against third parties, banks or managers.

Giving the specialised judge this power, the law excludes the possibility that the civil law judge can order an expertise in which no contestation exists, as allowed by the civil procedure code. (Cass. Com. 17th Sept. 2013, n° 12-17.741).

These examples underline the risks and costs of bad choices made by creditors or practitioners concerning the right judicial way to follow. Two codes are usually "in competition", with, sometimes, unclear limits: the commercial code and the civil procedure code.