The European, Middle Eastern and African Restructuring Review 2017

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The European, Middle Eastern and African Restructuring Review 2017

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We hope you find *The European, Middle Eastern and African Restructuring Review 2017* informative and useful.

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Russia

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Introduction

This article describes the Russian insolvency process effective as of 1 January 2017, as well as possible alternatives thereto.

The Russian insolvency process lacks predictability and effective rehabilitation procedures and, thus, mechanisms that would incentivise a debtor to initiate insolvency at an early stage, with the most common outcome of the insolvency process being liquidation of the debtor rather than recovery of the debtor's financial position. Further, the creditors have a high degree of control over all of the insolvency procedures and there are currently no effective tools that protect the debtor from creditors acting in bad faith. Against this backdrop, the reality is that the debtor will often enter into insolvency with almost no assets, and what little remains will be spent on covering the costs of the insolvency proceedings.

The insolvency process does not serve creditors well either, since it is time-consuming and can reduce the value of the debtor's assets. According to data from the Unified Federal Register of Bankruptcy Information, the creditors' recovery levels in the Russian insolvency process amounted to approximately 3.2 per cent of the total amount of claims included on the creditors' register with respect to the insolvency proceedings completed in 2016, and 5 per cent for those completed in 2015.[1]

It is currently considered that the amendments to the Insolvency Law[2] could make Russian insolvency proceedings better tailored towards the rehabilitation of debtors; however, whether they will do so in practice is yet to be seen.

Insolvency proceedings

Insolvencies of Russian companies are governed by Federal Law No. 127-FZ on Insolvency (Bankruptcy) dated 26 October 2002, as amended (the Insolvency Law). The Insolvency Law defines insolvency (bankruptcy) as inability of the debtor to meet claims of its creditors in relation to monetary obligations, mandatory payments (ie, payments to the state, including tax), severance and other labour law payments in full. We note that certain aspects of the insolvency process may vary significantly depending on the availability of the special regimes to certain types of debtors (eg, natural monopolies, credit organisations, insurance companies) and this article, with a few exceptions, does not address any such special insolvency regimes.

Insolvency filing

According to the Insolvency Law, an insolvency petition may be filed by the debtor, creditors, certain governmental bodies (the tax authority, etc) or the debtor's current or former employees with severance and/or wage claims against the debtor.

Debtor's right and obligation to file for insolvency

The Russian Insolvency Law provides for a right and, in certain cases, an obligation of the debtor to file for insolvency.

The debtor may file an insolvency petition on a voluntary basis if it foresees insolvency and there are circumstances clearly evidencing that the debtor will not be able to perform its monetary obligations, fulfil employees' claims for wages or severance benefits or make mandatory payments when due. The court practice is controversial with respect to legitimate grounds for debtors' voluntary insolvency petition and evidence, and grounds for filing are usually assessed on a case-by-case basis.

The Insolvency Law imposes an obligation on the general director (the CEO) of a Russian company to file an insolvency petition with the court within one month from the date when the CEO learns about any of the below circumstances:

- the satisfaction of claims of one creditor or several creditors would result in the debtor's inability to discharge its monetary obligations or to make mandatory payments to the state or other payments in full to other creditors;
- the debtor's shareholders or participants (or others authorised to make decisions on liquidation of the debtor under the debtor's governing documents) have adopted a resolution to file an insolvency petition;
- the enforcement of security over the debtor's assets will have a significant negative impact on the debtor's operations or make it impossible for the debtor to continue its business;
- the debtor meets the criteria of inability to pay (meaning that the debtor has ceased to pay its monetary obligations or make mandatory payments when due, as a result of insufficient funds – the 'cash-flow test') or of a deficiency of assets (meaning that the amount of the company's monetary obligations and mandatory payments exceeds the value of its assets – the 'balance sheet test');[3] or
- the debtor has failed to pay the severance pay, wages and other labour law payments within three months of them becoming due as a result of insufficient funds.

Risks of D&O liability with respect to the filing or occurrence of the insolvency

If the debtor's CEO fails to file an insolvency petition within one month from the date when such obligation arose, he or she may be personally liable for any additional losses creditors suffer as a result, be held subsidiarily liable for any debts incurred by the debtor after the expiry of this period and also incur administrative liability. Further, any subsequently appointed insolvency officer (on his or her own initiative or on the initiative of the creditors, a representative of the employees, a (former) employee or an authorised governmental agency (such as the tax service)) would be entitled to commence an action to recover those additional losses from the relevant CEO.[4]

On the other hand, the debtor may be liable to creditors if an insolvency petition is filed when the debtor was in fact capable of meeting creditors' claims in full or had not taken appropriate steps to contest unfounded claims. If the court finds evidence of fraudulent insolvency (ie, when the debtor is in fact solvent) or premeditated insolvency (ie, insolvency caused by intentional actions or omissions of the debtor, including actions or omissions of third parties controlled or instructed by the debtor or its controlling persons, such as, in certain circumstances, the filing of claims by creditors other than bona fide third-party creditors), the debtor's and the parent company's directors and officers may also be subject to civil, administrative or criminal liability.

Creditor's rights to file for insolvency

Under the Insolvency Law, insolvency proceedings may be initiated by creditors provided that:

- the amount of the claim or claims exceeds 300,000 roubles; and
- the debtor fails to pay its debt when due and these remain unpaid for three months following the due date.[5]

The creditor must supplement its insolvency petition with a valid court decision (or, if the relevant debt arrangement is subject to an arbitration clause, an arbitration award supported by a Russian court enforcement writ with respect to the arbitration award) confirming the amount of debt owed to the creditor.

The procedure is simplified for the Russian credit organisations, which may file an insolvency claim without such a court decision provided that they have published a notification of the intention to file an insolvency petition in the Unified Federal Register of Records of Activities of Legal Entities 15 days prior to filing the insolvency petition.[6]

Bondholder representative, trustee and bondholders as creditors in a Russian insolvency process

Federal Law No. 39-FZ on the Securities Market, dated 22 April 1996, as amended (the Securities Market Law), provides for the right of a Russian representative of bondholders to file claims on behalf of such bondholders to be included into the creditors' register of a Russian bonds issuer. In the absence of the bondholder representative, the courts would accept individual claims from holders of the Russian bonds.

In theory, a trustee of bonds governed by foreign law may file for insolvency of the Russian debtor and could try to participate in such proceedings if insolvency proceedings were initiated by another creditor, though some questions in respect of the process of supporting the claim and whether the trustee is a due security holder may arise. The issues were contested in Russian courts and we are aware of a one-off precedent, where a foreign trustee was successfully included in the creditors' register of a Russian debtor.

General overview of the Russian insolvency proceedings

Stages and general observations

The insolvency proceedings implemented by the court are the same irrespective of who filed for insolvency. The main stages (though not every insolvency process would include all of these, with the exception of the first one) are (i) supervision; (ii) financial rehabilitation; (iii) external management; and (iv) winding-up.

Choice of the procedure following the supervision stage is generally within the creditors' and court's control, with a few exceptions where the debtor (or its shareholders) could potentially intervene. In particular, the debtor and its shareholders may apply to the court for financial rehabilitation (subject to additional security granted by the shareholders or third parties to secure the debtor's obligations) even if the first creditors' meeting decides to proceed with external management or winding-up. In addition, a representative of the debtor's shareholders may participate in the creditors' meetings without any voting rights and has access to the relevant documents of the creditors' meetings, however, may not influence or block decisions of such meetings. The Insolvency Law also provides for the right of the debtor's shareholders and third parties to discharge the creditors' claims in full during the external management and receivership proceedings.

After the first creditors' meeting and at any stage during the insolvency process, the debtor and the creditors can reach an amicable settlement and conclude a settlement agreement terminating the insolvency process.[7]

Each stage of the insolvency process is supervised by an insolvency officer appointed by the court (with varying degrees of control over the debtor) that is chosen by the filing creditor for the supervision stage or randomly if the filing is done by the debtor. At other stages the insolvency officer is chosen and may be replaced by the creditors' meeting.

The Insolvency Law imposes a moratorium on monetary claims and mandatory payments of the debtor that arose prior to the court accepting the insolvency petition. Once the supervision procedure commences, all court proceedings concerning recovery of debts and all execution of proceedings over the debtor's property are suspended. The debtor is prohibited from offsetting any of the creditors' claims if such set-off affects the ranking of the creditors' claims.[8] The supervision procedure also stops the accrual of penalties and other financial sanctions for non-payment of debts.

The moratorium does not extend to current claims, payments in respect of death or physical injury, employees' wages and severance benefits and certain other claims. During a moratorium, the creditors may exercise their rights against the debtor only within the insolvency proceedings as set out by the Insolvency Law. The moratorium is effective until the end of the relevant stage and commences again on the subsequent stage of the insolvency proceedings.

The entire insolvency process usually takes more than two years. As discussed below, there are certain statutory deadlines for various stages of the process, which, however, may be extended by the court, and in practice, the process takes significantly longer than prescribed by law.

Supervision

Provided that the insolvency petition is found to be justified and is accepted by the court, following the hearing on the merits, the court shall initiate the first stage of the insolvency process, supervision, for a term of up to seven months. The main purpose of the supervision is to preserve the debtor's property and analyse its financial status.

The current management and directors of the debtor stay in control subject to certain limitations. In particular, certain transactions (eg, transactions in the debtor's assets exceeding 5 per cent of the balance sheet value, loans, guarantees, right assignments, debt transfer, trust management) require written consent of the insolvency officer, and other transactions are generally prohibited (eg, corporate reorganisations, distributions to shareholders).

During supervision, an insolvency officer analyses the current financial status of the debtor and identifies its creditors. The creditors are, in turn, entitled to file their claims to be included into the register of creditors maintained by the insolvency officer. The management of the debtor must provide the insolvency officer with all information about the business and activities of the debtor.

The first meeting of creditors has to be convened by the insolvency officer no later than 10 days prior to the expiration of the statutory period for supervision to decide upon the next insolvency procedure.

Financial rehabilitation or external management

The creditors may vote for financial rehabilitation (a procedure aimed at discharging the company's debts) or external management (a procedure aimed at restoring the debtor's ability to pay its debts), which may be introduced for a term of up to two years and 18 months, accordingly. Unlike financial rehabilitation, following introduction of the external management, the debtor's management immediately lose control over the debtor, and the external manager appointed by the court performs their functions. Debtor's management continues to be in control in financial rehabilitation proceedings, subject to limitations similar to the ones in the supervision stage.

In practice, the two procedures are rarely introduced in Russian insolvency proceedings[9] because of stringent requirements to the repayment schedule or the plan of external management, or the need to repay the debt in full.

The outcome of the procedures is either termination of the insolvency proceedings if the creditors' claims are satisfied in full; or introduction of either (i) in the case of financial rehabilitation only, external management; or (ii) receivership proceedings, in each case upon the creditors' decision.

Receivership proceedings and winding-up

If, following supervision, the creditors based on the recommendation of the insolvency officer decide that there are no grounds to restore the debtor's solvency, they may petition to the court to declare the debtor bankrupt and open receivership proceedings. Otherwise, receivership proceedings may be introduced following unsuccessful financial rehabilitation or external management.

The receivership proceedings are introduced for a term of up to six months and may be extended by the court for additional six months on the application of an interested party. Upon commencement of receivership proceedings, all of the powers of the debtor's management are terminated and vested in the receivership officer.

In the course of the receivership proceedings, the debtor's assets are sold at an action and the creditors' claims are satisfied with the proceeds from such sale, according to the priority established in the Insolvency Law. The disposal may commence after the inventory of the assets and, where requested by a creditor, valuation thereof, and the creditors' approval of the terms of sale of the property.

The result of the receivership proceedings is that the debtor is wound up and liquidated as a legal entity.

Creditors' claims and ranking

Creditors' register

A creditor may file its claim to be included into the register of creditors within 30 days from commencement of supervision, at any time during the external management or within two months from commencement of the winding-up procedure. Only creditors whose claims were included in the register can exercise their creditors' rights in insolvency, eg, vote for those claims at the creditors' meetings or challenge the actions of the insolvency officer. There is no requirement that all the existing claims have to be registered before the first creditors' meeting may happen, thus, the onus is on a creditor to ensure that its claim is duly registered to enable it to influence the process. To be included on the register, the creditor has to prove the legality and validity of its claims, whereas the receiver or other creditors may challenge such claims.

Secured claims

Secured claims (ie, claims that benefit from pledges under Russian law) are dealt with in the way set out in the Insolvency Law. As a general rule, the secured creditors' right to enforce security is suspended in supervision, financial rehabilitation and external management, and is terminated in the receivership proceedings, and the assets subject to security are sold in an auction with sale proceeds applied as per below. A secured creditor may, nevertheless, upon application to the relevant court considering the insolvency case, seek enforcement of security at the stage of financial rehabilitation and external management, unless the debtor proves that enforcement of security will make it impossible to restore its solvency.

Secured assets are sold in insolvency in accordance with the same procedure as the unsecured assets, with a few exceptions. In particular, a secured creditor has significant influence over the disposal process and may in certain cases appropriate the secured assets.

Secured creditors have a first-priority right to settle their claims out of 70 per cent of the proceeds from a sale of secured property. The remaining 20 per cent of the proceeds are used to settle the claims of first-priority and second-priority creditors to the extent the debtor's property is insufficient to satisfy such claims, and 10 per cent of the proceeds are used for payment of court and insolvency officers' fees and fees to persons engaged by the insolvency officer.[10] Any claims of a secured creditor that remain outstanding following enforcement of security are included in the third category of claims.

The list of issues on which secured creditors are entitled to vote has been expanded in recent years to include, among others, the right to vote on the appointment and dismissal of the insolvency officer and the termination of the receivership process and the transfer to external management. Nonetheless, the secured creditors' rights with respect to voting at the creditors' meeting remain limited. In particular, a secured creditor is entitled to vote only in the course of the following stages of the insolvency proceedings: (i) supervision; and (ii) financial rehabilitation and external management, where the creditor waived its right to exercise claims as a secured creditor or where a court refused to satisfy such creditor's motion to enforce the pledge in the course of the respective stage of the insolvency proceedings. Secured creditors generally do not vote in the winding-up procedure. Unanimous consent of all secured creditors is required to approve a settlement agreement.

Statutory ranking

The creditors' claims must be paid in accordance with the order of priority set out in the Insolvency Law. The priority for claims that arose prior to the commencement of the insolvency proceedings is as follows:

- first, payments in respect of death or physical injury;
- second, employees' wages and severance benefits, as well as payment of fees to copyright owners of intellectual property; and
- third, all other claims.

No claims can be paid until all claims of higher priority have been paid in full. In the case of insufficiency of assets to satisfy the creditors of the same priority, the claims of equal priority are paid on a pro rata basis. An intercreditor arrangement may not change the priority of claims of (a group of) creditors and thus would be unenforceable in a Russian debtor insolvency;[11] there is, however, no clarity as to whether the same would apply to the contractual ranking or subordination of the same ranking credtor claims.

Current claims

Current claims are the claims that arise after the court accepts the insolvency petition. Current claims are to be paid before claims that arose prior to the petition being accepted and such claims are not included on the creditors' register.

The Insolvency Law provides for the following priority for current claims:

- first, court and insolvency officers' fees and the like;
- second, employees' wages (for the period after the insolvency commenced) and severance payments;
- third, fees of other persons engaged by the insolvency officer, such as debt recovery agents;
- fourth, maintenance charges (utility payments, payments for electricity and the like); and
- fifth, all other claims.

Though there is no direct equivalent of a debtor-in-possession (DIP) financing, any financing provided to the debtor during the insolvency process will be treated as a current claim and will be satisfied before the claims arising prior to the acceptance of the petition. At the same time, current claims do not benefit from prior ranking security status and will be satisfied after the secured creditors' claims, which may practically nullify the debtor's ability to raise such financing.

Invalidation of debtor's transactions

The Insolvency Law provides for certain specific grounds for challenging transactions entered into by the debtor within a certain clawback period prior to commencement of the insolvency proceedings or after the commencement thereof. An insolvency officer, an external manager acting on his or her own initiative or on the initiative of the creditors, or bankruptcy creditors with substantial claims (generally exceeding 10 per cent of all the creditors' claims included into the register) may challenge certain transactions, in particular:

- transactions at an undervalue, if entered into within one year before the insolvency petition is accepted or at any time thereafter;
- transactions defrauding the creditors, if entered into within three years before the insolvency petition is accepted or at any time thereafter; and
- transactions at a preference, if entered into within one month (subject to potential increase to six months depending on the circumstances of the transaction) before the insolvency petition is accepted or at any time thereafter.

The invalidation claims are reviewed within the insolvency proceedings. If a transaction is invalidated, all the assets and funds transferred by the debtor (or on its behalf) thereunder shall be returned to the insolvency estate.

Alternatives to insolvency

Consensual restructurings: key issues

Outside of the insolvency legislation, Russian law contains no special regulations that would govern debt restructuring or contracts implementing it.

The basic principle set out in the Civil Code of the Russian Federation (Part One) No. 51-FZ dated 30 November 1994 (the Civil Code) is that agreements must be kept and the debtor must perform its obligations in compliance with the terms of an agreement, thus any amendments can generally be made only with the consent of all parties. Hence, an overarching restructuring with all (or a substantial part) of the creditors could be hard to achieve given the opposing creditors' interests and the weakness of the debtor's liquidity position and financial state more gewnerally.

At the same time, there are certain tools available for Russian debtors that allow for restructuring of obligations with a number of creditors with lower creditors' approval thresholds. Such tools may include, among others, Chapter 11 under the US Bankruptcy Code, an English law-governed scheme of arrangement where the debt documents are governed by English law, and closer to home, the use of statutory collective action clauses under the Russian law-governed bonds.

US Chapter 11

Chapter 11 of the US Bankruptcy Code provides a robust framework to facilitate the orderly restructuring of a debtor's affairs.

As a threshold matter, in order to be eligible for Chapter 11, a debtor need not be US-based or even maintain operations in the US; the Code merely requires 'a domicile, a place of business, or property in the US'. Courts have interpreted this standard broadly – particularly with respect to property, which has been held to include bank accounts and New York law-governed debt.

Chapter 11 offers a number of distinctive advantages for debtors as well as creditors:

- it offers significant optionality with respect to timing; for instance, if speed is the priority, a 'pre-packaged' plan can become effective in as little as 45–60 days;
- it allows management to remain in control of the debtor's operations during the process – which, for some companies, may be operationally or otherwise crucial;
- it facilitates financing options during the bankruptcy process through DIP financing, which, with Bankruptcy Court approval, provides DIP lenders structural priority in exchange for the risk; and
- it is a well-established framework that offers all stakeholders a significant amount of clarity regarding the procedural dynamics, as well as their relative positions and corresponding expectations.[12]

There have not been many examples of Russian companies or businesses using Chapter 11 (the most prominent being CEDC and Roust Corporation), however, the opportunity, provided the relevant connection is established, is there.

English law schemes of arrangement

Since the beginning of the financial crisis in 2008, there has been an upsurge in the use of English law schemes of arrangement in cross-border debt restructurings, including by businesses located in Russia (see, eg, Gallery Media, Rusal, Russian Standard). A scheme of arrangement is a court-led process to implement a 'compromise or arrangement' between the company and its creditors or members (or any class of them), which, if approved by the requisite majority of its creditors and sanctioned by the court, is binding upon such creditors and members. If 75 per cent of creditors or class of creditors by value and majority by number approve a scheme, the scheme binds the remaining creditors or class of creditors irrespective of whether they voted in favour or even participated in the voting.

The scheme's key advantage is that the companies could implement a restructuring solution at a lower approval threshold than may otherwise apply pursuant to the terms of the underlying debt documents or required by law.

There is no Russian law equivalent to an English law scheme of arrangement. The closest approximation to a scheme is article 451 of the Civil Code, which provides that a party can ask the Russian court to amend a contract, but only if such amendment is required as a result of a material change of circumstances. The procedure set out in article 451 of the Civil Code is limited in two material ways: it is available only in relation to contracts governed by Russian law and the bar set for what constitutes a material change of circumstances is very high. Other tools available under the Russian law would require consent of all creditors to proceed with the restructuring which makes the availability of a scheme to Russian companies all the more appealing. Coupled with the English court's increasing willingness to sanction schemes for foreign companies, it is no surprise that schemes are emerging as the favoured tool of choice for those engaged in complex cross-border restructurings.

The jurisdiction of the English court to sanction a scheme in respect of a foreign company depends on whether the company has 'sufficient connection' with England. One way to establish connection is by moving the scheme company's centre of main interests (COMI) to England. This may include carrying out all the company's functions from its sole office in London, arranging for the day-to-day management of the company to be conducted by a London-based company, holding meetings of the board of directors in London and holding its cash in a London-based bank account. While having an English COMI used to be the way to establish a connection, there is now an established body of court decisions showing that this is no longer a prerequisite: if English law is the governing law of the relevant debt documents, this alone is sufficient to create a link. A scheme should also be recognisable in Russia on the basis of private international law principles and despite the lack of any bilateral treaties allowing for an English court decision to be recognised in Russia.[13]

Rouble bond restructurings

The Russian market of corporate bonds has been rapidly evolving over the years. The number of issuers of corporate bonds increased and the credit

quality of the traded debt instruments, by contrast, decreased, which in turn boosted the risks of potential defaults under the bonds. To address concerns associated with the increased risks, the legislators have introduced several of the amendments to the Securities Market Law, which became effective in 2014 and which were aimed at enhancing the bondholder protection. The amendments introduced several universally acknowledged tools that could allow holders of the Russian law-governed debt instruments to effectively enable easier coordination and protect their rights, including the concept of the general meeting of creditors with the ability to take collective action and that of the bondholder representative.[14]

Novelties included a statutory collective action clause allowing a 75 per cent majority of bondholders to agree to a debt restructuring that is legally binding on all bondholders. A bigger majority of 90 per cent of bondholders would be necessary to waive the bondholders' right to file a claim with the court, including the rights to file an insolvency petition.

The amendments further introduced a concept of a bondholder representative. The appointment of the bondholder representative is mandatory where the bonds are:

- secured (excluding bonds guaranteed by the state or municipality) and placed by way of open subscription or by way of closed subscription among more than 500 subscribers (excluding qualified investors); or
- traded on an exchange (excluding bonds guaranteed by the state or municipality or bonds intended for qualified investors).

If the bondholder representative has not been appointed at the stage of placement of the bonds or in fact with respect to any bonds in circulation at the time of amendments becoming effective, the issuer may appoint a bondholder representative only with approval of the bondholder meeting. The meeting of bondholders may also at any time change a bondholder representative elected by the issuer or elect a representative where none was appointed.

A bondholder representative could play a key role in facilitating the restructuring process, eg, it could, if the bondholders meeting grants it with such power with a 75 per cent majority vote, execute amendments to the bond issuance documentation.

The bondholder representative role has been clearly inspired by, though is not identical to that of, a trustee under the foreign law governed bonds, and duties of the bondholder representative include:

- executing decisions adopted by the meeting of bondholders;
- monitoring the issuer's activities and controlling performance of the issuer's obligations under the bonds;
- identifying the possible infringement of the bondholders' rights and taking measures to protect such rights;
- timely communicating necessary information to bondholders;
- consolidating a position should a dispute arise, initiating court proceedings on behalf of the bondholders (including filing of an insolvency petition against the issuer or the person that provided security for the bonds) and taking any other procedural steps; and
- if the bonds are secured, exercising pledgees', beneficiaries' or suretyship creditors' rights.

As a general rule, the bondholders have no independent power to act on the matters that under the Securities Market Law are reserved to the bondholder representative. However, the bondholders may file individual claims within a month from the occurrence of the event that gave rise to the relevant claim, if the bondholder representative failed to do so.

Notes

1 Unified Federal Register of Bankruptcy Information. Mode of access: http://bankrot.fedresurs.ru.

2 Draft Federal Law 'On amending the Federal Law "On insolvency (bankruptcy)" and certain legislative acts of the Russian Federation with regard to the restructuring procedure in bankruptcies of legal persons . Mode of access: www.consultant.ru.

3 The practice of the Russian courts appears to be to analyse the two tests together, paying significant attention to any current unpaid debts and the relevant company's ability to pay them, its accounts payable and accounts receivable and its profit and loss statements.

4 Starting from 1 July 2017, certain amendments on D&O liability will take effect. Those amendments, among others, extend the limitation period for the filing of D&O liability claims, detail relevant court procedural rules and expand the number of plaintiffs entitled to file certain D&O liability claims.

5 We note that for certain types of debtors subject to the special insolvency regimes (eg, natural monopolies, credit organisations, insurance companies) the above thresholds may be significantly different.

6 The simplified procedure may not be available with regard to certain types of debtors subject to the special regime, eg, natural monopolies.

7 The settlement agreement is subject to approval by a simple majority of creditors plus unanimous consent of all secured creditors (ie, whose debt is secured by Russian pledges) and shall be affirmed by the court. The settlement agreement is a Russian law-governed document and shall not be regarded as a substitution for a scheme or other cramdown procedures available outside of Russia (for instance, whether or not such settlement agreement would work with respect to foreign law-governed agreements remains an issue).

8 The Insolvency Law makes an exception with regard to netting under, among others, the repo, derivative and other transactions entered into under master agreements consummated in the financial markets, in particular the set-off ban applies only to certain obligations thereunder providing for netting across all transactions under the relevant master agreement.

9 Although external management is introduced more frequently than financial rehabilitation, the number of cases going into external management is still insignificant, eg, at the end of 2015, 5,972 cases were in supervision, 47 in financial rehabilitation and 519 in external management (See the Report on the Work of Arbitrazh Courts of the Subjects of the Russian Federation with regard to Bankruptcy Cases for the year 2015).

10 For secured creditors under credit agreements the percentage of the proceeds from which they can satisfy their claims increases to 80 per cent. Accordingly, 15 per cent of the proceeds are used to settle the claims of first and second priority; and 5 per cent of the proceeds are used for payment of court and insolvency officers' fees and fees to persons engaged by the insolvency officer.

11 Resolution of the Plenum of the Supreme Court of the Russian Federation No. 54 dated 22 November 2016.

12 Carlo de Vito Piscicelli, David Billington 'Restructuring Emerging Markets High Yield Bonds: An Issuer's Roadmap'. Emerging Markets Restructuring Journal, Issue No. 2. Fall 2016. Page 60.

13 Polina Lyadnova, Sui-Jim Ho 'Untying the Gordian Knot: Restructuring Russian and CIS Companies Using English Law Schemes of Arrangement'. Emerging Markets Restructuring Journal, Issue No. 1 Spring 2016. Pages 19–25. See also Cleary Gottlieb Alert Memorandum 'Schemes of Arrangement For Foreign Companies: Update and Overview', 10 October 2016. Mode of access: www.clearygottlieb.com; Polina Lyadnova, Sui-Jim Ho 'Parallel Schemes of Arrangement'. International Corporate Rescue, Vol. 12, Issue 1, 2016.

14 Explanatory Note to the Draft Federal Law on 'Amendment to the Federal Law "On the Securities Market" (with regard to adoption of mechanisms aimed at protection of the bondholders' rights)'. Mode of access: www.consultant.ru.

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Cleary Gottlieb Steen & Hamilton LLP has 16 offices in major financial centres around the world and is a single, integrated global partnership with more than 1,200 lawyers. We are recognised as a leading international law firm that has helped to shape the globalisation of the legal profession for more than 70 years.

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The firm produces the *Emerging Markets Restructuring Journal*, to inform clients about important new developments and issues in this area.