

Russia: Recent developments in the bankruptcy of banks

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This article provides a brief outline of the particularities of insolvency proceedings in relation to banks and credit organisations in Russia, based on the recent amendments to the insolvency law. The authors describe the main bankruptcy stages in relation to credit organisations (out-of-court procedures, initiation of bankruptcy and liquidation) and their features. The article also analyses the role of Russia's Central Bank and the Deposit Insurance Agency in this process and how new legislation has broadened their functions.

The crisis of the entire financial sector of Russia caused a wave of bankruptcies among banks and other credit organisations. As a result, in the past two years, at least 200 Russian banks have ceased their activity through liquidation and bankruptcy proceedings.¹

Until December 2014, the insolvency of Russian banks had been regulated by the Federal Law No 40-FZ of 25 February 1999 'On Insolvency (Bankruptcy) of Credit Organisations'. On 22 December 2014, this Federal Law has lost its effect owing to the adoption of amendments into the Federal Law 'On Insolvency (Bankruptcy)' No 127-FZ, dated 26 October 2002 (the 'Insolvency Law'), which is now the main Russian bill establishing the specifics of the grounds and procedure for declaring a credit organisation insolvent and of its liquidation by way of bankruptcy proceedings.

This article provides a brief outline of the particularities of insolvency proceedings in relation to credit organisations in Russia based on the recent amendments to the Insolvency Law.

Out-of-court procedures

The Insolvency Law provides for a number of measures aimed at preventing the bankruptcy of credit organisations before applying to the court and involving, if necessary, the Deposit Insurance Agency (the 'Agency').

Recent amendments extended the list of out-of-court measures, which now comprises:

- financial rehabilitation of credit organisations;
- appointment of an interim administration to manage a credit organisation under risk of bankruptcy; and
- reorganisation of a credit organisation.

This list is not exhaustive, and allows applying other measures in order to prevent the bankruptcy of banks whose financial position is unstable.

The financial rehabilitation may be performed by founders (shareholders) of a bank, as well as third persons. They may, in particular, provide financial assistance to the bank, change the structure of its assets and liabilities, modify organisational corporate structure of the bank and/or take measures to put the amount of the bank's authorised capital in compliance with the amount of its assets.

In practice, appointment of an interim administration is the most frequently used out-of-court measure. It can be initiated by the Central Bank of Russia (CBR) without revoking the banking licence. During this stage, the CBR supervises the bank's activities, in particular by suspending or restricting the authority of the bank's management.

The CBR is entitled to implement a moratorium for up to three months on the settlement of the claims of credit organisation's creditors. Additionally, the interim administration of a credit organisation has the right to challenge any transaction executed within a three-year period from the date of its appointment. The interim administration stage can last up to six months.

The Federal Law No 177-FZ of 23 December 2003 'On Insurance of the Deposits of the Physical Persons in the Banks of the Russian Federation' (as amended) obliges Russian banks operating with deposits of individuals to join the system of deposits insurance controlled by the Agency (the 'System'). Under the Insolvency Law, the Agency acts as a collective liquidator of banks that have joined the

System. The recent amendments to the Insolvency Law empowered the Agency with more broad functions, such as the right to reduce the amount of the authorised capital of a bank down to the amount of its own assets (capital) or, if the given value is negative, down to one Russian rouble. Moreover, the Agency has obtained the right to adopt a decision on issuing additional shares of a bank in trouble as well as to introduce amendments into the articles of association of such a bank. In such a way the Agency can effectively carry out activities for the prevention of bank failures.

Initiating insolvency proceedings

An insolvency petition can be accepted by a state commercial court only after the credit institution's banking licence has been revoked by the CBR.

A bank is deemed unable to satisfy creditors' claims if the appropriate duties are not discharged by it within 14 days after their maturity date and/or the cost of the credit organisation's property is insufficient for discharging the obligations thereof with respect to creditors and/or the duty of making mandatory payments.

Based on the recent amendments to the Insolvency Law, the minimum amount of outstanding creditors' claims admissible as a grounds to initiate a legal entity's insolvency proceedings has been raised from RUB 100,000 to RUB 300,000.²

The state commercial court may initiate actions to announce the credit organisation bankrupt by application of the following persons:

- credit organisation – the debtor;
- bankruptcy trustee;
- bankruptcy creditors;
- competent authorities named in the Law on Bankruptcy; and

- the CBR as a body of banking regulation and supervision.

In accordance with the Insolvency Law, bankruptcy cases are to be considered by the state commercial court within a period not exceeding two months from the date of filing with such a court of an application to recognise a bank as bankrupt. This period includes timing to prepare the case for a trial and to issue a respective decision.

Liquidation of credit organisation

It is important to note that the Insolvency Law provides for liquidation (*'konkursnoye proizvodstvo'*) as the only insolvency procedure applicable to the banks. All other procedures [supervision (*'nablyudeniye'*), financial rehabilitation (*'finansovoe ozdorovleniye'*) and external administration (*'vneshneye upravleniye'*)] do not apply to credit organisations.

During the liquidation stage, the authority of a bank's management is vested into the arbitration manager. As we have mentioned above, if a credit organisation is licensed to take an individual's deposit, the Agency will mandatorily take the place of the arbitration manager.

The recent amendments to the Insolvency Law made it possible to transfer liabilities of a bank in trouble to other banks. Such procedures may be carried out by the Agency as soon as the troubled bank's licence has been revoked in obligatory compliance with the rule of priority creditors whose obligations are transferred to another bank. In such ways, the Agency protects the interests of the clients of the troubled bank.

Notes

- 1 Full list of liquidated banks: www.banki.ru/banks/memory.
- 2 Approximately US\$1,300 to US\$3,900.

About the authors

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