BANKRUPTCY UNDER THE NEW RULES

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Essential amendments to the Bankruptcy Law enacted

Starting from 29 January 2015, the rules of the Federal Law "On insolvency (bankruptcy)" shall be applied to the bankruptcy procedures as amended by the Federal Law of 29 December 2014 No. 482-FZ. It is noteworthy that some amendments are going to change substantially the practice on insolvency proceedings. In particular, the provisions were revised concerning the right to apply to court for bankruptcy, the rules on appointing the interim receiver in case of the debtor's bankruptcy, the pledge lenders' rights. In broader terms, the law is restricting the debtors' rights for the creditors' benefit, special privilege being extended to some creditors against the others. The following is the spotlight of the most essential amendments made by the said Federal Law.

Banks entitled to initiate bankruptcy with no judicial ruling

One of the key amendments is to entitle the banks to apply to arbitration court to adjudge the debtor bankrupt without any final and binding judicial ruling to recover the money from the debtor. Therefore, the banks obtain special privilege against other bankruptcy creditors, who shall first obtain the judicial ruling on the debt recovery in order to be entitled to address to court with a bankruptcy petition.

Under the new rules, the lending institution can address to court with a bankruptcy petition if the debtor fail to meet its liabilities within three (3) months, provided that a prior notice of such intention is given to the debtor and all the creditors known to the applicant. Up to 1 July 2015, a written notice shall be deemed proper if given not later than thirty (30) calendar days before taking legal action. Starting 1 July (or earlier if there is technical capacity), a notice is considered proper if published no less than fifteen (15) calendar days in the Unified Federal Register of Economic Events of the Legal Entities.

It appears that the banks' duty to notify all the debtor's creditors they are aware of is not an effective method to secure the creditors' interests. It can be rather cumbersome to prove the bank's awareness of some creditors in practical terms.

New rules for the debtor to apply with a bankruptcy petition

The debtor is losing its right to choose independently the interim trustee or the self-regulatory organization from which it should be appointed. The procedure for determining the self-regulatory organization (by random selection) shall be established by the authorized governmental agency1. Before that, such self-regulatory organization shall be determined by the court while the application filed by the debtor.

Moreover, the debtor is obliged to notify in advance all the creditors known to it of its intention to apply for bankruptcy. Such notice shall be given in the same time and manner as established for the notice to be given by the lending institution of its intention to file a petition for bankruptcy of its debtor.

As a result, one of the means for the debtor to retain control over the bankruptcy procedure, that is, initiating the bankruptcy procedure by the debtor itself, is excluded. The remaining one, which is the controlled bankruptcy upon the amicable creditor's application, is undoubtedly behind the first one in efficiency as the final and binding judicial ruling on the debt recovery is required in order to file such bankruptcy application.

The amount of liabilities enabling to initiate the bankruptcy increased

The amount of liabilities in order to apply with a bankruptcy petition of a legal entity was increased from 100'000 to 300'000 Rubles, while for bankruptcy of strategic

[1] No term is stated in the Law for establishing such procedure.

enterprises and organizations or natural monopolies it was increased from 500'000 to 1'000'000 Rubles.

Ancillary rights for pledge lenders

Bankruptcy creditors whose rights are secured with the pledge over the debtor's property (pledge lenders) obtained the right to vote on the following issues: to choose the receiving trustee or the self-regulated organization from members of which he is appointed; to address to court with a petition to suspend the insolvency receiver; to cease the bankruptcy administration and transit to receivership. Beforehand, they used the right to vote solely in the course of the supervision procedure or during financial rehabilitation and receivership in case of abandonment of the pledged property. In a point of fact, pledge lenders were disabled to substantially affect the procedure unless their claims were put on the list of creditors by the date of the first creditors' meeting, as well as in case of bankruptcy of the debtor to be dissolved. The pledge was supposed to be the adequate guarantee securing their interests, while now they are able to vote on the most important issues.

If the debtor's assets are replaced (one or more joint stock companies established on the base of the debtor's property), the pledged property of the pledge lenders shall be replaced under the new rules — the pledge of the right to the shares in the new joint stock companies occurs instead of the pledge of the debtor's property.

In addition to it, pledge lenders obtained the right to define the starting purchase price for the pledged item, the procedure and terms for the bidding process, the procedure and terms for safekeeping the pledged item. Only if there are any disputes and differences with the insolvency receiver or other creditors, they shall be subject to settlement by court.

Now, a pledge lender is entitled to withold the pledged item in the course of the tender on sale of the debtor's property by means of public offering in case there are no bids, which is a supplementary remedy to secure its interests.

Other changes

It is also important to accentuate the following changes: vesting the bankruptcy creditors with the right to declare omission of the limitation period during consideration of the reasonability of the other creditors' claims; vesting the insolvency receiver with the right to request more information of the debtor and its controlling parties and imposing the duty to provide such information on the wider range of persons. The Law shall also establish the time limit for the head of the company to notify its owners of occurrence of the signs of bankruptcy (10 days) and the liability for non-observance of this obligation (fine ranging from 25'000 to 50'000 Rubles or disqualification for the term from 6 months up to 2 years). The administrative liability for wrongdoings in bankruptcy has been increased. The new requirements have been established as to the report of the interim receiver (which shall contain the expert opinion of the presence or absence of the grounds for contesting the debtor's transactions) as well as some other amendments have been made.

Impact of the amendments on the current bankruptcy procedures

The provisions of the Federal Law "On insolvency (bankruptcy)" are applied to the bankruptcy proceedings initiated prior to enactment of the amendments as in force by the time when the current procedure is finalized (supervision, financial rehabilitation, receivership, bankruptcy administration, voluntary settlement), while the next procedure will be subject to the new rules. The exception to this shall be the rules ex-

panding the rights of the insolvency receivers to request information of the debtor's acts, which are applicable to the pending bankruptcy procedures as well.

Consequently, the amendments to the bankruptcy laws are mostly designated to protect the creditor's interests, banks in the first place. They will obtain from the legislator an effective instrument of the debt management expecting the non-payment crisis. In this context, one should expect the banking sector to apply more extensively the bankruptcy procedures when working with troubled borrowers.

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