

THREE'S A CHARM? RUSSIA'S THIRD BANKRUPTCY LAW IN TEN YEARS!

Like the rest of the world's new democracies and emerging market economies, Russia is trying to develop a body of new law to promote human rights and foster economic growth. And, to a significant degree, it *is* succeeding.

Among the many new—and to them, novel—property, commercial and business laws Russia is adopting a third version of its home-grown bankruptcy law. After the confusing and ineffective first bankruptcy law of 1992, and its much improved successor of 1998, “Bankruptcy à la Russé 2002” is a much better version, still. The new Russian bankruptcy law—about to be approved by the Duma—tries to remedy the most glaring problems of the existing bankruptcy system. Some of those remedies include the following:

- The new law will eliminate the far-too-easy and automatic procedure for a single creditor initiating an involuntary bankruptcy against a solvent debtor. Today, a single creditor owed about \$1,600, which is 90 days overdue, can force a company into bankruptcy. And, it can do so no matter how large or small the company.

The streamlined, “drive-through,” simplified creditors’ involuntary petition process extant today, and sometimes pliant bankruptcy judges, are a formula for great mischief. Since 90% of all business bankruptcy cases in Russia today are creditor or government initiated—and not voluntary cases—the problem is huge.

After several years of watching serious creditor abuse of the bankruptcy system, which allows creditors or competitors to hammer debtors into submission, or effectuate the involuntary takeover of a debtor, Russian lawmakers will make it more difficult for creditors to file involuntary cases.

- False or fraudulent, or what the Russians refer to as “fictive bankruptcy,” by business owners or its management is too prevalent and widespread. These contrived bankruptcy practices—whereby majority owners and/or directors and officers manipulate assets or income and expenses, or simply cook the books—allow the perpetrators to takeover the company on the cheap. It also deprives legitimate creditors, workers and others of their rights. Like the above problem, these abuses discredit the courts and the system immeasurably.
- Trustees (or “Arbitration Managers”) are to be more stringently screened for competence, ability and higher ethical standards. Transferring the organization and oversight of trustees to self-policing, non-governmental associations, and establishing new insurance or bonding requirements, are the tools by which the Russians intend to accomplish this task. It’s expected to improve the quality, ethics and competence of crisis managers heretofore often seen as too inept, too inexperienced, too unprofessional, and/or too greedy.
- Judges will be given more time to consider more complex issues and additional time to make the more difficult, consequential decisions.
- The new law will expand and guarantee the right of a debtor to contest an involuntary petition and to appeal trial court decisions which, heretofore, have sometimes been disastrous—and too often not appealable. Indeed, the Constitutional Court ruled last year that the inability to appeal certain consequential decisions made by the Commercial Court was simply unconstitutional.

- The pending legislation might also give secured creditors *real* security. Now, “secured creditors” take subject to and after higher priority creditors such as those with personal injury claims, wage claims [no limit], trademark claims. Secured creditors now have no right to any dedicated or specific collateral (i.e., they can take only from the debtor’s general assets/proceeds of sale in the estate . . . in the unlikely event that there is one after costs of bankruptcy case administration and higher priorities).

While some might scoff at the Russians’ bankruptcy law—or more specifically, its implementation—it is basically sound and workable. Yes, it needs revision and, yes, it needs even more so even-handed, businesslike application, but the Russians have only had a bankruptcy law for ten years.

We, in the United States, are on our fourth bankruptcy law in over 100 years, the last of which has undergone at least three major overhauls, and we’re facing still more changes in the near future. By comparison, the Russians are actually doing quite well!

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