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MINSK LEGAL FORUM

22-24 October 2015
Renaissance Hotel, Minsk, Belarus

**Session "Importance of Bankruptcy-Related Legal Services During Economic Crisis"**

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Ladies and Gentlemen,

As legal support to insolvency cases is currently of utmost importance for the national markets of our countries, it would be very useful for us to exchange our experience, views and opinions concerning this subject matter.

More than ever, this sector of legal practice is today the most profitable for law firms due to the large size of the claims involved and the diversity of the matters considered. In such cases, the entire business of a law firm's client or its contractor is usually put at stake. For law firms involved in such large projects, the most important competitive characteristics include quality, prompt performance and team integration – that is, the considerations that must be of our primary concern in any event. On the other hand, for the Russian economy, bankruptcy regulation is a critical – if not crucial – component of our efforts to withstand the economic decline and crisis as long as the financial sector, which is a vital artery of our economy, remains heavily affected by the crisis and sanctions.

We now see withdrawals of banking licences almost every week, and it inevitably causes a domino effect. It hits hard not only depositors, whose rebellious voice is probably the loudest one among all those affected, but, more importantly, those affiliated investment entities and financial institutions involved in live projects.

The very concept of bankruptcy is intended to promptly and fairly re-establish broken economic ties and to contribute, as far as possible, to a painless elimination of disproportions. And if this tool does not work properly, then it may lead, dare I say it, to a total collapse.

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In Russia, the bankruptcy law has been completely amended and restated several times. During the post-Soviet era, there was a need to prevent, to the maximum extent possible, large state-owned enterprises from being shipwrecked and having to dismiss their numerous employees. Pro-debtor oriented, that law allowed those huge non-privatised entities to keep afloat despite all their debts as long as they produced acceptable balance sheets to avoid any external interference, even when they drew up such sheets on their own.

After the aggressive reforms carried out in the 1990s, the bankruptcy law was restated to incorporate just the opposite, absolutely pro-creditor wordings, with the debtor immediately going bust and his assets being sold out in the event that he fails to repay a financial debt of only RUR 500,000, if I recall it properly. As a result, the economic landscape was completely altered by that law within just two or three years.

Further amendments to the bankruptcy law in Russia were all aimed at establishing a strong link between cheap Western loans flowing through the banking system into the mushrooming national economy, on the one hand, and the so-called “investment entities,” on the other hand. The law was restated again to make investments safer, with investors having to bear no subsidiary liability for their unsuccessful operations in the Russian Federation.

Since then, we have seen dramatic changes. Huge amendments were made to the bankruptcy law in July 2013 to carry out a large-scale reform requiring the disclosure of various control chains and ownership structures used by certain persons participating in the projects. The key change was the imposition of subsidiary liability for unsuccessful projects on all of the persons involved, including any individuals such as, in particular, exiled Russian tycoons. At its extreme, subsidiary liability infers that sanctions may be imposed on the ultimate business owners who actually control their relevant financial groups but have no signature right and hold no office with any company. The new law was adopted as part of the reform generally aimed at making business activities fully disclosable and transparent.

Another major legislative innovation aimed at considerably adjusting the bankruptcy mechanism was introduced by amending the definition of “damage” as a fundamental concept of civil law. Contrary to a common misconception, damage constitutes a universal category extending far beyond contract law. It can be claimed whenever a harm is caused, a contract breached, intellectual property misappropriated, etc. What is most important is that damages were previously only awarded if the following five conditions were met: illegality, causal relationship, defaulting party’s fault, existence of damage, and proof of its extent. Courts almost consistently required sufferers claiming any damages to document, reliably and clearly, the extent of such damages, the causal relationship, and the illegality of the causer’s actions. Now, and that is what really counts, you have to prove neither your damage nor its extent – after having found that an offence had been committed, the court must independently determine the extent of the damage caused by such offence based on the principles of reasonability and equity. Yet, the bankruptcy law was supplemented by a clause presuming the existence of causal relationship in certain cases. That amendment *per se* opens up vast opportunities for creditors. For example, the law provides that where a claim is made against a

controlling person, such person should not be deprived of the possibility to prove the lack of any causal relationship between his actions and the debtor's bankruptcy.

This formula tends to shift the focus in presenting the so-called *corpus delicti* to the court as the claimant is only required to name the offender and to prove the harm caused as such.

Naturally, a lot of cases occurred where bankruptcy-related matters were to be addressed in a new way. Of course, no case law may have been established during a short period of time after the last amendments were introduced to the bankruptcy law, but some drawbacks have already shown up – quite expectedly, though. These drawbacks are rooted in the old-time defects of the Russian legal and court systems, such as poor historical performance by the national law-enforcement authorities despite the fact that they have substantial experience applying those provisions of law concerning fraud.

Police appears to be absolutely inadequate in responding to the obvious events of juggling with documents and manipulation of evidence on the part of the debtor, which take place in each and every bankruptcy case – first of all, and almost inevitably, the concoction or falsification of some large competing claims allegedly raised against the debtor by his partners with a view to "eroding" the chances for the true creditors to get compensation out of his assets or earnings. As a result, a "weed" of the so-called "grey" legal services and controlled insolvency receivers has emerged and germinated, preventing those creditors who are really able to prolong the life of an important production chain or co-operative tie from "inheriting" the debtor's business by legally getting control over it. In Russia, bankruptcy in its latest phase usually means asset stripping and termination of any further business. No doubt, this major drawback of bankruptcy will be eliminated in the future, with legal entities getting access to a new much-promising field for applying their legal experience and expertise, thereby contributing to the optimum functioning of bankruptcy as a tool for regulating economic activities during the time of the crisis.

Thank you for your attention.