

neither check nor require domain name applicants to prove that they have a legitimate right to use the names they seek to register. The adopted text of Part IV of the *Civil Code* retains a reference to domain names, prohibiting registration of trademarks that are identical to domain names, rights into which have arisen prior to the priority date of the filed trademark application. However, Part IV of the *Civil Code* lacks any criteria of recognizing identity between a trademark and a domain name. Neither does it contain a legal definition of a domain name. Pursuant to Part IV of the *Civil Code*, no one may use, without the permission of the trademark owner, designations that are confusingly similar to the trademark in respect of goods and services, for individualization of which the trademark was registered, or similar goods. Part IV of the *Civil Code* specifies some acceptable forms of use of a trademark by its owner. The exclusive right into a trademark may be exercised, in particular, by application of the trademark in the Internet, including its application in domain names and other means of addressing. There is no procedure similar to UDRP in Russia, therefore, all domain name disputes that are not amicably resolved need to be taken either to a court of general jurisdiction (when the defendant is an individual) or an arbitrazh (state commercial) court (when the defendant is a legal entity). There is a trend to submit all domain name disputes to arbitrazh courts, regardless of whether the defendant is an individual or a legal entity. While this is not based on any written legislation, it happens more and more often.

14. BANKRUPTCY

14.1 Overview

Russia has had a series of bankruptcy regulations and laws in place since 1992, and has most recently passed two sets of amendments, the first in December 2008 and the second in April 2009, to the current bankruptcy law since the inception of the financial crisis. The Russian bankruptcy law is comprehensive and provides several variants for resolving a company's insolvency, including reorganization and rehabilitation of an insolvent company as an alternative to liquidation of its assets.

However in practice bankruptcy is not yet widely viewed as a reliable and transparent process for resolving debtor-creditor issues. Indeed, it has been widely perceived as a process used by debtors to transfer assets and avoid creditors, hence the concept of "sham bankruptcy" is addressed in the legislation.

The recent amendments to the law have been aimed at strengthening the role and regulation of bankruptcy administrators, and at broadening the scope of suspicious debtor transactions occurring before bankruptcy that can be reversed by creditors on application to the court.

14.2 Legislation

Bankruptcy and restructuring in Russia is governed by Part I of the Civil Code of the Russian Federation (Article 64) and by the Federal Law on Insolvency (Bankruptcy) of October 26, 2002, including subsequent amendments. This does not apply to insolvent banks and other financial institutions, which are governed under separate legislation. In addition, there are extensive rules and regulations adopted by the government, the Ministry of Economic Development and various state bodies, in addition to court decisions from the Supreme Arbitrazh Court and other courts designed to standardize bankruptcy in practice.

14.3 Procedure

The Russian bankruptcy procedure can be initiated by either creditors or the debtor itself. Creditors can file a petition to begin bankruptcy proceedings only after obtaining a court judgment that a debtor owes them in excess of 100,000 Russian rubles (approximately 3000 USD) and only after debt has remained unpaid for more than three months. The requirement for a court judgment is a relatively new requirement, which was designed to encourage parties to reach informal settlements. It however imposes delays on creditors seeking to initiate external controls over debtor companies.

The law requires debtor companies to file a petition for bankruptcy within a month of determining that satisfying one creditor's debt would make it impossible to satisfy the company's other debts.

Once the petition for bankruptcy has been filed, the debtor enters the first phase of the procedure, which is entitled Observation. Every bankruptcy involves an Observation period. Other phases, which will vary depending on the circumstances of the insolvency, include Financial Rehabilitation, External Administration, Competition Proceedings and Amicable Settlement.

14.3.1 Observation

The Observation phase of the process lasts for a period of not more than seven months. The important activities during this phase include securing and valuing the debtor's assets, and compiling the list of creditors. Once this has taken place, the last step in the Observation process is conducting the first Creditors' Meeting to determine what procedure should be invoked. During the observation stage, business proceeds more or less as normal for the debtor, as the court-appointed administrator has only limited authority over the debtor's activities. Management remains in place, unless the administrator obtains the approval of the court to dismiss them. Even in such an event, the new management is selected by the debtor. During Observation, the administrator's approval is required to purchase or sell assets totaling more than 5% of the debtor's assets and to grant and receive loans or guarantees. Debtors are prohibited from withdrawing from a LLC, issuing bonds or dividends and from making major decisions regarding reorganizations, liquidations, branch offices or joint ventures.

14.3.2 Amicable Settlement

The creditors and the debtor are allowed, at any stage of bankruptcy proceedings, to come to a settlement agreement, subject to the court's approval. Once a settlement agreement is arranged, the bankruptcy procedure is closed, though breaches the settlement agreement can be brought to the court for redress.

14.3.3 Financial Rehabilitation

This phase is triggered if the creditors and court believe there is a reasonable chance for the debtor to avoid bankruptcy. Business proceeds largely as it did in the Observation stage, with the following changes and exceptions: the court appointed administrator is now responsible for compiling a report for the court, which determines the outcome of this phase, and the Creditors' Meeting has the same limited authority as the administrator in Observation. In addition, the administrator's authority is broadened, and prior approval is required to increase accounts payable, to sell the debtor's assets, or to incur debt. The Financial Rehabilitation phase cannot exceed two years. At its end, the administrator's report to the court will be a major factor in the court determining whether the bankruptcy proceeding can be closed, or if the process must be continued, with more stringent measures being applied to satisfy creditors.

14.3.4 External Administration

External Administration is like Financial Rehabilitation aimed at restoring the debtor to financial health. However, in External Administration the debtor's management is dismissed and the court-appointed administrator manages the firm according to an External Administration Plan drawn up by the administrator and approved by the Creditors' Meeting. In this phase the administrator has the authority to embark on radical restructuring plans in an attempt to satisfy creditors' claims and restore the debtor's financial health, provided they are agreed to by the Creditors' Meeting. The Creditors' Meeting is also responsible for approving major transactions and the granting of loans and guarantees. External Administration is to last for no more than 18 months, with the possibility of a six month extension. At the end, if all debts have not been discharged and no agreement has been struck, the debtor proceeds to Competition Proceedings.

14.3.5 Competition Proceedings

In this stage the debtor is liquidated to pay creditors' claims in the order prescribed by law. During Competition Proceedings, it is still legally possible for an Amicable Agreement to be concluded between debtor and creditors.

14.4 Satisfaction of Claims

In the event of a liquidation, creditors' claims are divided into three classes. The first class of creditors are individuals owed compensation for physical injury or moral damages. The second class of creditors are employees owed severance pay and/or salaries, and authors or inventors owed royalty fees for intellectual property. All other creditors are treated as ordinary creditors to be paid after both of the preferred creditor claims have been satisfied in full. In the event that a class of creditor cannot be paid in full, they will be paid in part in proportion to the size of their claims relative to other claims in their class. Secured creditors are outside the bankruptcy to the extent their claims can be satisfied from the security they hold.

14.5 Banks and Financial Institutions

In the event that a bank or financial institution is unable to meet its obligations to its creditors, the Central Bank will revoke its license and it will be liquidated. The claims of its depositors will be satisfied before any other claims; otherwise things proceed as they do in other liquidations.