Analytical note on the prospects for the development of cross-border insolvency in the Russian Federation

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Abstract:

This paper analyses the existing regulation of cross-border insolvency in the Russian Federation and the prospects for its development. It discusses the jurisdiction of Russian courts in insolvency cases involving foreign entities, and the need for legislative changes to align with international standards.

Keywords: Russia, cross-border insolvency, jurisdiction, UNCITRAL Model Law, insolvency law, legislative development

A. Existing regulation of cross-border insolvency in the Russian Federation

I. Resolution of questions as to whether Russian courts have jurisdiction to hear insolvency cases involving foreign individuals and legal entities

The Bankruptcy Law of the Russian Federation (BL)[1] applies to persons who may be recognized as insolvent under the Russian Civil Code (*art. 1 para. 2 BL*). Separately, the law mentions the possibility of participation of foreign persons as creditors (*art. 1 para. 5 BL*). However, the law does not contain normative regulations of the procedure for the realization/transfer of property of a foreign insolvent debtor.

In this regard, judicial practice plays a major role in the application of Russian insolvency law, which is far ahead of positive regulation. Historically, Russian jurisprudence has developed two polar approaches regarding the existence of competence of Russian courts to hear bankruptcy cases against foreign debtors. The former approach consisted in denying the existence of such a competence, indicating that proceedings in such cases

1 Text available e.g. at https://www.consultant.ru/document/cons_doc_LAW_39331/ (access 22.12.2025).

could not be opened under Russian law. The more recent approach, on the contrary, points to the existence of competence, referring to instruments of soft law, in particular the UNCITRAL Model Law on Cross-border Insolvency (MLCBI) of 1997.

According to the first approach, if a foreign company applies for bankruptcy, the proceedings are subject to termination. This is what happened, for example, in the following cases:

- Judgment of the arbitrazh[2] court of the Krasnodarsky region of 02.02.2015, case No. A32–43709/2014 (short description).
- Judgment of the arbitrazh court of the Moscow district of 15.11.2017, case No. A40–15873/2017 (By ruling of the Supreme Court of the Russian Federation of 12.03.2018 the case was rejected for judicial review).
- Judgment of the arbitrazh court of the Central district of 22.11.2021, Case No. A83–2124/2021 (By ruling of the Supreme Court of the Russian Federation of 18.02.2022 the case was rejected for judicial review)

The second approach, on the contrary, concludes that Russian arbitrazh courts have jurisdiction to hear a foreign person's bankruptcy case. Judicial practice bases the existence of competence on the UNCITRAL Model Law on Cross-Border Insolvency.

This approach has become dominant due to recent developments in Russian court practice. In the framework of the bankruptcy case of West-Walk Projects Ltd.[3], a company based in Cyprus, the Supreme Court of the Russian Federation actually created norms of law and filled the legal vacuum.

Obviously, this judgment does not contain a complete and systemic regulation, but it draws a system of coordinates, a kind of foundation of legal regulation of cross-border insolvency. The judgment bases the regulation of cross-border insolvency on the theory of modernized universalism: the opening of main proceedings with parallel commencement of non-main (secondary) proceedings. The competence of the court opening the main

2 Following the Soviet tradition, Arbitrazh courts in Russia are state courts dealing with commercial disputes.

3 Judgment of the Supreme Court of the Russian Federation of 08.02.2024, case No. A40–248405/2022, accessible (in Russian) e.g. at https://legalacts.ru/sud/opredelenie-sudebnoi-kollegii-po-ekonomicheskim-sporam-verkhovnogo-suda-rossiiskoi-federatsii-ot-08022024-n-305-es23-15177-po-delu-n-a40-2484052022/?ysclid=mjgw296gpe730658670 (22.12.2025).

proceeding is determined by the presence or absence of a close connection with Russia, such as:

- the debtor conducts permanent economic activities in Russia,
- commercial activities are focused on persons who are located in Russia,
- the centre of main interests of the beneficiaries is located in Russia,
- the management body of the foreign entity is located in Russia,
- the beneficiaries of the company have Russian citizenship or residency or are involved in corporate relations with Russian legal entities,
- the beneficiaries have been brought to subsidiary liability by a Russian court,
- the assets of a foreign debtor are located in Russia,
- a significant part of creditors are Russian legal entities and individuals,
- Russia was the place of fulfilment of most of the contracts,
- The main evidence is located in Russia, etc.

In this case, the court distinguishes between the actual performance of economic activity in the jurisdiction where the person was registered and formal registration, adhering to the real seat doctrine. For the purposes of determining jurisdiction, however, the court uses the centre of main interests (COMI) interpretation of this doctrine. COMI venue may be evidenced by the following circumstances:

- the location of the debtor's principal property. We assume this means the debtor's commercial asset, or the asset that is of the greatest value,
- the location of the majority of the debtor's creditors,
- the location of the debtor's productive resources. As in the case of paragraph 1, it would appear that this refers to the main productive resources that form the basis of the debtor's economic activity.
- the location of the debtor's business activities,
- the place where most of the debtor's profits – the debtor's main income – are derived,
- the place where the debtor is reorganized,
- the place where the debtor's main obligations arise and are fulfilled.
- location of the debtor's beneficiaries and the centre of their main interests, etc.

The approach described above resembles the approach of the MLCBI as interpreted in Anglo-Saxon law and less resembles the model of cross-border insolvency regulation that exists in the European Union. It should be noted that the judgment does not indicate the existence of the contested presumption of COMI at the debtor's place of registration, thus unleashing the courts to localize COMI and verify the existence of their own competence. It follows from the above material that the rules created by the Supreme Court encourage courts to comprehensively analyse the factual circumstances in order to objectively determine COMI. A similar approach exists in Anglo-Saxon jurisdictions, whose courts often disregard the presumption, stating that its role is to minimize time costs for those cases where everything is obvious[4]. It appears that the rules of law created by the Supreme Court are an accumulation of global experience of cross-border insolvency regulation. In our view, the factors set out above for determining COMI and confirming competence should be interpreted systematically and not in isolation from each other.

A first group of judgments in Russia justify the existence of competence through the doctrine of centre of main interests (Art. 16 (3) MLCBI). For example, by a ruling of 30.06.2016 in the case No. A81–6187/2015 the arbitrazh court of the Yamalo-Nenets Autonomous District introduced a restructuring procedure in respect of a citizen of Ukraine. Thanks to the above-mentioned judgment, a positive practice of initiating insolvency proceedings against foreign citizens has emerged in the Russian Federation. For example, bankruptcy cases were initiated against a citizen of India[5]; a citizen of Georgia[6]; a citizen of Serbia[7] and a citizen of Germany[8]. It should be noted that this group includes insolvency cases involving only natural persons. At the time of the above-mentioned court decisions, the courts were averse to the idea of insolvency proceedings against foreign legal entities.

A second group within this approach justifies the existence of competence to commence ‘non-main proceedings’ through the doctrine of ‘establishment’ (*Art. 17(2)(b) MLCBI*). Thus, the Supreme Court of the Russian

4 East-West Logistics LLP v Melars Group Ltd. *England and Wales Court of Appeal Civ 1419 of 28.07.2020; Bear Stearns High-Grade Structured Credit. 389 B.R. 325 (S.D.N.Y. 2008).*

5 Judgment of the Moscow arbitrazh court of 29.06.2020, case No. A40–252126/2019.

6 Judgement of the arbitrazh court of St. Petersburg and Leningrad Region of 29.12.2020, case №A56–79182/2020.

7 Judgment of the arbitrazh court of the Republic of Bashkortostan of 03.08.2020, case №A07–28969/2019.

8 Judgment of the arbitrazh court of Krasnodar region of 02.03.2020, case №A33–27910/2019.

Federation actually recognized the possibility of opening ‘non-main proceedings’ in respect of LLC ‘Vitmet’[9].

The case of Pandora Consulting LC should be separately mentioned. Here, the judgment of the arbitrazh court of the Chelyabinsk Region of 22.04.2022 opened an insolvency proceeding against a foreign corporate debtor (established in the offshore jurisdiction Nevis)[10]. The court reasoned that denying the creditor the mechanisms provided for by the Russian Bankruptcy Law would limit the creditor's right to effective judicial protection by a Russian court.

The case on the bankruptcy of the Hungarian company PROinvest Kft is also of particular interest in today's court practice.[11] The arbitrazh court of the North-Western District concluded that the Hungarian company was just registered in Hungary, but actually carried out its activities in Russia, as the company had a number of permanent and temporary representative offices in different constituent entities of the Russian Federation, and also had settlement accounts. At the time of preparation of this article, the court of first instance had not yet ruled on the opening of proceedings against the debtor. The above bankruptcy case is of particular interest, because there is a Treaty on Legal Assistance between Russia and Hungary op 15.07.1958[12], under the terms of which decisions on non-property disputes are automatically recognized. The treaty obviously did not provide for the regulation of cross-border insolvencies, since this phenomenon did not exist as such in centrally planned economies. Meanwhile, Russian doctrine suggests that such treaties can be applied to bankruptcy cases. In addition, Hungarian recognition of the Russian bankruptcy procedure would raise a significant issue for cross-border insolvency regulation in the European Union. Currently, the EU Member States, when recognizing a bankruptcy opened in a third country, apply their national law. However, this approach leads towards territorialism, as the debtor's assets may be scattered across all jurisdictions in the European Union.

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9 Judgment of the Supreme Court of the Russian Federation of 08.10.2020, case No. A83–6324/2018.

10 Arbitrazh court of the Chelyabinsk Region, case No. A76–31539/2021 of 22.04.2022.

11 Judgment of the arbitrazh court of the North-Western District of 19.02.2024, case No. A13–13917/2023.

12 Text available (in Russian) at https://www.mid.ru/ru/foreign_policy/international_contracts/international_contracts/2_contract/53103/ accessed 22.12.2025).

II. Matters concerning the recognition by Russian courts of judgments of foreign courts recognizing Russian citizens as insolvent

It is obvious that not only migration of foreign citizens to the Russian Federation is possible, but also vice versa. This raises the question of the possibility of recognizing judicial acts of foreign courts on the recognition of Russian citizens as insolvent.

The analysis of judicial practice shows that Russian courts do recognize foreign judicial acts on the recognition of Russian citizens as insolvent. Thus, for example, a Russian arbitrazh court recognized the decision of a German court to recognize a Russian citizen as insolvent. Similarly, a Russian general court recognized a German court's decision to open an insolvency proceeding against a German citizen[13]. In both cases, the recognition of judicial acts of German courts was based on the principle of reciprocity. In the absence of reciprocity, the court refuses to recognize a judicial act of a foreign court recognizing a Russian citizen as insolvent[14]. Thus, Russian courts recognize foreign insolvency judgments only on the basis of the principle of reciprocity, since the Russian Federation is not a party to a treaty on insolvency matters. If there is no reciprocity with the country where the insolvency judgment was handed down, the Russian courts deny recognition.

In concluding this paragraph on the current regulation of cross-border insolvency, it should be noted that, although a step forward, the goal (full and systemic regulation of cross-border insolvency) is still a long way off. The Supreme Court's judgment in the WestWalk Projects Ltd. case does not regulate issues of recognition of foreign procedures, enforcement of judicial acts related to or arising from the bankruptcy case, and there is no regulation of coordination and cooperation between insolvency administrators approved in different jurisdictions. In this respect, the Russian legal system is yet to develop a consistent regulation of cross-border insolvency.

Besides the classical issues that have already been settled by the Member States of the European Union, the Russian legal system, as well as all others, will have to clarify the ways of determining jurisdiction for entities

13 Judgment of the arbitrazh court of the City of St. Petersburg and the Leningrad Region of 28.05.2008, case No. A56–22667/2007.

14 Judgment of the arbitrazh court of the Sverdlovsk Region of 14.07.2019, case No. A60–29115/2019.

engaged in the sphere of electronic commerce[15]. Rapidly evolving, this field has developed independent structures for corporate decision-making based on decentralization as a key principle. For example, the Multi-Signature Wallet is widely used, which works only with the consensus of all key holders[16]. Its use allows cash to be managed only with the consent of all key holders, and it is not physically necessary for all key holders to be in the same place. Equally, this technology is used for corporate decision making. Consequently, the main criterion for determining the COMI – the place of decision-making – loses its value and effectiveness. Another example is Compound, which is managed on the basis of anonymity and decentralization (*decentralized autonomous organization – DAO*)[17]. This example is particularly interesting not only from the point of view of corporate law, but also from the point of view of civil procedure, as a group of plaintiffs is currently gathering to sue Compound[18]. It is obvious that in case of non-compliance with the decision the company will face bankruptcy. However, which court will recognize its jurisdiction to commence proceedings remains unclear, as the company's COMI is not explicitly expressed.

B. Possible ways of development of regulation of cross-border insolvency institution

Taking into account the above-mentioned judicial practice, the regulation of the institute of cross-border insolvency is a topical problem. In this regard, we see the following possible ways of solving the problem.

15 A similar problem was scrutinized by the court in East-West Logistics LLP v Melars Group Ltd. England and Wales Court of Appeal Civ 1419 of 28.07.2020. The debtor had almost no physical traces of activity to the extent that would clearly link it to any jurisdiction. At the same time, the debtor had traces of commercial activity in Switzerland, England, Estonia, and was registered in Malta and the British Virgin Islands.

16 Investopedia, Multi-Signature Wallets <https://www.investopedia.com/multi-signature-wallets-definition-5271193> (last accessed 14.07.2024).

17 Compound, Governance <https://docs.compound.finance/governance/> (last accessed 14.07.2024).

18 The Rosen Law Firm, Compound DAO <https://rosenlegal.com/case/compound-dao/> (last accessed 14.07.2024).

I. Conclusion of a Treaty between the European Union and the Russian Federation

The best option for regulating cross-border insolvency would be to conclude an international treaty. A treaty with an experienced cross-border insolvency regulator such as the European Union (EU) would be particularly fruitful. However, it seems unlikely that such an international treaty would be concluded due to the number of complicating political aspects. In this connection we have to state that it is impossible to regulate cross-border insolvency by means of an international agreement with the European Union (as well as with individual member states).

II. Implementation of the UNCITRAL Model Law on Cross-Border Insolvency into the national law of the Russian Federation

Turning the view to instruments of soft law, the UNCITRAL MLCBI uses jurisdiction criteria that are clear and understandable to the Russian legal order. This follows from the courts' references to the rules of the MLCBI (despite the fact that the Russian Federation has not adopted or implemented the provisions of the MLCBI in any form). It should be noted that in 2011 the Ministry of Economic Development of the Russian Federation prepared a draft Federal Law 'On Cross-Border Insolvency (Bankruptcy)'[19]. This draft was actually based on the rules of the MLCBI.

Thus, one of the preferred options for regulating cross-border insolvency is to implement the UNCITRAL Model Law. The result would be a new law regulating cross-border insolvency.

We believe that individual (point) changes in the procedural legislation of the Russian Federation (Arbitrazh [Commercial] Procedure Code and Civil Procedure Code) are not able to give an exhausting solution of the problem of cross-border insolvency. The reason lies both in the specifics of the subject of regulation and in the different legal techniques used in both of the two Codes and in the insolvency legislation.

Finally, the adoption of a separate chapter within the Bankruptcy Law also seems less adequate. The general provisions of the Bankruptcy Law do not include the regulation of legal relations between a foreign debtor

19 Available in Russian language at ConsultantPlus (limited accessibility) <https://www.consultant.ru/cons/cgi/online.cgi?req=doc&base=PRJ&n=152192#3NOnBRUuIxvzsEaw2> (last accessed 14.07.2024).

and creditors (except for the treatment of foreign creditors). Consequently, in case of implementation of the UNCITRAL Model Law into the current Bankruptcy Law, it would be necessary to amend the general provisions of the Bankruptcy Law as well, taking into account the legal relations between creditors and a foreign debtor in the subject of regulation. In addition, it should be taken into account that the regime of cross-border bankruptcy differs from the legal regime of national bankruptcy.

III. Conclusion of an agreement between the Member States of the Eurasian Economic Union (EAEU)

The relevance of cross-border insolvency regulation depends on the intensity of trade turnover between specific countries. With the growth of civil turnover and mutual trade, the role of such an organization as the EAEU is increasing. Consequently, it would be possible to conclude a multilateral treaty between the EAEU Member States.

IV. Final conclusions.

Summing-up, the most preferable option to solve the problem of cross-border bankruptcy regulation would from our perspective be the implementation of the 1997 UNCITRAL Model Law into the national legislation of the Russian Federation. This conclusion is based both on the references of Russian courts to the Model Law and on the actual recognition of the possibility of opening 'non-main proceedings' in the case of LLC 'Vitmet'[20], as well as in the case of WestWalk Projects Ltd.[21]. This approach would make it possible to propose universal solutions regarding the regulation of cross-border insolvency in the Russian Federation, which will apply to any states and unions of states, regardless of the political aspects of relations with them.

We believe that in such a case, the principle of reciprocity should be abandoned and a system of direct recognition of foreign insolvency judicial

20 Judgement of the Supreme Court of the Russian Federation of 08.10.2020, case No. A83–6324/2018.

21 Judgement of the Supreme Court of the Russian Federation of 08.02.2024, case No. A40–248405/2022.

acts should be adopted, subject to certain conditions (including the possibility of applying the public policy exception) and legal procedures.

A reasonable structure of a Russian law on cross-border insolvency would appear to be as follows:

1) General provisions,
2) Determination of the competent court,
3) Access of foreign creditors to courts in the Russian Federation,
4) Recognition of judicial acts issued in foreign insolvency proceedings,
5) Coordination and cooperation of proceedings,
6) Parallel proceedings.