Russian Bankruptcy Law in Practice and its Impact on the 1998 Bankruptcy Law

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Introduction
The Law of 19 November 1992 “On Insolvency (Bankruptcy) of Enterprises” that entered into force on 1 March 1993 (hereinafter “the 1992 Bankruptcy Law”) is a typical example of a first-generation transition law. For various reasons, the law had a very slow start, including: the lack of familiarity with the enforcement of bankruptcy, a reluctance to declare enterprises bankrupt with a view to its negative effects, and the payment crisis that turned healthy enterprises into insolvent enterprises. Moreover, the 1992 Bankruptcy Law was very rescue-oriented and debtor-friendly. Also, as a result of the rather narrow definition of the concept of bankruptcy, it appeared difficult to enforce the law in practice. Case law has revealed many shortcomings of the 1992 Law, which necessitated the drawing up of a totally new bankruptcy law (hereinafter “the 1998 Bankruptcy Law”). The new law contained many novelties that were clearly practice-driven.

The objective of the present study is to examine the extent to which the novelties contained in the 1998 Bankruptcy Law were caused by the shortcomings of the 1992 Bankruptcy Law. First of all, however, a short survey of the 1998 Bankruptcy Law will be provided below.

The 1998 Bankruptcy Law
In accordance with Article 185, the Law of the Russian Federation “On Insolvency (Bankruptcy) of Enterprises” of 8 January 1998 entered into force on 1 March 1998. As of the same date, the 1992 Bankruptcy Law was repealed (Art. 186). Since there are already several commentaries to the 1998 Bankruptcy Law; I will not go into great detail below; rather, I will provide an overview of its major, new features.

The most important difference from its 1992 predecessor is that the definition of bankruptcy was changed, now meaning that: “the debtor

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did not fulfill its obligations within three months after they became due [to be fulfilled].” As a result, the fine-tuning of the 1992 Law (“incapacity to pay the creditors’ claims [...] in connection with the excess of the debtor’s obligations over its assets or unsatisfactory structure of its balance sheet”) was dropped. The new definition is more or less in line with that of Articles 25 and 65 of the Civil Code: “incapable of satisfying the claims of creditors”. However, it would have been preferable if the 1998 Law would have used the same definition as the Civil Code in order to avoid confusion.

Further novelties include:

(a) The introduction of supervision (nabliudenie) as of the moment bankruptcy proceedings commence, with the objective of safeguarding the assets of the debtor and assessing the latter’s financial position;
(b) A more prominent role for creditors reflected in the introduction of the meeting of creditors and the committee of creditors vested with specific powers;
(c) The procedure of sanation (sanatsiia) has been left out;
(d) External management aimed at restructuring and amicable settlement;
(e) Special procedures have been introduced for different categories of bankrupt persons, including:
   — “city-forming organizations”;
   — agricultural organizations;
   — credit organizations;
   — insurance organizations;
   — stock brokers; and
   — citizens, individual entrepreneurs, and farmers.

When examining court cases under the 1992 Bankruptcy Law, it becomes evident that the 1992 Law had many gaps and inconsistencies that needed to be addressed. Most of them led to adjustments in the 1998 Law. With regard to such court decisions leading to practice-driven changes in the law, the following categories of judgments in bankruptcy cases can be distinguished:

(a) Broadening the grounds for bankruptcy;
(b) Filling in gaps;
(c) Clarifying obscure provisions;
(d) Improving protection for creditors;
(e) Improving administrative procedures;