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Comparative
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Lending & Secured Finance 2021

A practical cross-border insight into lending and secured finance

Ninth Edition

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1 Overview

1.1 What are the main trends/significant developments in the lending markets in your jurisdiction?

The Russian lending market has been under mounting pressure from US and EU sanctions in recent years. The major deals involving state-owned banks and companies have been non-public and denominated in Russian rubles, euros or, sometimes, in other currencies.

The prepayment finance market has further increased its share and, in terms of amount and volume of transactions, has significantly surpassed the market of "traditional" pre-export finance and other "classical" trade finance structures. There have been a number of large prepayment finance deals involving major producers of copper, coal, aluminium, oil, gas, gold, fluorspar, magnesia and other commodities which demonstrate the market trend of prepayment structures expanding well beyond the oil market. In view of the growing trade between Russia and Asia, the prepayment finance market is also expanding to Asia.

Most cross-border gold prepayments are currently structured through a direct gold supply arrangement between an international bank and a Russian producer, although traditionally, such deals have been structured through licensed Russian banks.

An increasing number of lending transactions are governed by Russian law. Federal Law No. 486-FZ, dated 31 December 2017, "On syndicate facility (loan) and on amendments to certain legislative acts of the Russian Federation" (the "Syndication Law") contains detailed regulations of syndication lending and the role of lenders, facility agents and arrangers. Many Russian state banks tend to structure Russian law syndicated lending in accordance with the Syndication Law.

In response to the global COVID-19 pandemic, Russia changed its bankruptcy laws to provide for a moratorium on bankruptcies and a freeze on certain transactions, which applied to companies in a number of listed sectors, including road transport, air transport business, etc. The moratorium entered into force on 2 April 2020 and was lifted on 7 January 2021. During the moratorium, a number of restrictions applied to the eligible companies, including:

- courts were not entitled to accept petitions (claims) filed by a creditor in respect of any eligible company;
- penalties (charges, fines) and other financial sanctions for non-performance or improper performance of monetary obligations and obligatory payments (e.g., taxes and similar payments), other than in respect of the current payments, did not accrue (the freeze on financial sanctions);
- eligible companies could not set off monetary claims if this would violate the statutory order of creditors' priority; and
- creditors could not enforce pledges and mortgages (whether through a court or without recourse to the courts) in respect of eligible companies.

1.2 What are some significant lending transactions that have taken place in your jurisdiction in recent years?

Significant public finance transactions in recent years include, among others:

- a EUR 11.4 billion project financing for the construction of the Amur Gas Processing Plant by 22 banks from Europe, Asia and Russia, including the China Development Bank, Gazprombank, Sberbank of Russia and VEB.RF;
- a USD 7 billion loan by Credit Bank of Moscow PJSC to Trafigura for purchase of a stake in Rosneft PJSC's flagship Arctic oil project;
- a USD 2 billion syndicated financing of Baikal Mining Company by Sberbank of Russia, Gazprombank and VEB.RF;
- a syndicated facility of up to USD 1.5 billion for Amur Gas Processing Plant with Gazprombank (Joint Stock Company) acting as the lead arranger and lender, and Otkritie Bank and Sberbank of Russia acting as arrangers and lenders;
- a USD 665 million five-year pre-export facility for Uralkali with Crédit Agricole as a facility agent;
- a USD 1 billion sustainability-linked pre-export facility agreement with ING Bank and Natixis as Coordinating Bookrunning Mandated Lead Arrangers;
- a USD 750 million syndicated facility arranged by UniCredit for EVRAZ;
- a EUR 600 million syndicated facility for Novolipetsk Steel by Crédit Agricole Corporate and Investment Bank, NATIXIS, Intesa Sanpaolo Bank Ireland Plc, SGBTCI, AO Raiffeisenbank, Bank of America Merrill Lynch International DAC, Mizuho Bank, Ltd., Deutsche Bank AG, London Branch, ICBC Bank (JSC), ING Bank N. V. and UniCredit S.p.A.; and
- a USD 300 million syndicated facility for Aktyubinsk Copper Company organised by Natixis.

2 Guarantees

2.1 Can a company guarantee borrowings of one or more other members of its corporate group (see below for questions relating to fraudulent transfer/financial assistance)?

Generally, there are no restrictions on provision of guarantees or sureties by a Russian company in favour of members of its

group. If a guarantee or surety constitutes a "major" (i.e., a transaction amounting to 25% or more of the company's assets) or an "interested party" transaction, it may be subject to certain corporate consents, approvals or notification requirements.

Pursuant to the recent position of the Russian Supreme Court, unless proved otherwise, if sureties are provided by several members of the group, such sureties are considered to be given "jointly", in which case the relevant sureties will be jointly and severally liable.

2.2 Are there enforceability or other concerns (such as director liability) if only a disproportionately small (or no) benefit to the guaranteeing/securing company can be shown?

Any transaction, including a guarantee or surety, may be challenged by a company and, in certain cases, by its shareholders or members of the board if such transaction is entered into to the detriment of the company, and the counterparty was aware of such circumstances. In the meantime, consideration is not required for a guarantee or surety to be valid.

Also, a director of a Russian company shall generally act reasonably and in good faith and in the best interest of the company. If such obligations are breached, the directors may be sued for losses caused to the company.

In case of insolvency of a company, if a guarantee or surety has been issued in anticipation of insolvency, it may be challenged if such transaction is aimed at a violation of creditors' rights or constitutes a preferential transaction. Directors and controlling persons of a company may be subject to "subsidiary (secondary) liability" if the insolvency occurred as a result of their actions.

2.3 Is lack of corporate power an issue?

Subject to certain exceptions, Russian companies can enter into any lawful transaction. However, the powers of a CEO may be limited by the company's articles of association. The articles of association may also contemplate that two CEOs shall act jointly or severally (in the latter case, the powers may be divided between them). In certain cases, a guarantee or surety may require consent of (notification to) the shareholders (participants) or the board of directors if it constitutes a "major" or "interested party" transaction for the company or, in other cases, is stipulated by the company's articles of association.

2.4 Are any governmental or other consents or filings, or other formalities (such as shareholder approval), required?

Generally, no governmental consents or filings are required in respect of guarantees or sureties. A company issuing a guarantee has an obligation to publish this fact and the material terms of a guarantee in the Uniform State Register of Information on the Activity of Legal Entities (*Fedresurs*) (for more information, please refer to question 3.9).

As described in question 2.3, a guarantee or surety may require consent of the shareholders (participants) or the board of directors if it constitutes a "major" or "interested party" transaction for the company or, in other cases, is stipulated by the company's articles of association.

2.5 Are net worth, solvency or similar limitations imposed on the amount of a guarantee?

Generally, there are no such limitations. However, if the value of the transaction exceeds certain thresholds (such as 25% of the company's assets), this may be taken into consideration if the company's transaction is contested in the course of the company's insolvency.

2.6 Are there any exchange control or similar obstacles to enforcement of a guarantee?

There are generally no such obstacles other than insolvency of a company. In order for a company to make certain payments to a foreign lender in a foreign currency under a guarantee or surety, the company may be required to file with a Russian-authorised bank certain documents (including the relevant guarantee or surety) in order to record the agreement for currency control purposes. Such filing is required to be made as a condition to a payment transfer rather than to the entry into the underlying transaction, and such requirement is of an administrative nature and does not restrict or affect the company's obligation to make payments under the guarantee or surety.

3 Collateral Security

3.1 What types of collateral are available to secure lending obligations?

Russian law allows using various types of collateral, including a pledge of immovable property (mortgage), pledge of equipment (or other movable property), pledge of rights under bank accounts, pledge of goods in turnover, pledge over shares and participatory interest, and pledge over receivables.

3.2 Is it possible to give asset security by means of a general security agreement or is an agreement required in relation to each type of asset? Briefly, what is the procedure?

Russian law generally allows extending a pledge to "all assets" of a company. The respective pledge agreement shall be made in written form. However, it is unlikely that a pledge created by such a pledge agreement would automatically extend to certain types of assets, such as rights under bank accounts, immovable assets (mortgage), participatory interests in limited liability companies or shares in joint stock companies, since pledges over such assets are subject to registration/notarisation or other specific formalities.

3.3 Can collateral security be taken over real property (land), plant, machinery and equipment? Briefly, what is the procedure?

Security over immovable property (land, buildings, etc.) can be taken by way of mortgage. The mortgage agreement shall be made in written form. The mortgage shall be registered with the Unified State Register of Immovable Property ("*Единый государственный реестр недвижимости*"). Security over machinery and equipment is usually taken by entering into a pledge of movables. The pledge of machinery and equipment can be recorded with the register of notices on pledges maintained by the notaries (for more information, please refer to question 3.9).

3.4 Can collateral security be taken over receivables? Briefly, what is the procedure? Are debtors required to be notified of the security?

Yes, security over receivables is usually taken by way of a pledge. The debtor shall be notified about the pledge of receivables.

The consent of the debtor is generally not required unless otherwise provided by the underlying contract. If the consent of the debtor is not obtained in breach of the underlying contract, the pledge will be valid but the pledgee and pledgor may be sued for losses caused to the debtor.

The pledge over receivables can be recorded with the register of notices on pledges maintained by the notaries (for more information, please refer to question 3.9).

3.5 Can collateral security be taken over cash deposited in bank accounts? Briefly, what is the procedure?

Security over cash deposited in bank accounts is usually taken by way of a pledge of rights under bank accounts. The Russian Supreme Court has supported a view that a pledge of rights under a bank account is possible only in respect of specific pledge accounts ("*залоговые счета*"), which means that there is a substantial risk that a pledge of rights in respect of an ordinary bank account may be unenforceable. It is impossible to bypass this rule by changing the status of an ordinary bank account to a specific pledge account. A new pledge account must be opened for this purpose. A pledge of rights under a bank account is created from the moment the respective account bank is notified about the pledge. However, if the account bank is the pledgee, the pledge will be created from the date of the pledge agreement.

3.6 Can collateral security be taken over shares in companies incorporated in your jurisdiction? Are the shares in certificated form? Can such security validly be granted under a New York or English law-governed document? Briefly, what is the procedure?

Russian law makes a distinction between shares in joint stock companies and participatory interests in limited liability companies. Both can serve as collateral and both are in a non-documentary form.

In respect of the participatory interests, a pledgor must obtain the prior consent of other participants in the limited liability company in a form of a participants' resolution if the pledge is made in favour of a third party. A participatory interest pledge agreement must be made in written form and notarised. A pledge of participatory interest is deemed to be created from the moment of its registration in the Unified State Register of Legal Entities.

In contrast with a participation interest pledge, notarisation of a share pledge is possible but not mandatory. No consent of other shareholders is required. A share pledge must be registered with the shareholders' register or a depositary.

Pledges of participatory interests and shares are usually governed by Russian law. New York and English law may also be used to govern local pledges, but these are rarely seen because enforcement of such pledges may be more complicated in practice.

3.7 Can security be taken over inventory? Briefly, what is the procedure?

Russian law recognises the pledge of inventory (pledge of goods in turnover). The subject matter of a pledge of goods in turnover can be determined by specifying the generic features of the goods and their location (e.g., goods in certain premises). The pledge over inventory can be recorded with the register of notices on pledges maintained by the notaries (for more information, please refer to question 3.9).

3.8 Can a company grant a security interest in order to secure its obligations (i) as a borrower under a credit facility, and (ii) as a guarantor of the obligations of other borrowers and/or guarantors of obligations under a credit facility (see below for questions relating to the giving of guarantees and financial assistance)?

Yes, both options are possible as long as the required corporate consents (if any) are obtained.

3.9 What are the notarisation, registration, stamp duty and other fees (whether related to property value or otherwise) in relation to security over different types of assets?

Any pledge agreement shall be made in written form. Notarisation of a pledge of participatory interests is mandatory, while notarisation of pledges of other types of assets is possible but, as a rule, not mandatory. However, out-of-court enforcement of the pledged assets by way of notarial endorsement is only possible if the agreement is notarised.

A mortgage shall be registered with the Unified State Register of Immovable Property and takes effect from the date of such registration. A pledge over participatory interest shall be registered with the Unified State Register of Legal Entities and takes effect from the date of such registration. Similarly, a pledge over shares shall be recorded by a book entry made in the relevant account of the pledgor held with the register or custodian. There are also specific requirements for registration of a mortgage in respect of certain assets (i.e., airplanes, ships, etc.).

The amount of notary fees depends on the amount of the secured liabilities and whether the notarisation is mandatory. If the notarisation is mandatory, the amount of the notary fee cannot exceed RUB 150,000. If the notarisation is not mandatory, this amount cannot exceed RUB 500,000.

Pledges of most assets (other than immovable property, participatory interests, trade marks, patents, rights under bank accounts and pledges of other assets, transfers of rights in respect of which are subject to mandatory registration) can be recorded with the register of notices on pledges maintained by the notaries. Such notification is not mandatory and is not required for the validity of a pledge. However, the notification makes the pledge public and third persons are deemed notified about such pledge. This is particularly important in case of a dispute in respect of the priority of pledges. The fees in connection with the registration of such notices are nominal (RUB 600 per notice).

The fees for the registration of a mortgage by legal entities in the Unified State Register of Immovable Property are RUB 4,000 (shared by a pledgor and a pledgee).

A company issuing a guarantee or proving pledge over its movable assets must record this fact and the material terms of a guarantee (pledge agreement) in the Uniform State Register of Information on the Activity of Legal Entities (*Fedresurs*). Failure to publish such information does not affect the validity of a guarantee but constitutes an administrative offence. From 1 April 2020, the creditors are entitled (but not obliged) to publish the same information about sureties provided to them.

No stamp duties are payable as a matter of Russian law.

3.10 Do the filing, notification or registration requirements in relation to security over different types of assets involve a significant amount of time or expense?

The statutory term for registration of a mortgage is up to five business days, but in practice it sometimes takes longer.

Notarisation of a participatory interest pledge and registration of the respective pledge in the Unified State Register of Legal Entities usually takes five to 10 days. Foreign pledgors and pledgees must collect and submit to the notary a set of notarised and apostilled corporate and other documents, which often takes some additional time.

Notices regarding pledges of movable property are submitted by the notaries, and the entire process may be completed within one or two hours.

Registration and notary fees are described in more detail in question 3.9.

3.11 Are any regulatory or similar consents required with respect to the creation of security?

Regulatory or similar consents are generally not required with respect to the creation of security. A conservative interpretation of antimonopoly and foreign investment laws may purport to treat a security arrangement itself or certain covenants within it as the creditor obtaining "control" over the relevant debtor. However, as a matter of market practice, no consents of antimonopoly or other authorities are usually obtained with respect to the creation of security; depending on the situation, the creditors may consider applying for an antimonopoly clearance or at least for official guidelines at the enforcement stage.

3.12 If the borrowings to be secured are under a revolving credit facility, are there any special priority or other concerns?

Russian law previously required having a detailed description of the secured obligations, which created complications in instances when collateral secured the revolving facilities. At the moment, Russian law is far more flexible in respect of the requirement to describe the secured obligations, and expressly provides that a pledge or a surety/guarantee may secure future obligations, so in our view the previous priority concerns in respect of a security relating to revolving facilities is less likely to be an issue.

3.13 Are there particular documentary or execution requirements (notarisation, execution under power of attorney, counterparts, deeds)?

Please refer to question 3.9 in respect of the pledge agreements/mortgage agreements. Execution of contracts by means of electronic communication is allowed as long as such execution makes it possible to determine that the document has been signed by the relevant party.

Russian law does not set out any specific requirements in respect of execution of deeds.

4 Financial Assistance

4.1 Are there prohibitions or restrictions on the ability of a company to guarantee and/or give security to support borrowings incurred to finance or refinance the direct or indirect acquisition of: (a) shares of the company; (b) shares of any company which directly or indirectly owns shares in the company; or (c) shares in a sister subsidiary?

Financial assistance restrictions (including restrictions on the ability of a company to guarantee and/or give security to support borrowings incurred to finance or refinance the direct or indirect acquisition of shares of the company, shares of any company that directly or indirectly owns shares in the company or shares in a sister subsidiary) such as those that exist in Germany and certain other jurisdictions do not exist in Russia. However, such guarantee or security may in certain cases require corporate consent. Please refer to question 2.4 for further details.

5 Syndicated Lending/Agency/Trustee/Transfers

5.1 Will your jurisdiction recognise the role of an agent or trustee and allow the agent or trustee (rather than each lender acting separately) to enforce the loan documentation and collateral security and to apply the proceeds from the collateral to the claims of all the lenders?

Russian law does not currently recognise the trustee relationship, which is common in English law. The Russian Civil Code contains provisions allowing creditors to enter into a pledge management agreement and appoint a "pledge manager" to act on behalf of several creditors in connection with the pledge. The pledge management agreement may contemplate payment of a fee to the pledge manager. The pledge manager shall act in the best interest of the creditors. The proceeds received by the pledge manager in connection with the pledge become the common property of the creditors unless the pledge management agreement provides otherwise.

The Syndication Law introduced the role of a facility agent referred to as the "facility manager". The functions of the facility manager can be carried out by a credit organisation, VEB.RF, a foreign bank or an international finance organisation.

Facility managers shall run the register of the syndicate participants and record all amounts granted to the borrower. Facility managers shall act on behalf of lenders in their relationship with the borrower, including in actions such as collecting funds under the facility, including interest amounts and other payments, and providing relevant documents and information to lenders and security arrangers. In December 2020, further changes to the Syndication Law were introduced. The changes, among other things, include:

- the regulation of the filing of claims by the facility manager and, in certain cases, the lenders in the case of an insolvency of the debtor; and
- the introduction of the regulation of "sub-participation agreements" under Russian law.

5.2 If an agent or trustee is not recognised in your jurisdiction, is an alternative mechanism available to achieve the effect referred to above, which would allow one party to enforce claims on behalf of all the lenders so that individual lenders do not need to enforce their security separately?

Please refer to the answer to question 5.1.

5.3 Assume a loan is made to a company organised under the laws of your jurisdiction and guaranteed by a guarantor organised under the laws of your jurisdiction. If such loan is transferred by Lender A to Lender B, are there any special requirements necessary to make the loan and guarantee enforceable by Lender B?

Rights under loan agreements and guarantees governed by Russian law are usually transferred by way of assignment. The

consent of the debtor is not required unless otherwise provided by the loan agreement or guarantee. If consent is required by the loan agreement or guarantee but is not obtained, the assignment would still be valid, but the initial creditor would be liable for breach of contract.

6 Withholding, Stamp and Other Taxes; Notarial and Other Costs

6.1 Are there any requirements to deduct or withhold tax from (a) interest payable on loans made to domestic or foreign lenders, or (b) the proceeds of a claim under a guarantee or the proceeds of enforcing security?

Interest payable on loans made by Russian lenders (lenders incorporated in Russia and foreign lenders that have a permanent establishment in Russia) is generally subject to Russian income tax at a rate of 20%. The same rate applies to a foreign lender receiving its income from interest on loans at a source in Russia. In this case, taxable income is withheld by the borrower.

Proceeds under a guarantee are subject to the same rules as taxable income under loan agreements.

6.2 What tax incentives or other incentives are provided preferentially to foreign lenders? What taxes apply to foreign lenders with respect to their loans, mortgages or other security documents, either for the purposes of effectiveness or registration?

The general approach under Russian law is that foreign lenders are subject to the same rules as Russian lenders. However, international tax treaties provide certain specific tax exemptions or reductions. In order to enjoy such exemptions or reductions, the foreign lender must provide the borrower with: (i) the tax residence certificate issued by the relevant competent tax authority in that lender's jurisdiction of residence, confirming that the lender is a tax resident in such tax jurisdiction for the purposes of the relevant tax treaty; and (ii) a certificate confirming the beneficial ownership of income. Such certificates are usually provided before the first payment of interest under the loan and thereafter annually until the full repayment of the loan.

In accordance with recent changes to the Tax Code, a borrower is not required to obtain a tax certificate from a foreign lender in order to apply the relevant international tax treaty if the tax residency of such lender can be verified via reliable public sources (e.g., the lender is included in the Banker's Almanac or the International Bank Identifier Code Directory).

In 2020, Russia agreed to amend international double tax treaties with such countries as Cyprus, Malta and Luxembourg in order to raise the withholding taxes to 15% and to exclude the overly friendly tax advantages for Russian nationals to move money to those countries.

6.3 Will any income of a foreign lender become taxable in your jurisdiction solely because of a loan to, or guarantee and/or grant of, security from a company in your jurisdiction?

Please refer to questions 6.1 and 6.2.

6.4 Will there be any other significant costs which would be incurred by foreign lenders in the grant of such loan/guarantee/security, such as notarial fees, etc.?

Notarisation of loan agreements and guarantees is not mandatory in Russia. No registration of loan agreements or guarantees is required in Russia. Notarial and other fees applicable on security are described in question 3.9.

6.5 Are there any adverse consequences for a company that is a borrower (such as under thin capitalisation principles) if some or all of the lenders are organised under the laws of a jurisdiction other than your own? Please disregard withholding tax concerns for purposes of this question.

A loan from a foreign entity can be considered as "controlled indebtedness" if such loan is provided or secured by a foreign entity (or a Russian entity controlled by such foreign entity).

If the amount of such "controlled indebtedness" exceeds the amount of a borrower's own equity by more than three times (for banks and leasing companies, by more than 12.5 times), the interest paid on such loan can only be considered as a deductible expense subject to certain limits. The remaining interest is considered as a dividend paid to a foreign entity and is subject to 15% taxation (unless an international treaty allows specific tax exemptions or reductions).

7 Judicial Enforcement

7.1 Will the courts in your jurisdiction recognise a governing law in a contract that is the law of another jurisdiction (a "foreign governing law")? Will courts in your jurisdiction enforce a contract that has a foreign governing law?

Russian courts should generally recognise (and enforce) foreign governing law, provided that: (i) there is a "foreign element" in the transaction (e.g., one of the parties is a foreign entity or the subject matter of the contract relates to foreign assets); and (ii) such laws do not conflict with Russian public policy or specific mandatory rules ("*нормы непосредственного применения*") of the laws of the Russian Federation. The concepts of public policy and specific mandatory rules are not defined in the laws of the Russian Federation and, therefore, are open to interpretation by Russian courts.

If there is no "foreign element" in the transaction, the parties can still choose foreign governing law, but the Russian courts would then not apply such foreign law to the extent that it contradicts mandatory provisions of Russian law (which are rather extensive).

Furthermore, a Russian court will apply foreign law as the law of the contract only, provided that such Russian court has properly established the content of the relevant foreign law in relation to the issues considered by it. If a Russian court is not in a position to establish the content of foreign law within a reasonable period, it is entitled to apply the laws of the Russian Federation. In any event, the laws of the Russian Federation will apply as to the matters of evidence and procedure.

7.2 Will the courts in your jurisdiction recognise and enforce a judgment given against a company in New York courts or English courts (a "foreign judgment") without re-examination of the merits of the case?

Judgments of foreign courts may be enforced in the Russian Federation only if there is a treaty between the Russian Federation and the relevant foreign jurisdiction on the mutual recognition and enforcement of court judgments or, in the absence of such a treaty, on the basis of reciprocity. As of today, no such treaty is currently in force and no formal legal procedures for

reciprocal enforcement of court judgments exist between the Russian Federation and England or the Russian Federation and the United States, which means that the risk that a judgment of an English or a New York court would not be recognised and enforced in Russia is substantial.

We are aware of some cases in which judgments of foreign courts were successfully recognised and enforced in Russia (the claimant usually provided evidence, including an expert opinion, that, under similar circumstances, a judgment of a Russian court would be enforceable in the respective foreign jurisdiction), but we are also aware of a number of cases in which enforcement of foreign court judgments was denied by Russian courts.

7.3 Assuming a company is in payment default under a loan agreement or a guarantee agreement and has no legal defence to payment, approximately how long would it take for a foreign lender to (a) assuming the answer to question 7.1 is yes, file a suit against the company in a court in your jurisdiction, obtain a judgment, and enforce the judgment against the assets of the company, and (b) assuming the answer to question 7.2 is yes, enforce a foreign judgment in a court in your jurisdiction against the assets of the company?

In general, a claim under a loan would normally be enforced in Russia upon a court judgment.

(a) Obtaining a final and binding judgment of the arbitrazh (commercial) court of first instance usually takes three to four months. The proceeding at the court of appeal usually takes from two to three months. Enforcement of a Russian court judgment should normally be completed within two months from the day of the commencement of the enforcement proceedings, although sometimes it takes much longer due to various delays.

(b) Enforcement of a foreign judgment should technically be completed within one month, but may in practice take several months.

A bad-faith debtor may substantially delay the court or enforcement proceedings by means of raising various objections in respect of the substance of the foreign law as well as various procedural objections.

Under Russian law, it is also possible to collect debt through an out-of-court procedure under a notary's executory endorsement made on a copy of the loan agreement. An out-of-court order of debt collection may be exercised when a loan agreement specifically provides for such enforcement option. The lender must notify the borrower at least 14 days prior to the intended collection of debt. In the absence of the established court practice, it is unclear whether the out-of-court procedure can also be used by foreign banks.

7.4 With respect to enforcing collateral security, are there any significant restrictions which may impact the timing and value of enforcement, such as (a) a requirement for a public auction, or (b) regulatory consents?

The enforcement in respect of most types of pledged assets is possible both in court and out of court. In most cases, out-of-court enforcement of the pledged assets requires notarial endorsement and such endorsement is only allowed if the pledge agreement is notarised. The creditor would also be able to select an out-of-court enforcement when it has the actual possession over the pledged assets (e.g., the lender also acts as a depositary for the shares pledged to it or as the account bank where the rights under such bank account are pledged to it).

The out-of-court enforcement may be exercised by the following methods: a private auction; an appropriation; and a private sale without an auction. The out-of-court enforcement and the particular method of enforcement shall be provided by the pledge agreement. The methods of the court enforcement are: a public auction; an appropriation; and a private sale without an auction. Acquisition of assets of and shares and participatory interests in certain companies through an enforcement procedure may require certain antimonopoly and similar consents.

7.5 Do restrictions apply to foreign lenders in the event of (a) filing suit against a company in your jurisdiction, or (b) foreclosure on collateral security?

Foreign creditors should generally be treated in the same way as Russian creditors in terms of filings of suits and enforcement of the collateral security. All documents filed to the Russian arbitrazh (commercial) courts must be in Russian; any documentation in any other language must be translated into Russian, notarised and apostilled, unless originally written in Russian.

7.6 Do the bankruptcy, reorganisation or similar laws in your jurisdiction provide for any kind of moratorium on enforcement of lender claims? If so, does the moratorium apply to the enforcement of collateral security?

There is a general moratorium on enforcement of lender monetary claims since the introduction of the supervision procedure (the first insolvency stage). Creditors are not entitled to enforce collateral security during the supervision procedure. During the financial rehabilitation and external management procedures (further insolvency stages), secured creditors are generally entitled to enforce their security.

If a secured creditor opts for the enforcement of security during the financial rehabilitation or external management procedure, it must file an application to the court. The enforcement is possible only if there is a risk of loss or substantial devaluation of the security. If the debtor proves that the enforcement of the security will make restoration of the debtor's solvency impossible, the court can reject the creditor's enforcement application. In such case, a secured creditor obtains full voting rights at the creditors' meetings during that bankruptcy stage. Unless enforced during the previous stages, the collateral security should generally be sold during the final bankruptcy stage (liquidation).

During the bankruptcy proceedings, the company's pledged property can only be sold at an auction, and any provisions in the security documents concerning the out-of-court enforcement of a pledge do not apply.

Please also refer to question 1.1 in respect of the moratorium that applied until 7 January 2021.

7.7 Will the courts in your jurisdiction recognise and enforce an arbitral award given against the company without re-examination of the merits?

A foreign arbitral award needs to be recognised and enforced in Russia, and the creditor must obtain an executory writ for the execution of an arbitral award. The decisions of international arbitration tribunals are generally enforceable in Russia subject to compliance with the provisions of the 1958 New York Convention and the requirements of Russian procedural legislation. The process of recognising and enforcing a foreign arbitral award must be made without re-examining in substance or re-litigating the underlying dispute. In practice, however, due

to the absence of clearly established practice in this regard, Russian courts sometimes refuse to enforce foreign arbitral awards without substantiating such a decision with a sufficient legal explanation.

8 Bankruptcy Proceedings

8.1 How does a bankruptcy proceeding in respect of a company affect the ability of a lender to enforce its rights as a secured party over the collateral security?

Please refer to question 7.6.

8.2 Are there any preference periods, clawback rights or other preferential creditors' rights (e.g., tax debts, employees' claims) with respect to the security?

The proceeds obtained from the sale of pledged property are applied as follows:

(a) 80% (in the event of the pledge securing a facility agreement) or 70% (in all other cases) of the proceeds (in an amount not exceeding the aggregate amount of principal and interest) is allocated to satisfy the claim of the relevant secured creditor;

(b) 15% (in the event of the pledge securing a loan agreement) or 20% (in all other cases) is allocated to satisfy the "first priority" and the "second priority" claims if the unencumbered property of the company is insufficient to satisfy these claims; and

(c) the remaining amounts are allocated to the cost of the court and bankruptcy proceedings.

Russian insolvency laws provide that certain transactions qualifying as "suspicious" or "preferential" may be contested in the course of insolvency.

"Suspicious" transactions are those entered into (1) with the intention to infringe creditors' rights within the three-year period preceding the commencement of the insolvency proceedings, or (2) at an undervalue within one year preceding the commencement of the insolvency proceedings.

A so-called "preferential transaction" is a transaction entered into with a creditor or another person that results or may result in the preferential satisfaction of a claim of one of the creditors in comparison to claims of other creditors.

Preferential transactions may be challenged if they are entered into within the one-month period preceding the initiation of insolvency proceedings. However, the hardening period is extended to six months if a preferential transaction is entered into with a person who was aware of the debtor's inability to meet its obligations or in which the amount of the debtor's obligations exceeded the value of the debtor's assets. A related party is automatically deemed to have such knowledge.

The concept of preferential transactions captures prepayment under the existing agreements, set-offs, transfer of the debtors' property, granting security for an existing debt and other arrangements which can be frequently seen in the course of a debt restructuring. Therefore, the risk of challenge in insolvency should be carefully considered by the creditors prior to agreeing to any restructuring arrangement with a company.

8.3 Are there any entities that are excluded from bankruptcy proceedings and, if so, what is the applicable legislation?

According to the Russian Civil Code, certain entities such as political parties, religious organisations, public enterprises and most state corporations are excluded from bankruptcy proceedings. Liquidation of such entities is usually subject to the Civil Code and special laws. Please also refer to question 1.1 in respect of the moratorium that applied until 7 January 2021.

8.4 Are there any processes other than court proceedings that are available to a creditor to seize the assets of a company in an enforcement?

During bankruptcy proceedings, the assets of the company can be enforced only within the insolvency proceedings. Any provisions in the security documents concerning the out-of-court enforcement of a pledge do not apply.

9 Jurisdiction and Waiver of Immunity

9.1 Is a party's submission to a foreign jurisdiction legally binding and enforceable under the laws of your jurisdiction?

Submission by parties to a contract to the jurisdiction of a foreign court should generally be binding and enforceable if at least one party is a foreign entity and the subject matter of the contract is not subject to the exclusive jurisdiction of Russian courts.

Pursuant to recent changes to the Russian procedural legislation, notwithstanding any provision of a contract to the contrary, if: (i) any dispute is initiated or threatened against a Russian party in a foreign court or arbitral tribunal due to the Russian party becoming subject to any foreign sanctions aimed at Russia; or (ii) any other dispute arises between the parties to the contract relating to the application of any such sanctions, the Russian party may be entitled to (a) refer any such dispute to be finally resolved by a Russian arbitrazh (commercial) court, or (b) request a Russian arbitrazh (commercial) court to issue an injunction prohibiting the initiation or continuation of the dispute proceedings in a foreign court or arbitral tribunal. If such injunction is not complied with by the foreign party, the Russian court may award damages to the Russian party in an amount up to the amount claimed by the foreign party from the Russian party plus the Russian party's litigation costs. As the exact scope and effect of these rules is uncertain, they may potentially apply to any dispute with the Russian party, as long as it continues to be subject to any foreign sanctions.

9.2 Is a party's waiver of sovereign immunity legally binding and enforceable under the laws of your jurisdiction?

The judicial immunity of a state or another sovereign entity consists of three elements: (a) immunity from legal proceedings (i.e., immunity from being subject to the jurisdiction of courts and arbitral tribunals); (b) immunity from interim measures; and (c) immunity from enforcement. A sovereign entity can waive the immunity under an international treaty by giving a written consent or by application to the court. The waiver of immunity is binding and enforceable in Russia.

10 Licensing

10.1 What are the licensing and other eligibility requirements in your jurisdiction for lenders to a company in your jurisdiction, if any? Are these licensing and eligibility requirements different for a "foreign" lender (i.e. a lender that is not located in your jurisdiction)? In

connection with any such requirements, is a distinction made under the laws of your jurisdiction between a lender that is a bank *versus* a lender that is a non-bank? If there are such requirements in your jurisdiction, what are the consequences for a lender that has not satisfied such requirements but has nonetheless made a loan to a company in your jurisdiction? What are the licensing and other eligibility requirements in your jurisdiction for an agent under a syndicated facility for lenders to a company in your jurisdiction?

Russian law provides different legal regimes with respect to loan agreements and facility agreements. Only banks (including foreign ones) may enter into a facility agreement, while loan agreements may be entered into by any legal entity.

In order to carry on business, all banks incorporated in Russia must receive the Central Bank of Russia's licence. No licence is required to be obtained by a foreign bank to make a loan to a Russian company.

In terms of a cross-border transaction, it should be noted that:

(a) the borrowings under a foreign currency loan can be credited to a Russian borrower's foreign account with a bank located in: (1) the Eurasian Economic Union; or (2) a foreign state which automatically exchanges financial information with the Russian Federation, provided that: (i) a lender is (a) an agent of a foreign government, (b) located in the Eurasian Economic Union, or (c) located in a foreign state which automatically exchanges financial information with the Russian Federation; and (ii) the maturity of a loan exceeds two years; and

(b) a Russian company, for the purposes of effecting certain payments to a non-resident, shall have an individual contract number assigned to the respective contract by an authorised bank.

11 Other Matters

11.1 How has COVID-19 impacted document execution and delivery requirements and mechanics in your jurisdiction during 2020 (including in respect of notary requirements and delivery of original documents)? Do you anticipate any changes in document execution and delivery requirements and mechanics implemented during 2020 due to COVID-19 to continue into 2021 and beyond?

The possibility to execute contracts electronically existed prior to the COVID-19 pandemic; however, the COVID-19 restrictions contributed to a widespread use of electronic signatures. Under Russian law, in the case of electronic signing of a document, the parties to such document should be "reliably ascertainable", meaning that if a party later raises an objection that it had not signed the document in question, the other party should be able to prove conclusively to the court that the copy of the signed counterpart had been received from an email address associated with the counterparty. In the absence of a clearly established practice, it is considered that such means of execution is safely available only if the parties already have a document with "wet ink" signatures specifying authorised email addresses/fax numbers of each party. Electronic execution is not possible in cases where Russian law requires the notarisation of certain documents or the provision of an original of the contract for the registration. While the COVID-19 restrictions did not lead to the adoption of new laws in relation to the use of electronic signatures, in view of the global trend in online communication we expect that more detailed guidance on electronic signatures would be adopted.

11.2 Are there any other material considerations which should be taken into account by lenders when participating in financings in your jurisdiction?

One of the most important considerations which should be addressed at the financing stage is the need to obtain a pledge or mortgage from a Russian company as collateral, which is beneficial not only because it entitles a creditor to receive satisfaction of its claim from the proceeds of the sale of the pledged or mortgaged property, but also because the status of a secured creditor gives a creditor substantial comfort during insolvency proceedings.

Further considerations that must be taken into account are the requirement to obtain corporate consents and, in respect of state-owned companies, the procurement regulations.

Given the unpredictability of potential new sanctions, foreign lenders must be particularly cautious when entering into contracts with Russian counterparties. In particular, it is recommended to make sure that a lender will be able to terminate the contracts unilaterally without excessive losses if new sanctions make it illegal for the lender to perform the contract.

Grigory Marinichev represents international lenders and borrowers in prepayment finance, project finance, structured finance, syndicated lending, debt restructuring transactions, and insolvency issues. Grigory advises clients in the metals, mining, telecommunications, oil and gas, and power generation industries on a range of financial transactions, from syndicated and bilateral credit facilities, refinancing, and bond issues to export financing, loans, and loan restructurings. He also represents and advises project sponsors, export credit agencies, and multilateral financial institutions.

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