
**RAA CONFERENCE:
COLLECTING BAD DEBTS.
THROWING GOOD MONEY AFTER BAD?**

**KEY FACTORS SHAPING STRATEGY
OF RECOVERY ABROAD**

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The main choices to be made:

- 1. To act abroad directly as a creditor OR via insolvency receiver, appointed by the Russian state court?**
- 2. To join the Russian insolvency case prior to / in parallel with recovery abroad OR to skip it?**
- 3. To suit debtor's controlling persons in the Russian insolvency case of the main debtor / Russian criminal case (and then enforce relevant judgments abroad) OR to go directly to foreign courts?**
- 4. To initiate insolvency proceedings against debtor's controlling persons in Russia OR not?**

General factors affecting the choice:

- 1. Allocation of the main debtor's and its controlling persons' assets in Russia or abroad;**
- 2. Sufficiency of the foreign assets to satisfy the particular creditor;**
- 3. Proportion of the creditors' claims in the Russian insolvency case registry;**
- 4. Factors, increasing or decreasing the creditor's priority over the other claims in the Russian insolvency case registry;**
- 5. Degree of the particular creditor's control over the Russian insolvency receiver;**
- 6. Preferential treatment to the particular creditors from the Russian state courts due to the political reasons;**
- 7. Urgency of the interim relief against the foreign assets.**

Approach of foreign jurisdiction - Part I:

- 1. Approach to recognition and enforcement of the Russian court judgments (international treaties / reciprocity principle). Specific requirements for the recognition of the insolvency judgments. What particular judgments, issued in the Russian insolvency case have to be recognized?**
- 2. Approach to the interim relief in support of the recognition proceedings.**
- 3. Approach to the recognition of the foreign insolvency receiver's powers:**
 - upon debtor's *lex personalis* (without court proceedings) OR as a result of recognition court proceedings only;
 - recognition of the receiver's powers related to the particular assets only OR recognition of the insolvency court judgment on receiver's powers along with all legal effects of Russian insolvency case (including moratorium).
- 4. Would the foreign court recognize (due to debtor's COMI), that there are main proceedings in Russia and secondary proceedings in the foreign jurisdiction?**
- 5. Would the recognition of insolvency judgment affect creditor's rights to challenge debtor's transactions in the foreign jurisdiction directly (not via insolvency receiver)? Is it affected by the fact of such creditor's participation in the Russian insolvency case?**

Approach of foreign jurisdiction – Part 2

1. Local equivalent to the rule in **Gibbs**;
2. Strict approach to choose of jurisdiction via participation in insolvency case;
3. Approach to an extra-territorial effect of the particular Russian insolvency law provisions prior to the recognition of insolvency judgments:
 - differentiation of the approach in relation to the material and procedural provisions of law;
 - local case law regarding qualification of the particular Russian law provisions (e.g. on the moratorium or proper jurisdiction for claims to the controlling persons) as material / procedural / mixed nature provisions (for example, **Kehman case**, **Laptev case**, **VPB case**);
 - approach to the qualification of the similar local provisions as material / procedural / mixed nature provisions (**AVONWICK case**).

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