

The Moscow Times ● com



The Moscow Times » Issue 4055 » Business For Business

The Financial Crisis: a Threat to International Law Firms in Moscow?

18 December 2008 By John Hammond / Partner, Head of CMS in Russia



The dramatic events of the past few weeks have shaken the international financial community to its very foundations. We have watched capital flee from the Russian finance markets, at first in response to events here, and then following the collapse of Lehman Brothers as part of a worldwide flight to safety as finance markets across the world experienced their greatest stress since the start of the first world war nearly 100 years ago. Credit disappeared, and as clients sat almost paralyzed with fear and uncertainty watching share prices crash with almost the entire Western banking system driven to the precipice of insolvency, business seemed to grind to a halt. Against such a background, no initial public offering can be planned, no loan syndicated, no M&A transaction financed or major investment approved. Thankfully the threat of a total meltdown has been averted by the massive injection of public funds made by governments in the U.S. and Europe, but as recession now hits almost every economy, now is the time to start

to take stock, to start to analyze the the possible consequences, and to begin planning for the changed world in which we now live and work.

It was Oscar Wilde, who had little time for lawyers, who wrote: "we may all be in the gutter, but some of us are looking at the stars," a line which is destined to become a cliché of this downturn. For international law firms, however, a downturn is always seen as an opportunity. A recession generates work for advisers and in particular for lawyers as companies lay-off staff, restructure their balance sheets, reschedule debt and look to litigate to protect their business and assets. The challenge for the international law firms is to switch resources quickly enough from the standard work of the good times to the services clients now require. In Russia this will mean redirecting a whole generation of lawyers, most of whom have no experience of a recession and this of course, includes the Russian lawyers! The skills required for litigation are different from those that were until so recently needed to carry out a due diligence in preparation for an initial public offering in London, but in other disciplines the change may not be so dramatic — a good finance lawyer needs to understand how his loan agreement works under stress and how to secure his client's position when payments are not met in full on time. The experience of handling a workout or even an insolvency is an invaluable, if not integral, part of understanding how the credit markets function in the first place. And an M&A transaction is an M&A transaction in any market — an experienced practitioner must understand how to deal with the differences between a seller's market and the buyer's market that Russia now faces.

The Russian legal system has undergone significant change in the last 15 years, and just as Rome wasn't built in a day, a legal system takes considerable time to develop: the English legal system has an 800 year history and would still benefit from some major amendments! Any legal system has to provide mechanisms for dealing with the economic stress that any recession imposes on the

citizens and entrepreneurs operating within that system. It is also part of the international community and with the success of globalization, financial stress in one economy is transmitted instantaneously to many others. The coming months will present the Russian legal system with its greatest test to date on the international legal stage — the aftermath of 1998 was largely a very domestic affair: it was Russian banks that could not meet their debts and they reacted either by negotiating terms with their relatively few foreign creditors (for example, Rossiisky Kredit Bank, a transaction that I led) or by transferring their assets to new structures, leaving creditors with nothing but bitter memories (which faded as quickly as the oil price climbed). But after four years in which foreign capital has flowed into Russia and into almost every sector of business and economic life, the coming recession will not be such a family affair. Russian companies are major creditors of Western banks and have significant assets and interests outside Russia. Attempts merely to asset strip are unlikely to succeed in many jurisdictions outside Russia and may only assist creditors to enforce security against those assets and deprive the current owners of long term credibility once the markets bounce back. Russian creditors will need to look for international solutions to their problems and the relationship between Russian creditor protection laws and those in other jurisdictions will come under the spotlight. Will a US court, for example, be willing to recognize amicable settlement proceedings brought in Russia between a debtor and its creditors?

The question is just as valid when asked the other way around. Many international companies are coming under intense financial pressure and there will be casualties; not all will survive. How will the Russian courts deal with applications to recognize and enforce the creditor protection and insolvency laws of other jurisdictions? Will Russian courts recognize Chapter 11 proceedings for example, or will they give creditors in Russia priority by allowing claims against Russian subsidiaries to be enforced?

All of these questions and many more will challenge lawyers working in Russia in 2009. Those few lawyers who experienced the crisis of 1998 have invaluable experience to offer clients, but will also have plenty to learn as this crisis unfolds.

Shtokman Gas Field

Sustainable oil and gas expansion with StatoilHydro.

Russian for foreigners

Premium Russian language school in the heart of Moscow

Ads by Google

© Copyright 2007. The Moscow Times. All rights reserved.