LEGAL STATUS OF ENERGY COMPANIES

DOI: 10.61525/S231243500031368-2 Original Article / Оригинальная статья

BANKRUPTCY OF ENERGY COMPANIES IN RUSSIA AND CHINA: LEGAL REGULATION

Popondopulo V.F.[1], Silina Y.V.[2]

[1]LL.D., Professor,
Head of the Department of Commercial Law,
St. Petersburg State University
E-mail: v.popondopulo@spbu.ru
[2]LL.D., Professor,
Department of Civil Procedural Law,
Russian State University of Justice (North-West Branch)
E-mail: Slepchenko.1974@mail.ru

Abstract. This article compares Russian and Chinese legislation on the bankruptcy of energy companies employing a comparative analysis method, identifies similarities and differences in legal regulation. The theoretical relevance of this work is to identify the main legislative approaches to the legal regulation of bankruptcy of energy companies in Russia and China, thereby providing a foundation for further research on this issue. The practical relevance of this work is the possible use of the best practices of legal regulation of bankruptcy relations of energy companies in Russia and China. Despite the significant influence of state regulation on the economy, both in Russia and China, bankruptcy legislation generally corresponds in its content to market standards of bankruptcy regulation. In terms of bankruptcy regulation of energy companies, Russian bankruptcy legislation, unlike Chinese legislation, has more specific features. Chinese bankruptcy legislation is supplemented by the decisions of the State Council of the People's Republic of China and the practice of higher courts, as well as by widely used conciliation procedures.

Keywords: energy companies, town-forming organizations, strategic organizations, natural monopoly entities, state-owned enterprises, bankruptcy.

For citation: Popondopulo V.F., Silina Y.V. Bankruptcy of Energy Companies in Russia and China: Legal Regulation. Energy Law Forum, 2024, iss. 2, pp. 19–28. DOI: 10.61525/S231243500031368-2

БАНКРОТСТВО ЭНЕРГЕТИЧЕСКИХ КОМПАНИЙ В РОССИИ И КИТАЕ: ПРАВОВОЕ РЕГУЛИРОВАНИЕ

Попондопуло В.Ф.[1], Силина Е.В.[2]

[1]Доктор юридических наук, профессор,
заведующий кафедрой коммерческого права
Санкт-Петербургского государственного университета
E-mail: v.popondopulo@spbu.ru
[2]Доктор юридических наук,
профессор кафедры гражданского процессуального права
Российского государственного университета правосудия (Северо-Западный филиал)
E-mail: Slepchenko.1974@mail.ru

Аннотация. В статье на основе метода сравнительного анализа проводится сравнение российского и китайского законодательства о банкротстве энергетических компаний, выявляются сходство и различия правового регулирования. Теоретическое значение работы заключается в выявлении основных законодательных подходов к правовому регулированию отношений банкротства энергетических компаний в России и Китае как основы дальнейших исследований по данной проблематике. Практическое значение работы заключается в возможном использовании лучших практик правового регулирования отношений банкротства энергетических компаний в России и Китае. Несмотря на значительное влияние государственного регулирования на экономику как в России, так и Китае, законодательство о банкротстве в целом соответствует по своему содержанию рыночным стандартам регулирования отношений банкротства. В части регулирования банкротства энергетических компаний российское законодательство о банкротстве, в отличие от китайского, предусматривает больше особенностей. Китайское законодательство о банкротстве восполняется решениями Государственного совета КНР и практикой высших судов, а также широко используемыми примирительными процедурами.

Ключевые слова: энергетические компании, градообразующие организации, стратегические организации, субъекты естественных монополий, государственные предприятия, банкротство.

Для цитирования: Попондопуло В.Ф., Силина Е.В. Банкротство энергетических компаний в России и Китае: правовое регулирование // Правовой энергетический форум. 2024. № 2. С. 19–28. DOI: 10.61525/S231243500031368-2

Energy company concept. Energy companies are legal entities engaged in the production of energy resources (companies generating electricity, companies extracting gas, oil, coal, etc.) and the subsequent supply of these resources to consumers (retail companies). Energy companies also include organizations that provide infrastructure services.

In order to study the peculiarities of the legal status of energy companies, several classifications [1] have been proposed, which are also relevant for studying the peculiarities of their bankruptcy. It is about identifying energy companies that are town-forming, strategic, natural monopoly entities, and state unitary enterprises operating under the right of economic management. Federal Law No. 127-FZ On Insolvency (Bankruptcy) dated October 26, 2002 outlines the specific features of bankruptcy of these organizations. The Law On Bankruptcy of Enterprises of the People's Republic of China, adopted at the 23rd meeting of the Permanent Committee of the 10th National People's Congress on August 27, 2006, and entered into force on June 1, 2007, does not contain special rules on the bankruptcy of energy companies. However, this does not exclude the regulation of the relevant relations by the general rules of the Law on Bankruptcy, as well as decisions of the State Council of the People's Republic of China and higher judicial instances.

1. For the purposes of the Law on Bankruptcy of the Russian Federation, *a town-forming organization* means a legal entity that is a debtor and whose number of employees represents at least 25% of the

working population of the respective locality. Furthermore, the provisions on the peculiarities of bankruptcy of town-forming organizations also apply to other organizations with a number of employees exceeding 5,000 (Article 169). The rules of § 2 of Chapter IX of the Bankruptcy Law of the Russian Federation regulating the peculiarities of bankruptcy of town-forming organizations are also applicable to energy companies, inter alia, if they are strategic organizations or natural monopoly entities. The rules on the bankruptcy of town-forming organizations are based on the need to ensure the interests of employees of a town-forming organization, members of their families, and the locality where the town-forming organization is located [2]. The number of bankruptcy cases of town-forming organizations is relatively low, yet the legislator has deemed it necessary to regulate the bankruptcy relations of town-forming organizations, taking into account the social consequences of their liquidation.

2. A *strategic organization* means a federal state unitary enterprise or a joint-stock company whose shares are in federal ownership. These organizations are engaged in the production of products (works, services) of strategic importance for the defense and security of the State, the protection of morality, health, rights, and legitimate interests of citizens of the Russian Federation, as well as other organizations in cases stipulated by the Federal Law (Article 190 of the Law on Bankruptcy) [3]. Furthermore, strategic organizations may include large energy companies, such as organizations within the nuclear power industry complex: federal state unitary enterprises and joint stock companies established on their basis, including the main (parent) joint-stock company established by the decision of the President of the Russian Federation in accordance with Federal Law No. 13-FZ On the Peculiarities of Management and Disposal of Property and Shares of Organizations Engaged in Activities in Atomic Energy Use and on Amending Certain Legislative Acts of the Russian Federation dated February 5, 2007.

The list of strategic organizations to which the rules of § 5 of Chapter IX of the Law on Bankruptcy determining the specifics of bankruptcy of strategic organizations apply is approved by the Government of the Russian Federation (clause 2 of Article 190 of the Law on Bankruptcy). These include, in particular, such joint stock companies as Gazprom PJSC, Rosneft PJSC, RusHydro PJSC, Russian Grids PJSC, and InterRAO PJSC.

In order to achieve regulatory economy, Resolution of the Russian Government No. 684 On Strategic Enterprises and Strategic Joint-Stock Companies to Which Special Bankruptcy Rules Apply dated November 17, 2005, establishes that strategic enterprises and strategic joint-stock companies included in the list approved by Presidential Decree No. 1009 On Approval of the List of Strategic Enterprises and Strategic Joint-Stock Companies to Which Special Bankruptcy Rules Apply dated August 4, 2004, shall be considered as strategic organizations to which the rules outlined in Articles 190–196 of the Law on Bankruptcy apply.

Given the pivotal role of strategic organizations in defense and security, the protection of morality, health, rights, and legitimate interests of citizens, the peculiarities of their bankruptcy are most evident in the prevention of their bankruptcy.

3. A *natural monopoly entity* means an organization engaged in the production and/or sale of goods (works, services) under conditions of natural monopoly (clause 1 of Article 197 of the Law on Bankruptcy). Such condition of the commodity market occurs when the satisfaction of demand in this market is more efficient in the absence of competition due to technological features of production, and goods produced by natural monopoly entities cannot be substituted in consumption by others. Consequently, the demand for these goods depends to a lesser extent on changes in the price of goods (works, services) than the demand for other types of goods (Article 3 of Federal Law No. 147-FZ On Natural Monopolies of August 17, 1995). In the energy sector, natural monopolies are present in the transportation of crude oil and oil products through trunk pipelines, the transportation of gas through pipelines, electric power transmission services, operational and supervisory control services in the electric power industry, heat power transmission services, and publicly available telecommunications services and postal services (clause 1 of Article 4). In the context of natural monopolies, special measures of state regulation are employed, including the state regulation of prices (tariffs), control over investment and major transactions, prohibition of arbitrary termination or restriction of activities, etc.

The specifics of bankruptcy of natural monopolies are regulated by § 6 of Chapter IX of the Law on Bankruptcy, which provisions introduce certain restrictions on the application of general rules on the bankruptcy of legal entities, with the goal of limiting the bankruptcy of natural monopoly entities and

protecting consumers of products (works, services) of natural monopoly entities. The application of the "common standard" of bankruptcy to natural monopoly entities in the same manner as to other agents of property turnover has the potential to have catastrophic consequences for the Russian economy as a whole [4].

Bankruptcy legislation for energy companies. In Russia, the general provisions of the Law on Bankruptcy apply to bankruptcy relations of energy companies, unless otherwise stipulated by its special provisions and provisions of other laws regulating bankruptcy relations of energy companies.

The PRC Bankruptcy Law does not contain special provisions on bankruptcy of certain categories of debtors. Nevertheless, even in this instance, bankruptcy relations are regulated not only by the rules of the Bankruptcy Law, but also by other acts establishing the specifics of bankruptcy of state-owned enterprises and financial institutions (Articles 133–135 of Chapter XII "Additional Provisions" of the PRC Bankruptcy Law). Provisions of other legislative acts are applied to bankruptcy relations with peculiarities stipulated by the PRC Bankruptcy Law (Article 135). Consequently, the general provisions of the PRC Bankruptcy Law apply to bankruptcy relations of Chinese energy companies, as well as in Russia, unless otherwise stipulated by its special provisions and provisions of other PRC laws regulating bankruptcy relations of energy companies.

It is also important to consider the disparity in the scope of application of bankruptcy legislation between Russia and China. In Russia, between 30,000 and 50,000 cases of bankruptcy of legal entities are considered annually. In China, the practice of implementing the PRC Bankruptcy Law is minimal, which can be attributed to several factors, including the country's national mentality, collectivist traditions, broad judicial discretion, and government involvement [5]. According to the PRC Supreme People's Court, from 2007 to 2020, Chinese courts at all levels nationwide have handled a total of only 59,609 enterprise bankruptcy cases [6]. According to the Chinese National Bureau of Statistics, there were more than 5,800 enterprise bankruptcy cases registered in 2020 in China [7]. The PRC Ministry of Justice report for 2021 indicates that there were 19,613 bankruptcy cases in China [8]. Currently, the People's Republic of China is experiencing a severe energy crisis caused by power shortages, which has led to the suspension of many industries and the threat of bankruptcy [9]. Consequently, there is a discernible tendency towards an increase in the number of bankruptcy cases.

A comparison of the bankruptcy legislation of Russia and China also reveals that the Law on Bankruptcy of the Russian Federation is mainly pro-debtor, i.e. it is primarily oriented towards the protection of the interests of the insolvent debtor [8], whereas the PRC Bankruptcy Law has a generally pro-creditor orientation. This is evidenced by the absence of a number of features characteristic of Russian bankruptcy legislation, including the absence of excessive requirements when filing a debtor bankruptcy petition, the absence of excessive procedures applied in a bankruptcy case, which contributes to the reduction of time for its consideration, the absence of special rules for the bankruptcy of certain categories of debtors, and a number of other features of the bankruptcy regime in China. It is also important to note that the bankruptcy regime in China is based on negotiations (settlement agreement), which result in the exercise of rights and obligations of the debtor and creditors [10].

A range of entities that may be declared bankrupt. With the exception of state-owned enterprises, state corporations, companies, and foundations, legal entities may be declared bankrupt (Article 65 of the Civil Code of the Russian Federation). Consequently, if an energy company is established and operates in the legal form of a state-owned enterprise, it cannot be declared bankrupt, as the owner of the property of a state-owned enterprise is subsidiarily liable for the obligations of such enterprise if its property is insufficient (clause 6 of Article 113 of the Civil Code of the Russian Federation). Unitary enterprises operating under the right of economic management are liable for their obligations with all their property, and thus may be declared bankrupt.

State corporations and companies may be declared bankrupt if permitted by federal law, which stipulates their establishment. Typically, federal laws establishing a specific state corporation or company stipulate that they are not eligible for bankruptcy proceedings. The exclusion of state corporations and companies is justified by the State's desire to safeguard state property from the potential risks associated with foreclosure on bankruptcy grounds and the transfer of such property into private ownership. If we consider that public companies represent up to 70% of the country's economy by their economic potential [11], we can conclude that a significant portion of the Russian economy is only a quasi-market economy. This is also

applicable to the possibilities of bankruptcy of energy companies.

Chinese bankruptcy legislation establishes a distinctive framework for the bankruptcy of state-owned enterprises. They go bankrupt according to the rules of the PRC Bankruptcy Law taking into account the provisions of the State Council of the People's Republic of China and its supervisory authority (Article 133) [12]. It can be assumed that Chinese energy companies are established and operate, as a rule, in the legal form of state-owned enterprises and, therefore, can be declared bankrupt under the rules of the PRC Bankruptcy Law, taking into account the provisions of the State Council of the People's Republic of China, which contain special rules (regulations, restrictions, prohibitions) regarding the bankruptcy of such organizations.

Criteria and signs of bankruptcy of energy companies. Bankruptcy is the inability of a debtor, as determined by a commercial court, to fulfill all monetary obligations owed to creditors, pay end-of-service benefits and wages to employees, or fulfill the obligation to make obligatory payments. The external signs of bankruptcy of a legal entity being a debtor are as follows: a) debt of no less than RUB300,000; and b) delay in payment within three months from the due date, unless otherwise stipulated by the Law on Bankruptcy of the Russian Federation (Articles 2, 3, 6 of the Law on Bankruptcy of the Russian Federation).

The external signs of bankruptcy of a *town-forming organization* being a debtor are not distinctive. Consequently, if an energy company is a town-forming organization, it is sufficient to submit a petition to a commercial court to declare it bankrupt if there is a debt of at least RUB300,000 and a delay in the fulfillment of the obligation for three months.

In order to initiate bankruptcy proceedings against an energy company which is a *strategic organization*, claims amounting in the aggregate to at least RUB1,000,000 are taken into account if the respective claims are not fulfilled within six months of the due date (Article 190 of the Law on Bankruptcy).

The initiation of bankruptcy proceedings against energy companies that are *natural monopoly entities* is possible if the debt amounts to at least RUB1,000,000 and the relevant claims are not fulfilled by the natural monopoly entity being a debtor within six months of the due date (Article 197 of the Law on Bankruptcy).

As a general rule, the criterion for declaring a legal entity bankrupt is its *insolvency*, i.e. an energy company being a debtor is presumed to be insolvent unless the company can prove its solvency in court. The fact of insufficient funds (*debtor insolvency criterion*), i.e. the actual excess of the debtor's debt over the value of its property, is presumed unless otherwise stipulated by the Law on Bankruptcy.

Under Chinese legislation, an enterprise is required to settle its debt obligations in accordance with the Bankruptcy Law if it is unable to fulfill obligations that have expired and does not have sufficient assets to repay all debt obligations or has serious difficulties in repaying its debt (Article 2). The PRC Bankruptcy Law does not include any additional elements pertaining to the concept of bankruptcy. However, its brevity is compensated by the adoption of supplementary regulations by the State Council of the People's Republic of China. The rules of the PRC Bankruptcy Law apply to the bankruptcy of state-owned organizations, subject to the provisions of the State Council of the PRC. Furthermore, the explanations of the Supreme People's Court of the People's Republic of China and the Beijing Higher People's Court serve to reinforce the regulatory framework. Consequently, on July 23, 2013, the Beijing Higher People's Court published the Bankruptcy Proceeding Rules for Lower Courts, which defined the external signs of bankruptcy: a) a debtor's default for at least three weeks; and b) debts of at least RMB 5,000. The criterion for determining whether a debtor is bankrupt is whether the debtor is insolvent. The fact that the debtor's debts exceed the value of its property (debtor insolvency criterion) is not generally established.

Peculiarities of legal proceedings in bankruptcy cases of energy companies [13]. *In Russia*, bankruptcy cases are subject to the jurisdiction of commercial courts and are considered by commercial courts of the constituent entities of the Russian Federation at the location of a legal entity being a debtor. The proceedings on bankruptcy cases are conducted according to the provisions of the Commercial Procedural Code of the Russian Federation, subject to the peculiarities stipulated by the Law on Bankruptcy of the Russian Federation. These rules are fully applicable to the regulation of bankruptcy of energy companies.

Those with the right to file a bankruptcy petition against the debtor include *the debtor*, *bankruptcy creditors*, *employees*, *former employees of the debtor who have claims for end-of-service benefits and wages*, *and authorized bodies*. This right is contingent upon the

satisfaction of the necessary material and procedural prerequisites.

Within five 5 days of the court's receipt of the bankruptcy petition, the judge shall issue a *ruling on bankruptcy petition acceptance*, if the petition is filed in compliance with the necessary requirements.

The preparation of the bankruptcy case for court proceedings involves the verification of the validity of the petitioner's claims and the debtor's objections by the arbitrator. This should be performed after the acceptance of the bankruptcy petition within a period of no earlier than 15 days and no later than 30 days.

In considering the legitimacy of creditors' claims against a *town-forming organization* being a debtor, including an energy company, the court should be furnished with evidence substantiating that the organization's status as a town-forming entity. The obligation to provide such evidence falls upon the debtor, as the peculiarities of bankruptcy for town-forming organizations are stipulated by law in their interests. A relevant local government body is deemed a party to the bankruptcy case of a town-forming organization. In addition, federal executive authorities and executive authorities of the relevant constituent entity of the Russian Federation may also be involved (Article 170 of the Bankruptcy Law).

In the event of the bankruptcy of *strategic organizations*, a federal executive body that ensures the implementation of a unified state policy within the economic sector in which the respective strategic organization operates is involved as a party in the case. To illustrate, in the event of a bankruptcy case involving an energy company within the fuel and energy complex, the Ministry of Energy of the Russian Federation is deemed a party in the case.

A party in the bankruptcy case of a *natural monopoly entity* may be a federal executive body authorized by the Government of the Russian Federation to pursue state policy with respect to the relevant natural monopoly entity (Article 198 of the Law on Bankruptcy).

Additional requirements are imposed on insolvency receiver candidates in bankruptcy cases of *strategic organizations* (Article 193 of the Law on Bankruptcy), the list of which is determined by Resolution of the Government of the Russian Federation No. 586 On the Requirements to the Insolvency Receiver Candidates in Bankruptcy Cases of Strategic Enterprises or Organizations dated September 19, 2003. With respect to certain strategic organizations, the Government of the Russian Federation may establish additional requirements for insolvency receiver candidates, for example, if it is an energy company of the fuel and energy complex.

In bankruptcy proceedings, the arbitrator is the sole presiding figure, unless otherwise stipulated by the procedural legislation (e.g., complex cases — Articles 17 and 223 of the Commercial Procedural Code of the Russian Federation). The specific characteristics of court proceedings in bankruptcy cases are reflected in the authority of the court, the types of judicial acts adopted in bankruptcy cases, the consequences of their adoption, the grounds for postponing the trial, the suspension of proceedings, the dismissal of the petition, the termination of proceedings, etc. To illustrate, if a natural monopoly entity, prior to the commercial court accepting its bankruptcy petition, submits a claim to the court seeking to invalidate acts of state authorities approving prices (tariffs) for goods (works, services) produced or sold under conditions of natural monopoly, the bankruptcy proceedings of such natural monopoly entity being a debtor shall be suspended until the decision in the invalidation case enters into legal force. At the same time, if the relevant acts of state authorities approving prices (tariffs) for goods (works, services) produced or sold under conditions of natural monopoly are invalidated, the court may determine that it is not appropriate to declare the natural monopoly entity being a debtor bankrupt.

The Law on Bankruptcy of the Russian Federation also contains rules pertaining to challenging a debtor's transactions in a bankruptcy case (Chapter III.1) and rules for holding persons controlling the debtor liable in a bankruptcy case (Chapter III.2). These rules should be treated as special measures designed to protect creditors' rights by including the debtor's unlawfully alienated property in the bankruptcy estate.

In China, bankruptcy cases are considered by 97 specialized tribunals of *people's courts* and 9 bankruptcy courts at the location of the debtor (specialized courts) [14]. Bankruptcy proceedings are conducted according to the provisions of the Civil Procedure Code of the People's Republic of China with the peculiarities stipulated by the PRC Bankruptcy Law. Additionally, the Beijing Higher People's Court published the Bankruptcy Proceeding Rules for Lower Courts on July 22, 2013 [15].

The following entities may petition the court to declare the debtor bankrupt: the debtor, creditors, tax authorities, social insurance authorities, and the

debtor's staff. Upon acceptance of a creditor's petition, the people's court should notify the debtor within five days. If the debtor has objections, they should submit an objection to the people's court within seven days of the notification. Within seven days of the expiration of the objection period, the people's court is required to issue a ruling on whether or not to accept the petition for consideration. In the absence of an objection from the debtor, the people's court is required to issue a ruling on whether or not to accept the petition within 15 days of receipt of the petition (Articles 10 and 12). Such rulings may be appealed.

Parties in the case, i.e. those with a vested interest in it, include the debtor, creditors, the receiver, and other entities as stipulated by law (e.g., the supervisory authority of the State Council of the People's Republic of China in the case of bankruptcy of state-owned organizations).

In preparing a bankruptcy case for trial, the people's court appoints a bankruptcy receiver. This may be an individual registered as a receiver in the register of the people's court (usually for relatively straightforward cases) or a legal entity specializing in financial rehabilitation and bankruptcy. A liquidation commission, comprising representatives from various government agencies or firms specializing in bankruptcy and liquidation of legal entities, may also be appointed as a receiver [5]. The procedure for appointing receivers and their powers are regulated by Chapter 3 of the PRC Bankruptcy Law and the provisions of the Supreme Court of the People's Republic of China.

The PRC Bankruptcy Law provides for the possibility of challenging the debtor's transactions (Articles 31–34) and the possibility of prosecuting entities that have violated the bankruptcy legislation (Articles 125–131).

The Ministry of Justice of China and professional associations play a pivotal role in regulating and supervising financial rehabilitation and bankruptcy in China. The Ministry of Justice of China is responsible for implementing state policy in the areas of financial rehabilitation and bankruptcy, drafting relevant regulations, and supervising the activities of bankruptcy receivers. Professional associations unite bankruptcy receivers, improve professional standards, organize professional training and workshops, and facilitate the exchange of experience and information.

Procedures applicable in bankruptcy cases of energy companies. In Chinese law, the procedures applicable to debtors in bankruptcy cases are considerably less extensive. The following procedures may be applied to legal entities being debtors: financial rehabilitation, liquidation (similar to bankruptcy proceedings), and amicable settlement. The supervision, receivership, and simplified bankruptcy procedures that are typical for Russia are not provided for. Bankruptcy procedures under the PRC Bankruptcy Law apply to certain categories of legal entities being debtors, such as state-owned enterprises, including energy companies, with the specifics stipulated by the provisions of the State Council of the People's Republic of China and other laws (Articles 133–135).

Financial rehabilitation is a rehabilitation procedure aimed at restoring the debtor's solvency through debt restructuring and repayment in accordance with the financial rehabilitation plan and debt repayment schedule approved by the creditors' meeting.

The peculiarity of the financial rehabilitation procedure applied to an energy company being a debtor, which is a *town-forming organization*, is manifested in the fact that financial rehabilitation may be extended by the court for a period of up to one year if there is a petition from a local government body, a federal executive authority, or an executive authority of a constituent entity of the Russian Federation involved in the case, provided that they secure the obligations of the town-forming organization being a debtor (Article 172 of the Law on Bankruptcy of the Russian Federation).

In China, financial rehabilitation is implemented in accordance with the financial rehabilitation plan that has been approved by the creditors' meeting and adopted by the people's court [16]. In the PRC bankruptcy practice, the financial rehabilitation procedure is rarely employed. In accordance with Chinese legislation, bankruptcy proceedings may be initiated in one of two ways: either on the basis of a financial rehabilitation request or on the basis of bankruptcy proceedings, depending on the petition of the creditors' meeting and the decision of the people's court.

The peculiarities of the sale of an enterprise belonging to a *town-forming organization*, including an energy company, both in the case of receivership (Article 175 of the Law on Bankruptcy) and in the case of bankruptcy proceedings (Articles 175–176 of the Law on Bankruptcy), are as follows. In the event that a petition is submitted by a local government body, a federal executive authority involved in the case, or an executive authority of a constituent entity of the Russian Federation, a material condition of the

enterprise sale contract may be the preservation of jobs for at least 50% of employees as of the date of sale of the enterprise for a certain period of time, but no more than three years of the effective date of the contract. Other terms and conditions of the contract may be established as proposed by these bodies, exclusively with the consent of the creditors' meeting. In the event that the purchaser of the enterprise fails to fulfill the terms and conditions stipulated in the contract, the sale contract may be terminated by the court on the basis of an application submitted by the bodies who requested the tender.

In the absence of a petition to sell the enterprise of a town-forming organization through tender, the property of the town-forming organization declared bankrupt is sold at open bidding. In this case, the bankruptcy receiver is first required to offer the entire enterprise for sale, and if this is unsuccessful, the property of the town-forming organization is to sold in parts (Articles 110, 111 and 139 of the Law on Bankruptcy).

An energy company being a debtor, which is a *strategic organization*, may only be declared bankrupt and bankruptcy proceedings may only be initiated in the absence of grounds for the initiation of financial rehabilitation and receivership (Article 194 of the Law on Bankruptcy). An enterprise being a debtor, which is a strategic organization, including an energy company, should be sold through open bidding during both the receivership and bankruptcy proceedings, unless otherwise stipulated by the Law on Bankruptcy. Consequently, the enterprise should be sold only through closed bidding if it comprises property is subject to circulation restrictions. An obligatory condition of the bidding process is to ensure that the enterprise's intended purpose and mobilization property are secured; the debtor's contracts related to the defense order and other state needs in maintaining the defensive capacity and security of the Russian Federation is fulfilled.

In the event of sale of an enterprise of an energy company being a debtor, which is a strategic organization, responsible for performing works under the state defense order and satisfying the federal state needs in maintaining the defensive capacity and security of the Russian Federation, the Russian Federation has the pre-emptive right to this enterprise. Entities acting as bankruptcy receivers in this case and their affiliates are prohibited from participating in the bidding.

The property, property rights and other rights not included in the pool of assets of the strategic organization being a debtor, which is responsible for performing works under the state defense order and satisfying the federal state needs in maintaining the defensive capacity and security of the Russian Federation, may be sold on general terms outlined by Article 111 of the Law on Bankruptcy (Article 196 of the Law on Bankruptcy).

The sale of property constituting a single technological complex of an energy company, which is a *natural monopoly entity*, in the course of proceedings applicable in bankruptcy cases (supervision, financial rehabilitation, receivership, bankruptcy proceedings, amicable settlement) is permitted only through single lot auction. The mandatory conditions of this auction, and therefore of the property sale contract, are as follows: the purchaser's consent to assume the debtor's obligations under contracts for the supply of goods that are subject to regulation by the legislation on natural monopolies; the purchaser's assumption of obligations to ensure the availability of goods (works, services) produced or sold to consumers; and the availability of a license for the relevant type of activities.

If the purchaser fails to fulfill the aforementioned mandatory conditions, the sale contract shall be subject to termination by the court on the basis of an application submitted by the relevant federal executive authority. Upon the termination of the contract, the purchaser is entitled to reimbursement for the funds spent on the purchase of the debtor's property and the investment made in the property.

In the event of sale of property constituting a single technological complex of an energy company, which is a natural monopoly entity, the Russian Federation, constituent entities of the Russian Federation, and municipalities are afforded special rights. These include the right to suspend the sale of property for a period of up to three months in order to develop proposals to restore the solvency of the natural monopoly entity and the pre-emptive right to such property.

The *liquidation procedure* is regulated by Chapter X, Liquidation and Bankruptcy, of the PRC Bankruptcy Law. This procedure is similar to bankruptcy proceedings under Russian bankruptcy legislation. A notable distinction of Chinese bankruptcy legislation is the priority afforded to the satisfaction of creditors' claims. In particular, the satisfaction of claims for tax payments is deemed a priority

over the claims of commercial (bankruptcy) creditors. This approach was also employed in Russia prior to the adoption of the current Law on Bankruptcy of 2002.

Neither the Russian nor the Chinese legislation regulating the settlement procedure contains any specifics with respect to town-forming organizations, strategic organizations, and natural monopoly entities, including when they are energy companies. Consequently, when determining the terms of a settlement agreement to be concluded, it is essential to consider the specific characteristics of these organizations and the guarantees of preserving the integrity of their technological complexes, in particular, the rules governing the sale of property, the retention of jobs, the repurposing and closure of production, etc.

Under the Russian Law on Bankruptcy, the conditions for entering into a settlement agreement are as follows: full satisfaction of claims of the first and second priority creditors; at least 50% votes of the third priority creditors in favor of the settlement agreement, provided that all creditors whose claims are secured by collateral vote in favor of the settlement agreement (Article 150). Under Chinese law, the conditions for entering into a settlement agreement are as follows: approval of the settlement agreement by more than 50% of all creditors entitled to vote (ordinary creditor rights); at the same time, the creditors should represent more than 75% of all creditor rights not secured by property collateral (Article 97).

The Russian practice of applying settlement agreements demonstrates that the effectiveness of this procedure is regrettably limited due to the involvement of the authorized body of the State, which is constrained in its capacity to conclude a settlement agreement by the tax legislation (clause 1 of Article 156 of the Law on Bankruptcy of the Russian Federation, Chapter 9 of the Tax Code of the Russian Federation) [19]. The use of settlement agreements in the practice of bankruptcy in the People's Republic of China is considerably more prevalent than in Russia, which is attributed to the national mentality. Chinese citizens, including entrepreneurs, tend to prioritize compromising and negotiating over seeking legal recourse in court.

REFERENCES

1. Romanova V.V. Energy Law: Textbook for Training of Personnel of Higher Qualification. Moscow: Lawyer Publishing Group, 2021. P. 105–144.
2. Tkachev V.N. Legal Regulation of Insolvency of Town-Forming Organizations // Legislation and Economics. 2005. No. 6. P. 41–50.
3. Markov P. The Concept, Signs, and Legal Regulation of Bankruptcy of Strategic Enterprises // Law and Economics. 2006. No. 12. P. 29–33.
4. Vitryansky V.V. Peculiarities of Bankruptcy of Certain Categories of Debtors // Bulletin of the Supreme Arbitration Court of the Russian Federation. 2001. No. 3. Special Appendix. P. 120–127.
5. Jiang Yujia. The Curious Case of Inactive Bankruptcy Practice in China: A Comparative Study of U.S. and Chinese Bankruptcy Law // Nortwestern Jurnal of International Law and Business. 2014. Vol. 34. P. 558–582.
6. URL: https://www.court.gov.cn/zixun-xiangqing-318151.html
7. China's National Economic and Social Development Statistical Bulletin. China National Bureau of Statistics, 2020.
8. Popondopulo V.F. Bankruptcy: Legal Regulation. 2nd ed. Moscow, 2016. 432 p.
9. Colossus on Clay Feet: The Energy Crisis in the People's Republic of China as a Consequence of the Collapse of China. URL: https://topwar.ru/188003-koloss-na-glinjanyh-nogah-jenergeticheskij-krizis-v-knr-kak-posledstvija-krushenija-kitaja.html
10. Lee Lianji, Bakanova, V.A. Research and Practice of Market Bankruptcy in China // Young Scientist. 2023. No. 1. P. 169–171. URL: https://moluch.ru/archive/448/97644/
11. Report of the Federal Antimonopoly Service of Russia on the State of Competition in the Russian Federation. Moscow, 2016. P. 7. URL: https://nationalinterest.ru/wp-content/uploads/2017/02/doklad-o-sostoyanii-konkurentsii-v-Rossijskoj-Federatsii-za-2015-god.pdf
12. Strelkova I.I. The Bankruptcy Legislation of China: The Main Stages of Evolution // Legal Studies. 2017. No. 1. P. 75–90.
13. Khasanshina F.G., Gimazova Ye.N., Khasanshin R.I. Judicial Examination of Insolvency (Bankruptcy) Cases. Moscow, 2021. 192 p.
14. Bo Li, Ponticelli J. Going Bankrupt in China // Review of Finance. 2022. Vol. 26. Iss. 3. P. 449–486.
15. Varavenko Ye.V. The General and Special in the Formation of Modern Civil Law of Russia and China (Comparative Legal Analysis) // Bulletin of the Khabarovsk

State Academy of Economics and Law. 2010. No. 4. P. 104.

16. Xu E. Certain Problems of Legal Regulation of Bankruptcy Insolvency in China // Leningrad Law Journal. 2006. No. 5. P. 86–91.

17. Shamshurin L.L. Settlement Agreements as a Rehabilitation Procedure for Insolvent Debtors // Bulletin of the Supreme Arbitration Court of the Russian Federation. 2003. No. 5. P. 112–118.

Authors' information:
Vladimir F. Popondopulo
LL.D., Professor,
Head of the Department
of Commercial Law,
St. Petersburg State University

Yelena V. Silina
LL.D.,
Professor,
Department of Civil Procedural Law,
Russian State University of Justice
(North-West Branch)

Сведения об авторах:
Попондопуло Владимир Федорович
Доктор юридических наук, профессор,
заведующий кафедрой коммерческого права
Санкт-Петербургского государственного
университета

Силина Елена Владимировна
Доктор юридических наук,
профессор кафедры гражданского
процессуального права Российского
государственного университета правосудия
(Северо-Западный филиал)

Received / Поступила в редакцию 08.04.2024
Revised / Поступила после рецензирования и доработки 03.05.2024
Accepted / Принята к публикации 17.06.2024