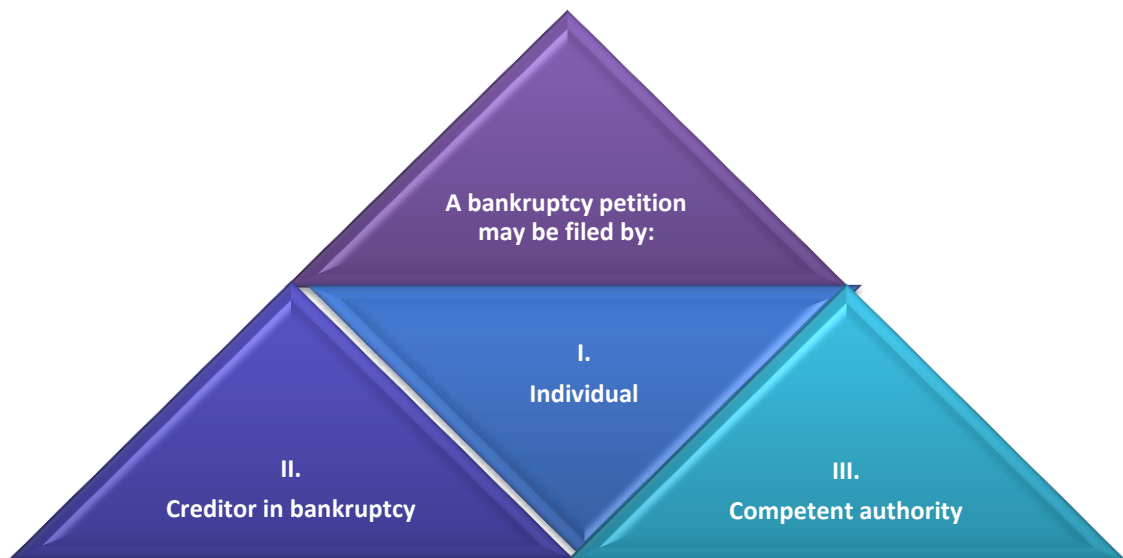


*On October 01, 2015 amendments to Chapter X of Federal Law No. 127-FZ of October 26, 2002 "On Insolvency (Bankruptcy)" ("**Bankruptcy Law**") went into effect. Those changes introduce a new procedure for bankruptcy of individuals who have not acquired the status of individual entrepreneur. Bankruptcy cases are filed with and heard before commercial (arbitrazh) courts.*

We would like to offer you an overview of some key points of the new procedure for bankruptcy of individuals.

## 1. Filing of a bankruptcy petition with a commercial court

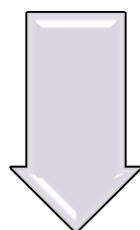
Personal bankruptcy is initiated when a bankruptcy petition is filed with a commercial court.



The competent authority is, as before, the Federal Tax Service of Russia (formerly known as the Ministry of Taxes and Duties).

A bankruptcy petition against an individual, including an individual entrepreneur, is filed with a commercial court having jurisdiction in the place of residence of the individual. In the event the place of residence of an individual is not known or he/she resides outside of the Russian Federation, a bankruptcy petition against such individual is filed with a commercial court having jurisdiction in his/her last known place of residence in the Russian Federation.

It is remarkable that, the Supreme Court of the Russian Federation in its clarifications which are currently being developed reasonably provides for a prohibition on initiation and administration of two bankruptcy cases against an individual with the status of entrepreneur, i.e. as an individual and as an individual entrepreneur.



Only one bankruptcy case may be initiated against an individual even though he or she has the status of entrepreneur.

### 1.1. Initiation of self-bankruptcy by an individual

An individual may initiate self-bankruptcy if:



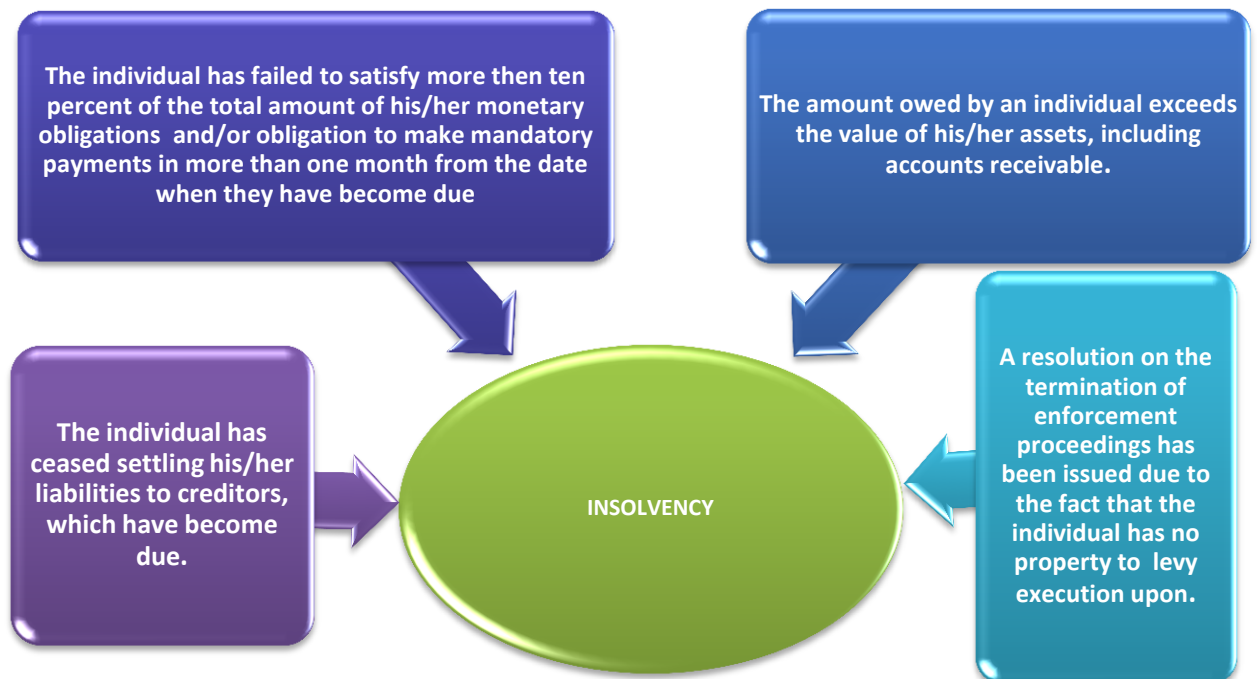
- Circumstances have occurred which manifestly evidence that the individual is unable to satisfy creditors' claims and/or fulfill its obligation to make mandatory payments when due.

- The individual fails to meet the solvency test and/or there are signs of insufficiency of his/her property.

According to the Bankruptcy Law, insolvency of an individual is his/her inability to pay off money owed to his/her creditors and/or fulfill his/her obligation to make mandatory payments in due time.

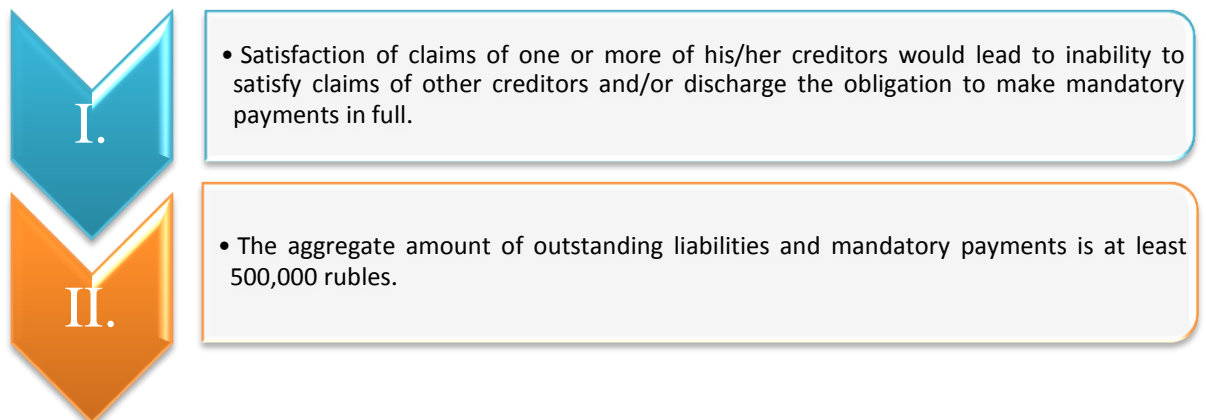
In the Bankruptcy Law insufficiency of property is defined as a situation where an amount of money owed by a debtor, including overdue mandatory payments, exceeds the value of debtor's property (assets).

An individual is declared insolvent in the event at least one of the following circumstances exists:



**A commercial court holds that an individual is insolvent unless interested persons have proved otherwise**, and there are sufficient grounds to believe that, relying on expected cash receipts (including his/her earnings and amounts payable to him/her), within a reasonably short time he/she will be able to pay off his/her debts and/or discharge his/her obligation to make mandatory payments which have become due. The concept of reasonably short time is not defined either in the Bankruptcy Law or in clarifications thereto which are currently being developed. Therefore, commercial courts will interpret it, based on facts of a particular case.

The new version of Chapter X of the Bankruptcy Law establishes that an individual has both right and obligation to file with a commercial court a self-bankruptcy petition. An individual incurs such obligation if:



In such a case, an individual must file a bankruptcy petition within 30 business days of the date when he/she became or should have reasonably become aware of occurrence of the

above referenced grounds. The laws do not set any exact time when the above term for filing by an individual of a bankruptcy petition starts to run. It appears that a commercial court, when considering whether the individual has met the said deadline or not, will proceed from the necessity of observance by the individual of the principles of fairness, reasonableness, and due diligence.

It is worthy of note that if an individual is declared bankrupt, the arbitration court may render a ruling putting temporary restrictions individual's leaving Russia.

The Bankruptcy Law denies individuals the right to file a new bankruptcy petition within 5 years of the date of completion of sale of his/her assets or termination of bankruptcy proceedings against him/her as a result of such assets sale.

**1.2. Initiation of bankruptcy by a creditor in bankruptcy or by a competent authority**

As a general rule, a creditor in bankruptcy or a competent authority may file a bankruptcy petition against an individual only subject to an enforceable court decision recognizing creditors' claims.

The Bankruptcy Law sets forth the list of claims which serve as a valid ground for initiation of bankruptcy of an individual even without an enforceable court decision:

Claims for mandatory payments	Claims based on a notarized protest of an unpaid or nonaccepted bill, or bill with undated acceptance	Claims supported by a notary writ.
Claims based on documents produced by the creditor and establishing monetary obligations which have been recognized but are have not been satisfied by the individual	Claims based on notarized agreements	Claims based on loan agreements with credit institutions
	Claims for recovery of alimony to support minors children, in cases where establishment of paternity is not required, paternity (maternity) is not challenged , or no need for involvement of other interested parties arises	

The above list is exhaustive. In its explanations which are currently being developed the Supreme Court of Russia specifies that if a claim of a creditor in bankruptcy or a competent authority does not fall within the above list, filing thereof without a copy of an enforceable court decision should not serve as a ground for commercial court's refusal to accept it for consideration. If in such situation the claimant does not enclose a copy of an

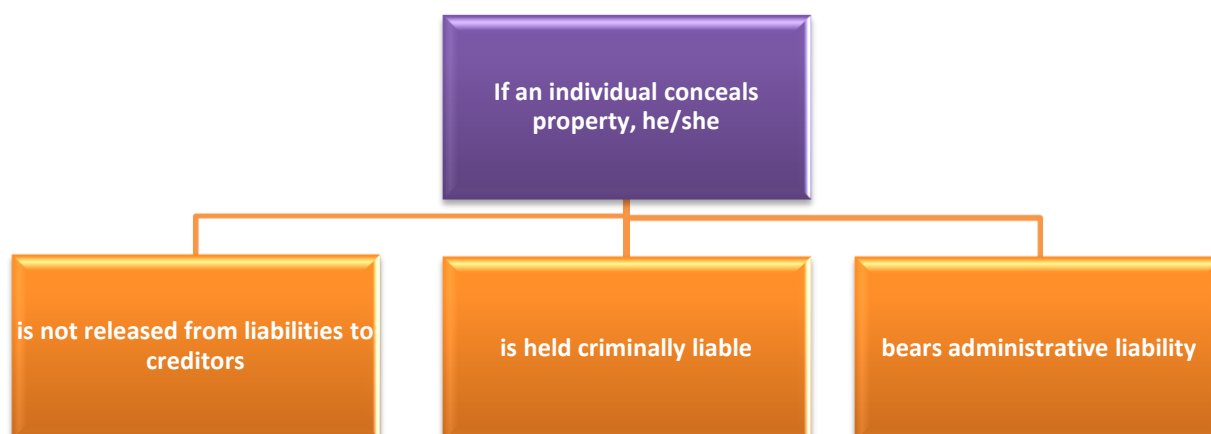
enforceable court decision, the commercial court leaves the petition for bankruptcy of an individual without action.

Please note that the Bankruptcy Law does not allow for filing of an individual bankruptcy petition, in case creditor's claim is based on a dispute over a right. In the event the commercial court establishes that there is a dispute between an individual and its creditor, it renders a ruling that the petition should be recognized unfounded and left without consideration or that proceedings should be discontinued. Therefore, in case of a dispute over a right it is necessary, prior to filing a petition in bankruptcy with a commercial court, to settle the dispute through ordinary proceedings.

### 1.3. Provisions of the Bankruptcy Law intended to protect interests of creditors in bankruptcy

As a general rule, a bankruptcy petition against an individual is accepted by a commercial court if his/her debt is equal to or exceeds 500,000 rubles and the said debt is more than three months overdue.

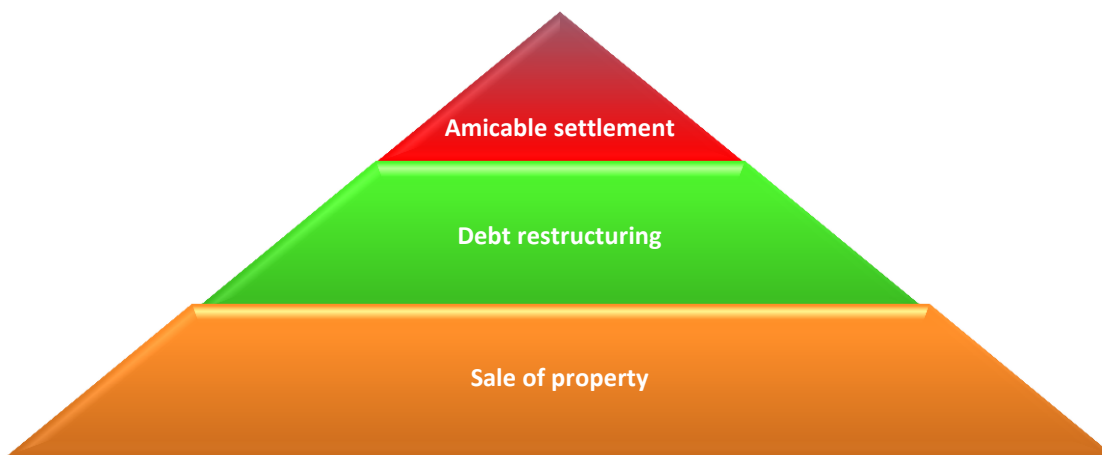
If a bankruptcy petition against an individual is filed with a commercial court, the individual is obligated to provide exhaustive information about his/her property, accounts, deposit, exclusive rights, property sale transactions over the past three years etc.



It appears, judging from recent case law relating to the International Industrial Bank, OJSC bankruptcy cases and other cases, that concealing of assets in foundations and trusts and by other means also may become a ground for imposition of liability.

## 2. Procedures applicable to bankruptcy of an individual

According to the Bankruptcy Law, an individual may be subject to the following bankruptcy procedures:



As before, the term “amicable settlement” means a procedure applicable in a bankruptcy case at any stage of its examination for the purpose of termination of the bankruptcy proceedings by making of an agreement between the debtor and the creditors. Please note that an amicable settlement agreement made in course of individual’s bankruptcy proceedings applies to claims of creditors in bankruptcy and of the competent authority, included in the list of creditors' claims as of the date of creditors’ meeting at which a decision was taken to enter in the settlement agreement. In the event of revival of bankruptcy proceedings because of breach of terms and conditions of the settlement agreement, the individual is declared bankrupt and sale of his/her property is ordered.

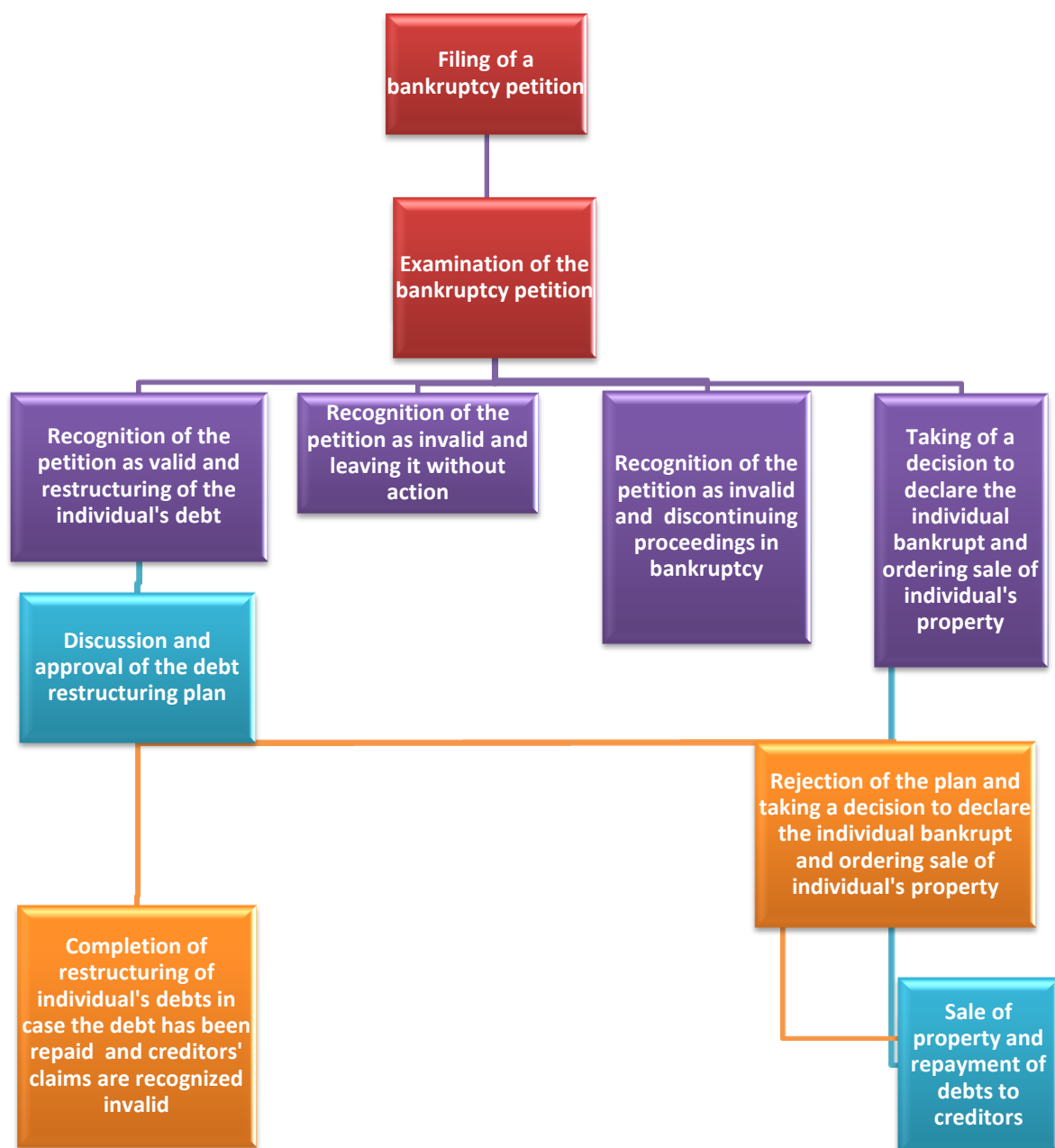
Restructuring of individual’s debt is a rehabilitation procedure applicable to an individual in a bankruptcy case with the aim of reestablishing his/her solvency and repayment of debts to creditors in accordance with a debt restructuring plan proposed by authorized persons and approved by a commercial court. Amounts of creditors’ in bankruptcy or competent authority’s claims included in the individual’s debt restructuring plan approved by a commercial court, bear interests. Debt may be restructured for up to three years.

Sale of individual’s property is also a rehabilitation procedure applicable in a bankruptcy case to an individual who has been declared bankrupt, with the aim of proportionate satisfaction of creditors’ claims.

Individual’s bankruptcy procedures are carried out by the financial manager, i.e. official receiver in an individual’s bankruptcy case, whose participation in the proceedings is obligatory. From provisions of the Bankruptcy Law it follows that when filing a bankruptcy petition the petitioner nominates a self-regulating organization from among whose employees the financial manager will be appointed. Furthermore the Bankruptcy Law does not prohibit nominating a particular person as the financial manager along with nomination of a self-regulating organization from among whose employees such manager is to be appointed.

Under the Bankruptcy Law a financial manager approved by an arbitration court in an individual’s bankruptcy case must meet requirements established for official receiver. Costs of bankruptcy procedures are paid from commercial court’s deposit account.

**3. Individual’s bankruptcy proceedings flow-chart:**



#### 4. Consequences of individual's bankruptcy

As a general rule, upon completion of settlements with creditors, an individual who has been declared bankrupt is released from further satisfaction of creditors' claims.

The Bankruptcy Law also provides for various consequences of termination of a bankruptcy case at various stages of the proceedings. Individual's bankruptcy may have both positive and negative consequences. Specifically, if sale of individual's property was ordered (or creditor's claims were terminated at the property-sale stage), the individual will not be able to initiate another self-bankruptcy during five years following the date of completion of such sale. Besides, such individual may not hold any position in managing bodies of any legal entity or otherwise participate in management of a legal entity during following three years.

Furthermore, negative consequences of breaches committed by an individual in course of bankruptcy proceedings are provided for. Specifically, the release from further satisfaction of creditor's claims is not applicable in case of concealment by an individual of information about his/her property.

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This overview is not intended to provide legal advice and/or any other form of legal assistance that may be rendered by attorney-at-law to client. The exclusive purpose of this review is to make aware its recipient of certain recent changes in Russian laws and regulations, and of the development of law application practice. Any use of the information contained herein for particular purposes may require more detailed case-specific explanations. Further information can be obtained via +7 (495) 933 75 67 or [office@agp.ru](mailto:office@agp.ru)



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