

COVID-19 and Bankruptcy Moratorium in Russia

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Structure

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Imposition of moratorium

- The Russian Government is now authorized to impose a moratorium on creditors' initiation of bankruptcy proceedings in respect of debtors in exceptional cases, such as natural and man-made emergencies and significant Ruble exchange rate fluctuations (see Article 9.1 of the Russian Federal Law "On Insolvency (Bankruptcy)" as amended by Federal Law of 01.04.2020 No. 98-FZ).
- Due to the spread of COVID-19 the Russian Government imposed a moratorium on creditors' initiation of bankruptcy proceedings in respect of companies most affected by COVID-19 (see Decree of the Russian Government of 03.04.2020 No. 428). The moratorium is imposed for 6 months and may be extended in the future.

Companies affected by moratorium

Moratorium applies to the following business entities (individual entrepreneurs and companies):

- Business entities which suffered the most from the COVID-19 pandemic. The most affected industries include the transport sector, the entertainment business, tourism and hotel business, catering, consumer services (such as repair, dry cleaning, beauty salons), sports and additional education, organization of conferences and exhibitions. The precise list of industries is published by the Federal Tax Service and is available at the following link: <https://www.nalog.ru/rn77/business-support-2020/9704514/>
- Strategic companies and organizations (the list is approved by Decree of the Russian President dated 04.08.2004 No. 1009 and Order of the Russian Government dated 20.08.2009 No. 1226-r).
- Core companies important for the Russian economic system. The list of such companies is to be approved by the Government Commission. The preliminary list includes more than 600 companies (such as Mail.ru Group and Yandex) and is available here: <https://www.interfax.ru/sistemoobrazuyuchieorgangizatsii.html>

Special service to check whether moratorium applies

- The Federal Tax Service of Russia also prepared a special service which can be used to check whether the moratorium applies to a certain company.
- The service is placed on the official website of the FTS of Russia at the following link:
<https://service.nalog.ru/covid/>

Moratorium Key Points

- Rejection of the creditors' bankruptcy petitions: During the moratorium creditors' bankruptcy petitions will be rejected by the courts. The same will happen to petitions filed prior to the commencement date of the moratorium but at the time of its imposition not accepted by the court. At the same time debtors retain the right to file petitions for their own bankruptcy during the moratorium but will no longer be obliged to do so in cases specified by law.
- Fines and penalties: No fines and other financial sanctions for default on an eligible debtor's monetary obligations or mandatory payments will be charged.
- Collateral security: It will be unlawful to enforce pledges upon the debtor's property.

Moratorium Key Points

- Transactions: Transactions made by the debtor during the moratorium (except for those made in the ordinary course of business at less than 1% of book value of the assets) may be considered null and void. Termination of the debtor's monetary obligations by set-off will be prohibited, if this could affect other creditors of the debtor.
- Enforcement proceedings: All enforcement proceedings on asset recovery based on the claims filed prior to the imposition of moratorium will be suspended (although arrests of the debtor's property shall remain in force).
- Distribution of profits: Debtor will be prohibited to distribute profits, pay dividends or the actual value of shares to shareholders.

Overall conclusion

- It is advisable to check whether your company is on the list of the eligible debtors subject to moratorium. It is also necessary to thoroughly check whether the moratorium will apply to your counterparties.
- Additional care is advisable in respect of the transactions to be made during the moratorium in order to mitigate the risk that these transactions are voided due to failure to observe the moratorium restrictions.
- This is only the initial stage of legislative changes as a result of the COVID outbreak, and therefore we strongly advise to closely monitor further developments.

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