

COVID-19: Russia Introduces Bankruptcy Filing Moratorium

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A moratorium on bankruptcy filings and certain security enforcement has been imposed by the Russian government for at least six months with respect to many categories of companies. During this period, the ability of creditors to enforce their existing rights will be restricted significantly. It is likely that the negotiating balance will swing in debtors' favor, but the moratorium will place all business and survival decisions of those protected companies under increased scrutiny and at risk of being challenged or found void in certain cases.

Legal Background

On April 1, 2020, the Russian president signed into law an amendment to the Federal Law No. 127-FZ "On Bankruptcy" (the Bankruptcy Law), giving the government the authority to impose a temporary moratorium on the filing of bankruptcy petitions against certain legal entities and individuals if certain "extraordinary circumstances" exist. Any moratorium introduced by the government can be extended for as long as the relevant circumstances continue.

As a response to COVID-19, the Russian government imposed such a moratorium for an initial period of six months beginning April 4, 2020, pursuant to Decree No. 428 dated April 3, 2020 (Decree 428).

Protected Debtors Under New Decree

A database of all debtors protected by the new moratorium has been set up by the Federal Tax Service, which includes companies falling within the following categories:

- companies in a wide variety of sectors (including travel, tourism, culture, entertainment, sports, catering and services) that are set out in a special governmental commission list dated March 17, 2020;
- companies that the Russian government has determined are "systemically important" for the Russian economy;
- the strategic enterprises and companies set out in the Russian presidential decree dated August 4, 2004, No. 1009, which includes various state-owned companies that are strategically important; and
- companies engaged in implementing state policy in their respective industries, pursuant to the Russian governmental decree dated August 20, 2009, No. 1226-r.

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Effect of the Moratorium

- Russian courts must reject any involuntary bankruptcy petition that is filed by any creditor of any protected debtor during the moratorium period or that has already been filed, but which has not been approved by the court prior to the start of the moratorium period.
- Creditors are prohibited from making formal announcements through the Unified Federal Register of Bankruptcy Data of an intention to file a bankruptcy petition.
- Any obligation of a protected company to file a voluntary bankruptcy petition under the Bankruptcy Law is suspended, although debtors still have the right to do so if they wish.
- To protect the interests of creditors, protected debtors are prohibited from carrying out certain actions that could result in any unjustified extraction of value, including share buybacks and paying dividends.
- Existing enforcement proceedings against protected debtors are suspended (although property arrests and other restrictions remain in place).
- Creditors who have pledges over property are prohibited from enforcing that security. Enforcement against other forms of security, such as direct debit agreements, guarantees and suretyships, have not been prohibited.

Transactions Subject to Challenge, if Bankruptcy Proceedings Are Initiated Following Expiry of the Moratorium Period

With respect to any bankruptcy proceedings initiated against a protected debtor in the three months following the end of the moratorium:

- all disposals of property, and assumptions of liabilities, during the moratorium period that exceed 1% of assets and are outside the ordinary course of business are void *ab initio*; and
- the existing time periods for challenging antecedent transactions (one year prior to a bankruptcy filing for suspicious transactions and up to six months prior to a bankruptcy filing for preferential transactions) have been extended, so as to include the entire moratorium period and the period of one year and up to six months, respectively, prior to the commencement of the moratorium.

Companies that are subject to the moratorium will need to be extremely careful when taking any protective action and consider initiating discussions with certain creditors in advance of taking steps that potentially could be subject to challenge.

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