

# Russian Bankruptcy Moratorium extended for further 3-month term

October 2020

Readers will recall, on April 6, 2020 a 6-month moratorium on initiation of bankruptcy proceedings (the **Moratorium**) entered into effect in Russia. The Moratorium is a key governmental relief measure in the COVID-19 pandemic.

The new RF Governmental Decree No. 1587 dated October 1, 2020 has extended the Moratorium for another 3-month term as from October 7, 2020. Unlike the initial Moratorium (which covered specifically entities deemed systemically important and entities of strategic importance to the state economy), the document lists only one main category of debtors (both entities and individual entrepreneurs) covered by the Moratorium (Eligible Debtors): entities and individual entrepreneurs who have suffered the hardest from the COVID-19 pandemic (i.e., are engaged in a particular type of economic activity which has been hit hard, such as airline, tourist, hospitality, sports and recreation, education, etc.).

Under the April 2020 amendments to the Russian Bankruptcy law, any Eligible Debtor may **voluntarily withdraw** itself from the list of Eligible Debtors (i.e., opt out) by filing a notice with the Unified Federal Register of Data related to the Activity of Legal Entities of the Russian Federation. Upon the publication of such notice, the protections/restrictions of the Moratorium will no longer apply to such debtor. However, given that the term of the Moratorium has been extended by the Russian Government, any such withdrawal notice filed prior to such extension will expire from October 7, 2020. Entities will now need to file a **new** withdrawal notice in order to continue their respective exclusion from the Moratorium.

As specifically highlighted by Prime Minister Sergey Mishustin, during the term of the Moratorium Eligible

Debtors may fully benefit from a **judicial instalment plan** (*sudebnaya rassrochka*), a new concept introduced as part of the governmental relief package for the COVID-19 pandemic.

During the life of the Moratorium, any Eligible Debtor who files a **voluntary bankruptcy petition** and is at the so-called 'observation' (*nablyudeniye*) stage (or in a debt restructuring procedure, in the case of an individual entrepreneur) may petition, as from the date of the first creditors' meeting, for the court to approve a Plan. The due dates for such Eligible Debtor's payment obligations covered by a Plan will be **modified** (shifted). As a general rule, under the Plan all obligations must be performed **within a one-year period in equal instalments**. However, such term shall be **two years** if the Eligible Debtor's revenue has decreased by 50% or more **and three years** if (i) the Eligible Debtor is a strategic company **and** (ii) its revenue has decreased by 50% or more in each case on a year-on-year basis.

## During the Plan's term:

1. Claims by the Eligible Debtor's founders (participants) to pay for their 'withdrawal' (a mandatory redemption right under Russian corporate law) may not be performed, nor may the Eligible Debtor otherwise redeem or pay for its outstanding shares;
2. An Eligible Debtor's monetary obligations cannot be terminated by set-off, if this could harm other creditors;
3. The owner of a unitary enterprise which is an Eligible Debtor may not assume control over the enterprise's property;

4. Payments of dividends and other distributions of profit by the Eligible Debtor to its founders (participants) (whether in cash or in stock) are strictly prohibited;
5. No penalties will accrue for default on an Eligible Debtor's monetary obligations (e.g., default interest) or mandatory payments (e.g., fines and interest on unpaid taxes); and
6. Enforcement (foreclosure) procedures for claims that arose before approval of the Plan are stayed.

Governmental officials expect by applying for a Plan, Eligible Debtors may modify due dates for payment obligations covered by such Plan, which should hopefully give them breathing room to make payments and avoid losing assets or terminating business. As mentioned previously, this assumes the economic effect of the pandemic will be short-lived, and Eligible Debtors will have sufficient funds to settle the restructured debts within such period(s). That may be a big assumption for some debtors.

Recent amendments to the Russian Bankruptcy law adopted in connection with the COVID-19 pandemic have left a number of important questions unanswered (pls. see our previous alerts as of **April 7**, **April 27** and **June 8**). The business community will no doubt look to the courts for further guidance. At the same time, that limited court practice which has developed to date on the Moratorium has been contradictory and revealed a lack of unified approach and clarity.

## Contacts

### Timothy Stubbs

Partner, Head Russian Banking & Finance

T: +7 495 644 05 00

E: [timothy.stubbs@dentons.com](mailto:timothy.stubbs@dentons.com)



### Mikhail Ivanov

Partner, Head Russian Litigation and Arbitration

T: +7 812 325 84 44

E: [mikhail.ivanov@dentons.com](mailto:mikhail.ivanov@dentons.com)



### Roman Zaitsev

Partner, Head Moscow Litigation and Dispute Resolution

T: +7 495 644 05 00

E: [roman.zaitsev@dentons.com](mailto:roman.zaitsev@dentons.com)



### Andrei Strijak

Partner

T: +7 495 644 05 00

E: [andrei.strijak@dentons.com](mailto:andrei.strijak@dentons.com)



### Maria Mikheyenkova

Counsel

T: +7 495 644 05 00

E: [maria.mikheyenkova@dentons.com](mailto:maria.mikheyenkova@dentons.com)



### Filipp Petyukov

Counsel

T: +7 495 644 05 00

E: [filipp.petyukov@dentons.com](mailto:filipp.petyukov@dentons.com)



### Marina Smirnova

Associate

T: +7 495 644 05 00

E: [Marina.Smirnova@dentons.com](mailto:Marina.Smirnova@dentons.com)

