

# Russian Government Acts to Introduce Bankruptcy Moratorium

April 2020

On April 1, 2020 Russian President Vladimir Putin signed into law Federal Law No. 98-FZ, introducing a number of key relief measures to address the impact of the COVID-19 pandemic in Russia. These included, among others, amendments to RF Law No. 127-FZ On Insolvency (Bankruptcy) of October 26, 2002 (the **Law**), authorising the Russian Government to impose a moratorium on creditors' initiation of bankruptcy proceedings (a **Moratorium**) in order to "stabilize the economy, in exceptional cases." The Duma's adoption of Law No. 98-FZ was swiftly followed by the Russian Government's announcement of a Moratorium in its Decree No. 428 of April 3, 2020. The Moratorium entered into effect on April 6, 2020 and will last for six (6) months. It may be extended by further decree.

## Eligible Debtors

RF Governmental Decree No. 428 lists three (3) main categories of debtors covered by the Moratorium (Eligible Debtors):

1. entities and individual entrepreneurs who have suffered the hardest from the COVID-19 pandemic (i.e. engaged in a particular type of economic activity, such as airline, tourist, hospitality, sports and recreation, education, etc.);
2. entities deemed systemically important for the state economy; and
3. entities of strategic importance to the state economy (as per RF Presidential Edict No. 1009 of August 4, 2004 and RF Governmental Decree No. 1226-r of August 20, 2009).

The official list of OKVED classification numbers of Eligible Debtors (for category (1)), as well as the list of the entities systemically and strategically important for the state economy, is published on the Tax Service's website at: [https://www.nalog.ru/rn77/news/activities\\_fts/9713703/](https://www.nalog.ru/rn77/news/activities_fts/9713703/). The Russian Government directed that the Governmental Commission on Enhancement of Sustainability of Development of the Russian Economy shall finalize and further promptly send to the Russian Federal Tax Service for publication on its website information on any amendments to the relevant lists of above main categories of Eligible Debtors (including relevant OKVED classification numbers for category (1)).

The Russian Federal Tax Service has launched on its website a special service (<https://service.nalog.ru/covid/>) to provide information on entities and entrepreneurs in category (1). The service may be used to conduct a search on whether an entity or entrepreneur is an Eligible Debtor.

Notably, the Moratorium does not extend to natural persons who have not registered as individual entrepreneurs.

## Impact of Moratorium

In general the Moratorium will result in the following:

- Creditors' involuntary bankruptcy petitions filed while the Moratorium is in effect must be rejected by a Russian court. The court must also reject petitions filed before the Moratorium

was imposed but which the court has not yet accepted by the date of the Moratorium.

- A creditor's notice of its intention to file an involuntary bankruptcy petition entered into the Unified Federal Register of Bankruptcy Information during the Moratorium will not be published online until the Moratorium is over.
- A competent authority (e.g., tax authorities) must wait to file an involuntary bankruptcy petition for mandatory payments (e.g., taxes) until 15 days after the Moratorium is over.
- Eligible Debtors are no longer obliged to file voluntary bankruptcy petitions within the statutory period prescribed by the Law (generally one month) during the term of the Moratorium. Accordingly, management and other controlling persons of Eligible Debtors will not face the immediate threat of personal liability for unlawful trading after the expiry of such period.
- Claims by an Eligible Debtor's founders (participants) to apportion a share of the debtor's assets due to withdrawal (a right generally provided under Russian corporate law) will not be granted, nor will an Eligible Debtor be allowed to redeem outstanding shares or pay the actual value of shares.
- An Eligible Debtor's monetary obligations cannot be terminated by set-off during the period of the Moratorium, if this could harm the debtor's other creditors.
- The owner of a unitary enterprise that is an Eligible Debtor may not take over the enterprise's property. The payment of dividends and share premia and distribution of profit between an Eligible Debtor's founders (participants) is prohibited, during the term of the Moratorium.
- No penalties will accrue for default on an Eligible Debtor's monetary obligations or mandatory payments (e.g., taxes) during the term of the Moratorium.
- Enforcement (foreclosure) measures against collateral pledged by an Eligible Debtor (including ordinary enforcement (foreclosure) outside of formal insolvency procedures) are prohibited.
- Enforcement (foreclosure) procedures for claims that arose before the Moratorium was imposed will be stayed. However, attachments of an Eligible Debtor's assets and other restrictions on disposing of the debtor's assets imposed during enforcement

procedures will not be lifted and hence will remain in effect.

- The rules for calculating time periods/deadlines will change correspondingly, taking into account the duration of the Moratorium, for: (i) challenging the debtor's transactions (e.g., antecedent transactions such as suspicious and preferential transactions), and (ii) determining the scope/amount of debtor liability.
- An Eligible Debtor's transaction entered into during the Moratorium will be deemed void, unless made in the ordinary course of business and the value thereof (taken together with any interrelated transactions) does not exceed 1% of Eligible Debtor's assets.
- The bankruptcy trustee (administrator) may decide to hold meetings of creditors and employees of an Eligible Debtor (as well as of non-eligible debtors) by absentee ballot.
- The rules for concluding settlement agreements in bankruptcy cases have been modified.

## Observations

The above-mentioned amendments to the Law (and announcement of the Moratorium itself) *de jure* do not prohibit creditors or Eligible debtors from voluntarily entering into negotiations, or from concluding and performing, voluntary non-judicial restructurings (work-outs). That said, it remains to be seen what the impact may be of certain rules (e.g., the 1% rule) on distributions to creditors which are agreed during the effect of the Moratorium under work-outs. There could be a risk of such agreements' being contested if arrangements under them violate the Moratorium.

The Law makes no distinction between domestic (Russian) creditors or international creditors (including IFIs). Accordingly, the Moratorium applies across the board to all creditors of Eligible Debtors.

The announcement of the Moratorium will no doubt act as a double-edged sword. On the one hand, the Moratorium may well help to avoid (or at least delay) a mass wave of bankruptcies and foreclosures, giving Eligible Debtors breathing room and avoiding an immediate inundation of the courts (which are most certainly ill-equipped to deal with such a voluminous docket). The Russian business and consumer communities of course are rightfully questioning whether the Moratorium will, in and of itself, be sufficient

to alleviate the financial distress of many Russian businesses and households. At the same time, Law 98-FZ has introduced a number of other useful forms of COVID-19 relief, such as rental abatements. Certain categories of lessees will now have the right: (1) to claim a reduction of lease payments for the term of the compulsory suspension of their activities introduced by government authorities; and (2) to apply for deferrals in relation to lease payments for the year 2020, and in such cases lessors shall be obliged to enter into respective amendment agreements to the initial lease documentation). Hopefully the collective effect of such measures will provide at least some needed relief, during these exceptional times.

To be sure, the announcement of the Moratorium will also restrict certain forms of abusive behavior by debtors in order to help protect creditors' interests (such as the prohibitions on profit distributions and share redemptions, transactions out of the ordinary course of business and the like).

But the Moratorium also creates a knock-on risk for creditors, where they cannot meet their own funding obligations due, e.g., to the inability to exercise foreclosure rights. Moreover, it seems possible that the announcement of the Moratorium of itself may trigger an Event of Default under existing loan documentation and/or make lenders more reluctant to provide new financing during the Moratorium period.

The financial community will no doubt keep a watchful eye on the impact of the Moratorium and relevant interpretations by the courts.

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