

Russian Government acts to introduce bankruptcy moratorium

April 2022

Readers will recall, on April 1, 2020 the RF President signed RF Law No. 98-FZ, amending RF Law No. 127-FZ On Insolvency (Bankruptcy) of October 26, 2002 (the **Law**) and authorising the Government to impose a moratorium on creditors' initiation of bankruptcies to stabilize the economy in exceptional cases (a **Moratorium**).

Immediately thereafter, by Decree No. 428 of April 3, 2020 as part of the COVID-19 relief program, the Government adopted such a Moratorium until 7 January 2021 (the **COVID Moratorium**).

Given the economic instability connected with the current geopolitical crisis, on March 31, 2022 the Government announced a new Moratorium (the **2022 Moratorium**) by Decree No. 497 of March 28, 2022. The 2022 Moratorium entered into effect on April 1, 2022, will last for six (6) months until October 1, 2022 and may be further extended.

Eligible Debtors

Under RF Governmental Decree No. 497, the 2022 Moratorium applies to all citizens, individual entrepreneurs and legal entities, excluding developer-debtors (where apartment buildings and other real estate have already been included in the unified register of problematic objects as of April 1, 2022) (**Eligible Debtors**).

Notably, the list of Eligible Debtors under the 2022 Moratorium is **much wider** than under the COVID Moratorium (which had applied to certain categories of debtors who had suffered the hardest from the pandemic, entities deemed systemically important for the economy, and entities of strategic importance to the economy, and which moreover did not extend to natural persons not registered as individual entrepreneurs).

Impact of Moratorium

Generally, the legal impact of the 2022 Moratorium is the same as that of the COVID Moratorium:

- Russian courts are obliged to reject creditors' involuntary bankruptcy petitions filed while the Moratorium is in effect. They must also reject all petitions filed but not yet formally accepted prior to the date of the Moratorium.
- A creditor's notice of intent 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bankruptcy petition entered into the Unified Federal Register of Bankruptcy Information during the Moratorium will not be published online until the Moratorium is over.
- 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.
- 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.
- 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 may accrue due to 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 solvent enforcements (foreclosures)) 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.
- 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.

During the life of the Moratorium, any Eligible Debtor meeting certain conditions¹ who files a **voluntary bankruptcy petition** and is at the so-called 'observation' (*nablyudenie*) 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 **judicial instalment plan** (*sudebnaya rassrochka*).

Any Eligible Debtor may **voluntarily withdraw** itself from the list of Eligible Debtors, by filing a notice with the Unified Federal Bankruptcy Register. Upon the publication of such notice, the protections/restrictions of the Moratorium will no longer apply to such debtor. However, should the term of the Moratorium be extended by the Russian Government, any such withdrawal notice filed prior to such extension will **expire**, and the entity must file a new withdrawal notice to continue its exclusion from the Moratorium.

Observations

The 2022 Moratorium is adopted with the aim of providing Eligible Debtors an opportunity to cope with current financial difficulties arising from sanctions introduced globally against Russia, to improve their business, to find new sources of income and to strengthen their financial condition without closing operations or laying off employees.

Commentators observe that the 2022 Moratorium, ostensibly a business support measure, will have a significant downside in that it may also lead to abuse by Eligible Debtors capable of servicing their debts. Ultimately this may unfairly impact *bona fide* creditors.

As with the COVID Moratorium, the 2022 Moratorium makes no distinction between domestic (Russian) creditors and international creditors (including IFIs). Accordingly, the 2022 Moratorium applies across the board to all creditors of Eligible Debtors.

¹ The debtor must meet **all** of the following conditions to be eligible:

- Its revenue for the reporting period in the calendar year when the bankruptcy proceedings were initiated had **decreased by 20% (twenty per cent)** or more year-on-year (in certain circumstances, two preceding financial years are to be compared);

- It has no outstanding debts for **tort claims for injury or death** or **remuneration** due its employees;
- Its creditors **voted against** a voluntary arrangement (*mirovoye soglasenie*) or abstained from voting;
- **It did not have any creditors' involuntary bankruptcy petitions** pending prior to imposition of the Moratorium (which would have had to be rejected under the Moratorium rules); and
- It has filed its voluntary bankruptcy petition **no earlier than one (1) month** following introduction of the Moratorium.

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