



Impact of COVID-19 on Insolvency Laws:

How Countries Are Revamping Their Insolvency and Restructuring Laws to Combat COVID-19

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In connection with the COVID-19 pandemic and to ensure the economic stability in case of an emergency situation, the Russian state authorities adopted the Federal Laws No. 98-FZ dated April 1, 2020, and No. 149 dated April 24, 2020 (Laws), introducing amendments in licensing, healthcare, procurement and bankruptcy legislation.

With respect to the bankruptcy legislation, the Laws supplemented the Federal Law On Insolvency (Bankruptcy) No. 127-FZ (Bankruptcy Law) dated October 26, 2002, with a new provision (Article 9.1) authorizing the Russian government to introduce a moratorium on the initiation of bankruptcy cases (by the creditors) in case of emergencies or a natural disaster.

In accordance with those amendments and in connection with the COVID-19, the government of the Russian Federation introduced the moratorium on the initiation of bankruptcy cases by creditors with respect to certain debtors (the Resolution of the Government of the Russian Federation No. 428 dated April 3, 2020). According to this Resolution, the moratorium is introduced with respect to two groups of debtors:

- Companies acting in the areas of business that are recognized as mainly affected by the COVID-19. The list of these areas is stipulated in the Resolution of the Government of the Russian Federation No. 434 dated April 3, 2020. This list includes, for example, transport, entertainments, sports, cultural events, tourism, hotels, education, health, restaurants, etc., and
- Companies that can be described as those having strategic meaning and included in one of the three governmental lists of such companies.

This moratorium is introduced for the period of six months and is effective since April 6, 2020 through to October 6, 2020.

The Supreme Court of the Russian Federation issued its clarifications on the application of the new amendments in the Bankruptcy Law in the Legislation Reviews as separate issues of judicial practice related to the application of legislation and measures to counteract the spread of the new coronavirus disease 2019 (COVID-19) No. 1 dated April 21, 2020, and No. 2 dated April 30, 2020 (Legislation Reviews).

Moratorium on Bankruptcy Proceedings

- A moratorium on bankruptcy proceedings is introduced for a period determined by the government. The moratorium may be extended if circumstances that served as the basis for its introduction remain in force. The specific provisions of the moratorium are summarised below.
- During the moratorium, any applications on the initiation of bankruptcy proceedings filed by the creditors with the court, as well as submitted before the date of the moratorium but not considered or resolved by the date of the moratorium, will be returned back to the applicant by the court. As the Supreme Court explains, once the moratorium procedure is lifted, the creditors have to publish a new notification on their intention to initiate the bankruptcy procedure. The creditors have the right to apply for bankruptcy procedure within 15 days after such a publication.
- During the moratorium, creditors are not permitted to levy execution on the pledged property, such as seize property collateral, including through out-of-court procedure.

	<ul style="list-style-type: none"> • Enforcement proceedings relating to the execution against a debtor's property are suspended with respect to the claims that arose before the moratorium. As explained by the Supreme Court, the creditors are also deprived of the right to get the execution of the writs through the banks and other credit organisations. • During the moratorium, however, seizure of and other restrictions on debtors' property that have already been imposed through enforcement proceedings are not lifted. The Supreme Court also admits a possibility to get the writ of execution with the court and to establish the restrictions on disposition of debtor's property within the execution procedure. • The composition and size of monetary obligations, claims for severance payments and/or salaries under an employment contract, and mandatory payments arising prior to the date of the moratorium and claimed after the court has accepted the application for declaring the debtor bankrupt, are determined on the date of introduction of the moratorium. The amount of the respective monetary obligations denominated in foreign currency that arose prior to the date of the moratorium is determined in rubles at the lowest rate established on the date of the moratorium or on the date of bankruptcy proceedings. • During the moratorium, accrual of the penalties (fines and penalties) and other financial sanctions for non-fulfillment or improper fulfillment by a debtor of monetary obligations and obligatory payments for claims arising before the introduction of a moratorium ceases. • During the moratorium, meetings of creditors, committees of creditors, former employees of any debtor will be held by the decision of the administrator in absentia. • If, during the moratorium period, the creditor gives its written consent to the amicable agreement, then when counting the votes at the meeting of creditors when deciding on the conclusion of an amicable agreement, the creditor is considered to have voted for such an amicable agreement. • Any person who is subject to a moratorium has the right to refuse of implication of a moratorium procedure by filing the relevant notification in the Unified Federal Register of Bankruptcy Information. After the publication of such a notification, the moratorium does not apply to such a person. • The Supreme Court clarified that the moratorium is aimed at protecting debtors who suffered as a result of respective circumstances, providing them with the opportunity to get out of a difficult situation and return to normal economic activity. In a situation when debtor's owners take a decision on its liquidation, and, thus, it is not expected to continue its normal business activity, creditors are not deprived of the right to file an application for declaring the debtor bankrupt. 	
<p>Additional Regulations</p>	<ul style="list-style-type: none"> • The new Law also cancels any governmental inspections for the period from April 1 to December 31, 2020, inclusively for small- and medium-sized businesses. In addition, in 2020, the Russian government will have the right to establish rules for organising and conducting the federal state control (or supervision) proposed by the Law. • By the governmental acts (the Information letter of the Russian General Prosecutor General dated March 26, 2020, and the Order of the Russian Federal Tax Service dated March 20, 2020, No. ED-7-2 1812) from March 18, 2020 until May 1, 2020, the federal authorities will not start tax audits or customs and prosecutor's inspections. • According to the Order of the Government of the Russian Federation dated March 18, 2020, from March 20, 2020 to May 1, 2020, business entities working in tourism, air transportation, physical education, sports, art, culture and cinema will be granted "tax holidays", a deferral of payment of taxes and other contributions. 	

- The Central Bank of the Russian Federation has also recommended to the credit organisations to consider the restructuring of loans of small and medium-sized businesses, including the provision of deferrals for the repayment of principal and interest, as a priority measure to prevent overdue debt or to resolve.
- Finally, from March 19, 2020 to April 10, 2020, access to all courts was limited. Only cases of an urgent nature, as well as cases of simplified and procedural proceedings, were considered by the courts.

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