

The Week in Review: Russian Bankruptcy Law Developments 23-27 March 2020

March 2020

This week Russia's President Vladimir Putin and Prime Minister Mikhail Mishustin announced measures to stabilize the Russian economy due to the Coronavirus pandemic and recent major Ruble exchange rate fluctuations.

Not all such measures are self-executing (a number require enacting legislation). It is understood that despite the 5-day national holiday announced by the President (which starts 30 March), the Duma will be working next week. It is therefore likely that such implementing legislation will be adopted on short order.

Several of the more notable developments are flagged below.

Draft Bankruptcy Law on Moratorium

The Duma will be reviewing a draft law (expected to be adopted next week) granting the RF Government in exceptional cases the right to impose a moratorium on initiation by creditors of bankruptcy proceedings against certain categories of debtors (entities engaged in a particular type of economic activity, or entities which have suffered most from the circumstances which resulted in the imposition of such moratorium, most likely to be airline, tourist, hospitality and catering companies, for a term to be determined by the Government. Creditors' involuntary bankruptcy petitions filed while the moratorium is in effect must be rejected by the court. If by the date on which the moratorium is imposed a court has not already initiated the relevant bankruptcy procedure in a previously-initiated bankruptcy case, then the court is obliged to stay proceedings in the case within three (3) business days from when the moratorium is introduced, for the duration of the moratorium.

Notably, for bankruptcy cases initiated during the three (3) months after the moratorium ends there will be

corresponding adjustment of time periods/deadlines for deeming parties to be 'interested' in (i.e., affiliated with) the debtor, challenging antecedent transactions, determining the scope/amount of debtor liability, and conclusion of settlement agreements.

During the term of the moratorium: (1) eligible debtors are no longer obliged to file voluntary bankruptcy petitions in the prescribed circumstances; (2) any non-bankruptcy enforcement procedures against eligible debtors, as well as enforcement procedures by secured creditors against collateral pledged by eligible debtors (including out-of-court enforcement procedures) are prohibited; (3) any eligible debtors' transactions falling out of the scope of their ordinary business with a value exceeding 1% of the debtor's assets shall be considered void.

If a debtor itself files a voluntary bankruptcy petition during the moratorium, then creditor-initiated bankruptcy proceedings previously initiated against such debtor and subject to the moratorium are to be deemed terminated, and a court will be obliged to initiate bankruptcy proceedings under the debtor's own voluntary petition.

Notably:

- The moratorium is not automatic and must first be announced by the RF Government. It is likely to be limited in scope to certain types of debtors in certain heavily-affected industries; and
- The draft law makes no exceptions for foreign creditors (including IFIs) providing cross-border financing;
- The draft law does not prohibit parties from voluntarily undertaking any non-judicial restructuring (workout), though any moratorium would certainly impact the dynamics of workout

negotiations (e.g., temporarily limiting threats from holdout creditors, alleviating concerns of debtor management re. unlawful trading, etc.)

Further Presidential Relief Measures Impacting the Russian Market and Credit Institutions

In this week's appearance by President Putin, he announced the following:

- A 5-day national paid holiday for employees starting 30 March.
- A credit holiday will be instituted to suspend fines on unpaid credit purchases and mortgages. The suspension will apply to individuals whose income decreases by more than 30 percent as a result of the pandemic.
- Credits for entrepreneurs in Coronavirus-affected industries will be extended.
- Russia's bankruptcy procedures will be made "stronger and less burdensome" (again this will require further amendment of the RF Bankruptcy Law).
- Small and mid-sized businesses will be given more time to pay all taxes except for value-added taxes in the course of the next six months.
- Microbusinesses (i.e., companies with 15 employees or fewer that make no more than 120 million rubles (currently ca \$1.52 million) in income) will be given more time to make federal welfare payments, in addition to being given more time to pay taxes.
- Small and mid-sized businesses that experience financial hardship amid the crisis will have their credit payments delayed for six months.
- For the companies hit by the Coronavirus pandemic (the list of the related businesses to be further confirmed) certain measures are planned to eliminate the burden of tax and federal welfare payments, mostly through granting of deferrals for making such payments.
- Coronavirus-affected businesses will be released from lease payments for the term of the compulsory suspension of their activities introduced by the Government; and will also receive deferral in relation to certain lease payments.

Bank of Russia Recommendations

The Central Bank of Russia has also made certain non-binding recommendations to credit institutions this past week:

- Banks are recommended to provide prompt solutions on debt restructuring for individual debtors diagnosed with Coronavirus, to refrain from imposing penalties during the terms of such debtors' disability and to refrain (until 30 September 2020) from enforcement against mortgaged

residential property where it is the debtor's and his family's sole residence.

- Banks are recommended to give payment deferrals to small- and mid-sized businesses and entrepreneurs and self-employed individuals and to allow credit restructuring upon such persons' request until 30 September 2020.

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