

# Newsletter

## *Russian bankruptcy moratorium extended until January, 2021*

October 09, 2020

Dear Ladies and Gentlemen,

This is to inform you that [the Resolution of the Government of the Russian Federation](#) dated October 01, 2020 No. 1587, has extended the moratorium on bankruptcy of companies, at the request of their creditors, until January 07, 2021.

In this regard, we would like to draw your attention to the key provisions related to the moratorium regime and its extension.

### 1. Moratorium – the first results.

It is too early to summarize the preliminary results of the first 6 months of the moratorium. Nevertheless, there is already a number of obvious difficulties in the application of moratorium regulation.

First, we would like to mention the formality of the codes of Russian National Classifier of Types of Economic Activity ('**OKVED**') as the sole criterion for applying the moratorium to certain legal entities. The actual main activity of the company could be indicated among the additional activities, or not indicated at all. However, the courts take a purely formal approach and refuse to apply the moratorium, if the main OKVED code is not included in the list.

In addition, despite the utmost clarity of the law setting forth the rule that applications, accepted by the court at the time the moratorium was introduced, are subject to further consideration in trial, difficulties do arise in practice. In particular, arbitrazh courts often defended the debtors, whose bankruptcy was initiated by its creditors long before the pandemic and adoption of governmental measures to mitigate its consequences.

### 2. Who is subject to the moratorium extension?

After the moratorium extension, a number of the debtors' categories were excluded from the list: bankruptcy immunity under the creditors' applications will remain in force only for legal entities and individual entrepreneurs, which operate in one of the areas most affected by the pandemic, as [determined](#) by the Government of the Russian Federation<sup>1</sup>. Mainly, these are the industries of retail trade and the provision of services to the population, services in the sphere of culture, leisure and sports, as well as transport activities.

To check whether a company, with a certain OKVED code, is included in the list of affected industries, it is enough to type in the TIN / OGRN of the company on the [website](#) of the Federal Tax Service of Russia.

Therefore, the moratorium regulation will not apply to strategic and systemically-important enterprises. At the same time, in case of initiation of a bankruptcy case for such debtors, the periods of "depth" (prior to the bankruptcy initiation period, when the transaction is concluded), for challenging transactions on special bankruptcy grounds, are extended for the period of the moratorium.

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<sup>1</sup> The list was approved by the Resolution of the Government of the Russian Federation of April 03, 2020 No. 434, as amended by the resolutions of the Government of the Russian Federation of April 10, 2020 No. 479, of April 18, 2020 No. 540; of May 12, 2020 No. 657, of May 26, 2020 No. 745, of June 26, 2020 No. 927.

According to statistics from the Federal Tax Service of Russia, the moratorium will affect more than 517,000 companies and 1.6 million individual entrepreneurs.

### 3. What are the consequences of the moratorium extension?

We wrote in detail about the consequences of the moratorium introduction in the framework [here](#). The main consequence is the impossibility for creditors to initiate the bankruptcy procedure of the person under moratorium, as well as to enforce debt recovery from him, in any way.

Meanwhile, the debtor itself, subject to the moratorium regulation, is still entitled to declare itself bankrupt. In turn, a number of restrictions apply to the companies under moratorium, in particular, the prohibition of any payments under corporate rights (including dividend payments) and the redemption, or acquisition, of outstanding shares by the debtor, as well as the conclusion of set-offs, in violation of the priority provided by the Bankruptcy Law.

### 4. Is it possible for the company to waive the moratorium?

An entity, subject to the moratorium regulation, retains the opportunity to withdraw from the moratorium regime by publishing the relevant information on the website of the Unified Federal Register of Significant Information on Facts of Operation of Subjects of Economic Activities ('**Fedresurs**'). Please kindly note that a previously-published withdrawal from moratorium regime is no longer valid, since the date of the moratorium extension. For this reason, the notice on withdrawal shall be re-published.

According to the Fedresurs, at the end of August 2020, there were about 750 companies notifying their withdrawal (out of 3.5 million under the moratorium regime).

### 5. What opportunities does the moratorium offer for companies?

In addition to the obvious advantage of protection against creditors' claims, one of the main amendments of Art. 9.1 of the Bankruptcy Law is the possibility for a debtor, under the moratorium regime, to obtain a judicial installment of debts (*sudebnaya rassrochka*).

In fact, a judicial installment plan is a prototype of a rehabilitation procedure (i.e., aimed at restoring solvency), which has common features with a settlement agreement: the debtor secures the opportunity to pay off its debts, retains property, and its management stays empowered. The key difference (and at the same time, the advantage) of the judicial installment plan, from the settlement agreement, is that its enforcement does not require the creditors' consent, but only the court's granting of the application.

### 6. What is a judicial installment plan?

The judicial installment plan provides, for the debtor, the opportunity to pay off its creditors according to its obligations that are due at the time the installment plan is introduced, or will "mature" within a year after its introduction, in equal monthly installments.

The default installment period constitutes 1 year, but could be increased to 2 years, and for strategic enterprises - to 3 years, if the debtor's revenue has decreased by more than 50%. Still, in this case the debtor is obliged to provide security in the form of a bank guarantee, or other collateral to unsecured creditors. Based on this, we tend to consider that, in practice, it will be difficult to obtain an installment plan for more than a year.

### 7. How to obtain a court installment plan?

A debtor, under the moratorium regime, has the right to file, within a bankruptcy case, an application on a judicial installment plan, subject to the following conditions:

- (A) **The debtor's income has fallen by more than 20%**, compared to the income for the same period of the previous calendar year. Since the Bankruptcy Law does not specify what is meant by a "similar period", in practice it is advisable to define such periods by analogy with the periods of payment of income tax.
- (B) **Initiation by the debtor of the bankruptcy proceeding** during the moratorium period, provided that, prior to the introduction of the moratorium, no one filed an application for the debtor's bankruptcy.

- (C) **The introduction of the supervision procedure (initial bankruptcy procedure) and holding of the first meeting of the debtor's creditors**, at which no decision was made to approve agreement.

In this regard, in practice, obtaining an installment plan is possible only after 5-6 months from the date of the introduction of the observation proceedings, against the debtor.

- (D) **The debtor must pay off debts to citizens** for damage to life, or health, and for the payment of severance pay and remuneration of employees.

Considering the similarity of the legal regulation of court installments and the settlement agreement in bankruptcy, we assume that the subsequent court practice will highly likely elaborate additional criteria necessary for the application of this procedure. For example, (a) the economic feasibility of the rehabilitation plan or (b) the absence of a deterioration in the creditors' position, in comparison with the situation if the debtor was in bankruptcy proceedings.

#### 8. What rights do creditors have during the installment plan period?

Creditors, whose claims amount to more than 10% of the total amount of the register of creditors' claims, have the right of access to information about the debtor's property and obligations, as well as the right to receive a quarterly report on the execution of the court installment plan.

In case of non-fulfillment of the terms of the court installment plan, creditors have the right to submit an application for the cancellation of the installment plan and the resumption of bankruptcy proceedings.

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If you have any questions, please do not hesitate to contact ALRUD partners.



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