

# Newsletter

## *Moratorium on bankruptcy*

April 6th, 2022

Dear Ladies and Gentlemen,

The Government of the Russian Federation has adopted Resolution No. 497 dated March 28, 2022, which establishes a large-scale moratorium on bankruptcy from **April 1**. Meanwhile, earlier on **March 9, 2022**, the Federal Tax Service had already decided to suspend the initiation of bankruptcy proceedings.

In this newsletter, we will provide you with an analysis of the key provisions of the moratorium.

### 1 Who is covered by the moratorium?

As opposed to the bankruptcy moratorium introduced in **2020** due to COVID restrictions, the new moratorium applies to **all debtors**, including legal entities, citizens and individual entrepreneurs, with the exception of developers of residential buildings and other real estate sites that were included in the unified register of problematic objects prior to April 1, 2022.

### 2 How long will the moratorium last?

The moratorium has been imposed from **April 1, 2022 to October 1, 2022** with the possibility of it being extended by a decision of the Government of the Russian Federation in accordance with Article 9.1(1) of the Bankruptcy Law, unless the circumstances that served as the basis for its introduction are no longer valid. We would like to point out that the previous moratorium was extended for six months.

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

The legal regulation of the moratorium remains the same for the time being in accordance with **Article 9.1** of the Bankruptcy Law, and the interpretations of **Resolution No. 44 of the Plenum of the Supreme Court of the Russian Federation**.

#### 3.1 Consequences for creditors:

##### **(A) Inability to initiate insolvency proceedings**

Creditors may not file bankruptcy applications. These applications will be returned by the courts. In addition, applications that were filed before the moratorium but have not yet been accepted by the courts as of the date of moratorium will also be returned.

##### **(B) Inability to launch enforcement proceedings**

Apart from not being able to submit bankruptcy applications, creditors are also not allowed to launch regular enforcement proceedings: all enforcement proceedings have been suspended and pledges cannot be enforced. The law also provides for suspending the accrual of financial penalties on debtors for failing to perform their obligations.

### **(C) Debtors may apply to a court for an installment plan**

Debtors may file a bankruptcy petition during the moratorium and receive an installment plan approved by a court. The installment plan allows debtors to repay obligations to creditors which are due at the time the installment plan was introduced or will become due within a year after its introduction in equal monthly payments. We have already written about the judicial installment plan and the conditions for its provision [here](#).

## **3.2 Consequences for debtors:**

### **(A) Debtors affected by the moratorium may still file for their own bankruptcy**

Debtors' obligation to file for bankruptcy is suspended for the duration of the moratorium. However, in accordance with the explanations of the Supreme Court of the Russian Federation, controlling entities may be held liable for the failure to file a bankruptcy application if the signs of insolvency emerged long before the moratorium was imposed. In other words, filing for bankruptcy remains a right, but not an obligation for debtors.

### **(B) Restrictions on transactions with shares and the payment of dividends**

It is prohibited to sustain the claims of a founder (shareholder) for the separation of a share from a company's charter capital in connection with the termination of a shareholder's relations with a company, the purchase or acquisition by a debtor of outstanding shares or the payment of the actual value of the share, the payment of dividends, income on shares, as well as the distribution of profits between the founders (shareholders) of a debtor.

### **(C) Restrictions on offsetting with counterparties**

The termination of a debtor's monetary obligations through offsetting with a counterclaim is not allowed if the order of repayment of creditors' claims established by the Bankruptcy Law is violated. In this case, the offsetting transaction may be challenged by the creditors of both parties.

The conclusion of these transactions poses the risk of invalidation by creditors of debtors without commencement of bankruptcy on the basis of Articles 10 and 168 of the Civil Code of the Russian Federation, as explained by [Resolution No. 44 of the Plenum of the Supreme Court of the Russian Federation](#) in paragraph 8. In addition, these transactions may be challenged in the event the debtor subsequently initiates bankruptcy proceedings.

## **4 How can one withdraw from the restrictions imposed by the moratorium?**

Legal entities and individuals retain the opportunity to withdraw from the moratorium by publishing relevant information in the Unified Federal Register of Legal Information on the Operations of Legal Entities, Individual Entrepreneurs and Other Subjects of Economic Activity ([Fedresource](#)). However, such withdrawal also entails the loss of all the advantages that the moratorium offers for debtors.

Please note that there are no universal solutions for minimizing risk in the current circumstances. We will be happy to advise you on your specific request.

We hope that the information provided herein will be useful for you. If any of your colleagues would also like to receive our newsletters, please send them the link to complete a [Subscription Form](#). If you would like to learn more about our [Dispute Resolution Practice](#), [Restructuring and Insolvency Practice](#) and [Economic Sanctions and Compliance Practice](#), please let us know in reply to this email. We will be glad to provide you with our materials.

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



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