

COVID-19: limitations, implications and opportunities for business

important things to know about business activity
in Russia in the face of a pandemic

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introduction

Dear readers,

The Russian government bans and restrictions aimed at preventing the spread of the novel coronavirus disease COVID-19 as well as the state aid to support economic activity in the country can have a significant impact on business operations.

In this presentation, we have put together a Q&A on current statutory and regulatory changes – with particular emphasis on court system and insolvency – to help entrepreneurs factor in most emerging legal opportunities and duties for making business decisions.

For convenience, all acts and regulations referred to in this presentation are hyperlinked to the source (in Russian) and highlighted in [blue](#).

We are also prepared to conduct a prompt analysis of existing risks, work out legal recommendations and offer anti-crisis solutions for companies operating in Russia and abroad.

Kind regards,

Ivanyan and Partners

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today

general issues

legislation

The Government's reaction to the crisis did not go as far as legislative amendments to the rules civil procedure. Reaction to this crisis mostly comes from within the judiciary as they have to adapt to the new environment.

On 18 March 2020 the Presidium of the Supreme Court (and the Presidium of the Judiciary Council) issued a Ruling introducing a special regime for the courts in the Russian Federation for a period (initially) from 19 March 2020 till 10 April 2020.

On 8 April 2020 a follow-up Ruling (the '[Emergency Ruling](#)') was issued by the same authority amending and extending this regime till 30 April. Further extensions may be anticipated, depending on the situation.

The judiciary is also impacted by the [Presidential Decrees](#) declaring holidays for the period initially from 30 March to 3 April and then extending it to 30 April 2020. The effect of these Decrees on the court proceedings will be further discussed below.

court hearings

The Emergency Ruling allows the courts to conduct court hearings in urgent matters (for instance, application, extension, cancellation or replacement of measures of restraint; protection of life of a minor; interim relief measures etc) as well as writ and summary proceedings, and the matters that can be heard in absentia.

deadlines

Authoritative opinions have been voiced (e.g., in a Supreme Court letter) that in view of the holidays declared by the President till 30 April 2020 all deadlines ending within this period shall be deemed to end on the first working day after the quarantine. The period of such inevitable extension shall affect the overall period of trial. It has to be seen how the court will implement these guidelines in practice. Currently the hearings in commercial cases are mostly adjourned till after the quarantine.

The limitation periods can arguably be affected by the same declaration of a holiday period by the President. If the last day of the deadline is not a working day, the period ends on the next working day (i.e. the first working day after the quarantine). That may be debatable, however, due to the peculiar nature of the current holidays. At any rate, the documents can be submitted within the original deadline by mail or on-line.

enforcement

Most enforcement procedures in Russia are ordinarily conducted in writing. While the bailiffs are trying to adjust to the current situation whenever they need to travel or get in contact with the debtors or creditors, we are unaware of any special legislation in this field related to the epidemic.

court premises and submissions

Access to the court premises is limited to trial participants in the cases where hearings are conducted. Personal appointments and review of the case files are suspended (by way of experiment, some arbitration courts have arranged for remote access to the digital copies of case files, where available).

Documents are accepted by the courts only on-line and by mail.

private sector

Companies and individuals in the private sector, including lawyers, banks etc, mostly work remotely and endeavor to maintain normal business hours and (wherever possible) procedures, irrespective of the special holidays regime.

insolvency

moratorium on bankruptcy

A moratorium on bankruptcy has been introduced for certain debtors to cushion the effects of the epidemic and the lockdowns.

On 1 April 2020, [Article 9.1 of Bankruptcy Law came into effect](#) whereunder the Russian Government can call a moratorium on initiation of bankruptcy proceedings against certain debtors.

The period of the moratorium is established by the Russian Government and may be extended.

On 3 April 2020, [the Government of the Russian Federation put a 6-month moratorium on](#) initiation of bankruptcy proceedings on the application of the creditors.

The moratorium applies to the following debtors:

- [Organizations and individual entrepreneurs whose OKVED code is on the list of specific areas of business](#) most affected by the deteriorating situation caused by the spread of the novel coronavirus disease and eligible for provision of first-priority targeted support.

For moratorium purposes, the information concerning the relevant activities of the company shall be included in the Unified State Register of Legal Entities or Unified State Register of Individual Entrepreneurs as at 1 March 2020.

- [Systemic organisations.](#)
- [Strategic enterprises and strategic joint stock companies.](#)
- [Strategic organizations and federal executive authorities](#) ensuring implementation of the unified state policy in economic sectors in which such organizations operate.

implications for the creditors

The implications of the moratorium for the creditors and the tax authority:

- Impossibility to file a bankruptcy petition (petitions filed during the moratorium and those filed before the moratorium but not accepted for hearing by the court shall be returned).
- Impossibility for the creditors to publish a notice of intention to file a bankruptcy petition with a court.

The tax authority shall have the right to file a bankruptcy petition with a court not earlier than 15 days after the expiry of the moratorium.

implications for the debtors

The implications for the debtors subject to the moratorium throughout the duration thereof:

- Debtor's obligation to file a petition with an arbitration court shall be suspended (the debtor's right to file a petition shall be preserved).
- Implications similar to the consequences of the first phase of bankruptcy for the insolvent legal entities:
 - a debtor's shareholder cannot claim its share in the company's capital when leaving the company or otherwise, and the company cannot purchase its own shares.
 - [set-off shall not be allowed](#) if it disrupts the priority order of satisfaction of the creditors' claims envisaged by [Article 134\(4\) of the Bankruptcy Law](#).
 - seizure by the state of the property owned through a state-owned enterprise shall not be allowed.
 - payment of dividends, equity income and distribution of profit among the debtor's shareholders shall not be allowed.

- financial penalties for non-performance or undue performance of monetary obligations or statutory payments shall not accrue, except for the payments due irrespectively of insolvency procedures.

- Foreclosure of pledged property, including extra-judicial foreclosure, shall not be allowed.
- Enforcement proceedings for pecuniary claims in relation to the claims arising prior to the introduction of the moratorium shall be suspended (however, attachments and other restrictions on disposal of the debtor's property shall not be removed).

post-moratorium implications for the debtors

Implications for bankruptcy proceedings initiated against the debtors subject to the moratorium within three months from expiry of the moratorium:

- The periods during which certain categories of persons are recognized as the debtor's interested parties as well as the suspect periods for the purposes of challenging of transactions shall be calculated from the date of introduction of the moratorium and shall include:
 - the relevant period prior to the moratorium.
 - the duration of the moratorium.
 - a 12-month period following the expiry of the moratorium but not later than till the date of the institution of the bankruptcy proceedings.
- The composition and amount of claims against the debtor arising prior to the moratorium and made after commencement of bankruptcy proceedings shall be established as of the date of introduction of the moratorium.

- The amount of claims against the debtor in foreign currency arising prior to the moratorium shall be calculated in roubles at the lowest rate established by the Bank of Russia as at the date of introduction of the moratorium or the date of commencement of the bankruptcy proceedings.
- The transactions involving transfer of property and undertakings made during the moratorium shall be deemed to be void (excluding those made in the course of debtor's ordinary business if the transaction price does not exceed 1% of the value of the debtor's assets as at the date of introduction of the moratorium).
- The procedure for entering into an amicable agreement in bankruptcy proceedings shall be simplified.

implications for all bankruptcy proceedings

During the moratorium, in all bankruptcy proceedings pursuant to the resolution of the bankruptcy administrator, the meetings of creditors, creditors' committee, construction participants and the meetings of employees or former employees of any debtor may be held by absentee voting.

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forecast

after the crisis and long-term effects

duration of measures

Most of the measures introduced so far are temporary, but the effects of the bankruptcy moratorium and various support measures are designed to last after the crisis.

economic crime / corruption matters

Most authorities currently perform their functions, and at the moment it is difficult to project any negative impact on anti-corruption prosecutions or law enforcement at large. We need to see, however, how the situation will unfold further

3rd party funded matters

It would be interesting to see how this crisis may impact third-party funding in the Russian dispute resolution market. It is not, however, apparent that the cultural and institutional barriers that limit recourse to third-party funding will be any lower after the crisis. It may be that the market will need to adapt and show more flexibility in view of the inevitable financial consequences of the current events.

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about the firm

resolving the most difficult and complex legal issues

specialism

Since 2006, we have been providing legal assistance to business owners, state corporations and authorities, private clients, and non-profit institutions. Our key competencies are support for complex investment projects, transactions and resolving complicated disputes, including cross-border and international lawsuits.

people

90+ lawyers and attorneys in the firm's Moscow and St. Petersburg offices protect the interests of our clients.

expertise

The main areas of our work are corporate and finance transactions; litigation and bankruptcy proceedings in Russia and abroad; infrastructure / PPP projects and real estate investments; compliance and public procurement; Public International Law and economic sanctions; and private clients and tax structuring of assets in various jurisdictions.

experience

We combine high legal proficiency with the skills of juridical protection of corporations before public authorities. Beyond that, we have unrivalled experience in Russia in the area of Public International Law.

scale

Ivanyan and Partners is in the [Top-10](#) of the largest and most successful law firms in Russia. The total volume of the projects we have advised on over the past five years (2015-2019) exceeds \$63 b, and the geographical reach of our work covers 29 countries on three continents

contacts

Moscow

Kadashevskaya nab., 14, bldg. 3
Moscow, 119017, Russia
+7 495 647 0046
reception.mos@iplf.ru

St Petersburg

Konnogvardeyskiy bul., 5, Office 101
St Petersburg, 190000, Russia
+7 812 647 0046
reception.spb@iplf.ru

ivanyan.partners

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