ALERT MEMORANDUM

Russia – Amendments to the Bankruptcy Law Following the COVID-19 Outbreak

2 April 2020

On March 25, 2020 the President of Russia addressed the nation over the COVID-19 outbreak and proposed certain economic measures for tackling the negative impact of the pandemic. On March 26, 2020, the Government of Russia introduced a draft bill reflecting the President's proposals which, among other things, was aimed at modifying the Russian Federal Law on Insolvency (Bankruptcy) dated October 26, 2002. The bill was signed by the President of Russia and entered into force on April 1, 2020 (the "Amendments").[1]

Government Powers

The Amendments vest the Government, in exceptional circumstances (*i.e.*, natural and man-made emergencies, significant fluctuations of rouble exchange rate and other similar circumstances), with discretionary power to impose moratorium on initiation of bankruptcy proceedings against certain categories of persons or specific persons, as may be determined by the Government ("affected debtors"). The Government shall specify the term of the moratorium, which could be further extended should the circumstances giving rise to the imposition of the moratorium persist.

Immediate Impact of the Moratorium

The imposition of moratorium would have significant implications for the rights and obligations of the affected debtors and their creditors. Primarily, creditors would be prevented from filing bankruptcy petitions against affected debtors. While the moratorium may provide temporary relief against the most extreme measures save for certain additional

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For more information, please consult the COVID-19 Resource Center.

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[1] Federal Law No. 98-FZ dated April 1, 2020 "On Amending Certain Legislative Acts of the Russian Federation Regarding Prevention and Liquidation of Emergencies". The full text is available at: http://publication.pravo.gov.ru/Document/View/0001202004010072.

restrictions on enforcement of security, set off and penalties described below, the moratorium would not restrict the creditors from, *e.g.*, making claims for unpaid amounts under the affected debtors' financing arrangements and in that sense would not necessarily alleviate any liquidity concerns the affected debtors may have.

Importantly, during the moratorium, the affected debtors will be relieved from their obligations to file a bankruptcy petition should they meet the insolvency criteria (but they retain the right to do so). Currently, the failure to file such petition may result in the debtor's directors having secondary liability for any indebtedness incurred in the period between the obligation to file the respective petition arises and the filing thereof. In addition, directors may also be subject to fines or, in case of repetitive failures to file the relevant applications, disqualification.

In addition, during the moratorium:

— The affected debtors will not be allowed to repurchase their own shares and distribute dividends;

— Creditors will not be allowed to levy execution upon the affected debtors' pledged property, set off affected debtors' liabilities against creditor's liabilities in breach of the priority of the creditors set out by insolvency law (subject to certain exceptions) and charge penalties and fines for non-performance of such debtors' obligations;

— All ongoing enforcement proceedings based on the claims filed before the moratorium was imposed will be suspended (although interim measures such as attachments shall remain in place).

Post-Moratorium Proceedings

The Amendments also set out certain additional provisions relating to the bankruptcy proceedings against the affected debtors initiated within three months after the moratorium is lifted. Amongst those are the following:

— The moratorium results in the extension of the terms for challenging "suspicious" and "preferential" transactions of the affected debtors: such transactions may be challenged if they were entered into within one or three years prior to the moratorium, respectively, during the moratorium period or within one year after the moratorium is lifted (but up to the date of the initiation of the respective bankruptcy proceedings);

— All transactions involving a transfer of property or creation of liabilities for affected debtors entered into during the moratorium period <u>will be null and void</u>, save for the transactions in the ordinary course of business, provided the amount of the respective transaction (interrelated transactions) does not exceed 1% of the affected debtor's assets based on the latest financial statements available at the date of the moratorium imposition. This provision has been vividly criticized in the media, as this effectively means that all transactions entered into with the affected debtors during the moratorium period (including vital liquidity financings or asset and liability management transactions) may be unwound.

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