

14 April 2020

FROM: Rybalkin, Gortsunyan and Partners

RE: RUSSIA: LEGAL IMPLICATIONS OF LEGISLATION ON COMBATING COVID-19 PANDEMIC

## 1. THE MOST CRITICAL PHASE OF THE CRISIS

The major sources of Russian law setting forth the immediate measures to combat COVID-19 pandemic are Decrees of the President of the Russian Federation No. 206 dated 25 March 2020 and No. 239 dated 2 April 2020. In accordance with these decrees the period from 30 March till 30 April was declared "non-working" and the activities of all organizations and state bodies have been limited significantly. The powers to elaborate specific rules of operation during this period were vested in local authorities and state bodies. Extensive legislation was passed by Russian federal and regional authorities with effect in different areas of substantive (civil, corporate, anti-trust, labor etc.) and procedural law. One of the most significant laws in this sphere is Federal Law No. 98 On Amending Certain Russian Emergency Prevention and Response Regulations dated 1 April 2020 (the "**Amendment Law**").

Rules of functioning of Russian courts are set forth in the joint Resolution of Presidium of the Russian Supreme Court and the Presidium of the Council of Judges of the Russian Federation dated 8 April 2020 (the "**Resolution**"), which is to be in effect until 30 April 2020. By the Resolution, Russian courts are instructed to restrict access of public to the court premises. This includes restriction of obtaining of copies of judgments and judicial documents for the parties in person, reviewing case files and participation in court hearings.

At the same time, individuals and legal entities may submit documents to courts via post or Internet. Furthermore, some state arbitrazh (commercial) courts allow the parties to disputes to review case files remotely via electronic tools. Accordingly, judges and the court staff are working, though with limitations. They accept documents, consider motions and may render judgements on separate matters, e.g., on postponing hearings, and upload them to the unified system of court documents. The court staff is accessible over the phone.

Resolving of most disputes on the merits is effectively suspended, and courts are recommended to continue resolving *urgent* disputes only. The Resolution contains a non-exhaustive list of disputes falling within the category of urgent, e.g.: certain administrative cases, disputes over criminal preventive measures, imposing or lifting interim relief (injunctions); disputes to be considered in summary proceedings not involving trial, as well as cases where the parties requested to consider the dispute in their absence. The courts are given leeway in determining, what other categories of disputes may be recognized urgent considering the circumstances, the parties' position and the epidemic situation in the relevant Russian region.

Russian courts are also recommended to hear cases by videoconference, if technically possible. However, to date this recommendation is challenging to implement, given the restriction of public access to the courts and the fact that under Russian procedural law videoconference is only possible between different Russian courts (and not e.g. among a court and parties). During the "non-working" period there were a couple of precedents of having cases heard via WhatsApp, however it is premature to assume that they give rise to settled practice.

Neither the Resolution nor the President's decrees or other acts issued subject to them contain any provisions on procedural deadlines (e.g. appeal periods) during the "non-working" period. The Russian Supreme Court has voiced its opinion that the hearings in commercial disputes scheduled before 30 April 2020, shall be postponed to a later date. We would expect that Russian courts may follow this approach *mutatis mutandis* in relation to other procedural deadlines as well.

As regards limitation periods, it should be noted that Russian law allows suspending the calculation of limitation period if submitting of a claim remains impossible due to an extraordinary and unavoidable

circumstances. However, as noted above, the submission of claims is not completely impossible at least in a number of Russian regions. Therefore, we assume that the "non-working" period limitation may allow to suspend running of or retribute limitation period on a case to case basis.

The Russian Supreme Court is currently developing mandatory guidelines on the substantive and procedural law implications of anti-pandemic measures, which shall cover at least the most evident legal lacunas existing as of today.

Enforcement proceedings have also been affected by the spread of COVID-19. Russian Federal Service of Court Bailiffs has issued several regulations including Order No. 202 dated 19 March 2020 (as amended) and Instruction No. 25-r dated 7 April 2020 containing new rules of enforcement procedure being in force (so far) until 30 April 2020. These acts *inter alia* restrict access of public to the Service's premises and decrease the number of officials working within the said period. However, Russian courts may still issue writs of execution (a motion to a court to issue one may be submitted electronically or via post) and send them to the relevant creditor by post.

Russian Federal Service of Court Bailiffs continues performing enforcement proceedings accepting enforcement documents from individuals and legal entities. However, though no extensions for enforcement proceedings are explicitly provided for by law, we expect delays in enforcement of judicial acts caused by an overload of the Federal Service of Enforcement Agents, especially given a temporary decrease of their staff.

In addition the Amendment Law and Resolution of Russian Government No. 428 dated 3 April 2020 have established a six-months moratorium on initiation of bankruptcy proceedings by creditors of certain businesses effected by the lockdown (e.g. in the spheres of aviation, hotels, education, sports, entertainment, public dining, tourism), strategic companies and enterprises included into a list of companies possessing major significance for Russian economy (collectively the "**Qualifying Debtors**").

Russian courts will not accept any creditors' bankruptcy petitions against the Qualifying Debtors should they be filed during the moratorium period (provided such petitions have not been accepted for hearing prior to the moratorium date). Moreover, the creditors will not be allowed to publish an announcement on intention to submit a bankruptcy petition against a Qualifying Debtor, which is mandatory before the bankruptcy filing. The Qualifying Debtors are not prohibited from filing a bankruptcy petition against themselves, however during the moratorium period their management shall not be considered liable for not doing so (even if a Qualifying Debtor matches the insolvency criteria).

Certain restrictions relating to the operation of other businesses have also been introduced by the Russian regional authorities. For example, pursuant to Decree of the Mayor of Moscow No. 12-UM dated 5 March 2020 (as amended) employees of organizations, engaging in a vast number of branches of economy, are prohibited from attending the offices/premises of these organizations for the period from 13 April 2020 until 19 April 2020. Law firms, for instance, fall within the scope of such organizations and lawyers in Moscow are only allowed to work remotely. Notably, based on a later Decree of the Mayor of Moscow No. 43-UM dated 11 April 2020 attorneys-at-law are exempt from staying at home in order to ensure the citizens' rights to legal aid.

Banks in Russia are generally allowed to work on a usual basis, though most of their staff are working remotely. However, their work largely depends on local and internal regulation.

## **2. FORECAST: AFTER THE CRISIS AND LONG-TERM EFFECTS**

The pending restrictions in functioning of the courts set forth by the Resolution, in enforcement proceedings, as well as those affecting the operation of certain types of businesses imposed by regional authorities are expected to be canceled as soon as the Russian authorities decide that the situation with COVID-19 improves. At present the "non-working" period shall cease after 30 April 2020, and given the Russian national holidays in May the first business day shall be 6 May 2020 (though extension of lockdown regime is possible).

At the same time, some measures will remain in force after the lockdown measures are set aside. For instance, as mentioned above, the bankruptcy moratorium was imposed for six months until 3 October

2020. Notably the moratorium involves not only the prohibition to file bankruptcy petitions against the Qualifying Debtors, but also some significant regulations affecting their business e.g.: prohibitions to set-off, to pay dividends, to enter into transactions apart from those normally concluded in the usual course of business, etc. Moreover, the six months moratorium period will be taken into account to extend the claw-back period to challenge certain debtor's transactions.

We expect that the moratorium introduced by the Russian Government will be lifted by 3 October 2020 (if not extended), should the Russian economy start restoring after the crisis. However, it is difficult to predict accurately at what stage after the end of the pandemic this will be done.

We do not expect material changes following the end of the COVID-19 pandemic relating to economic crime, including corruption matters.

At the same time many substantive law measures implemented in connection with combatting COVID-19 and negative consequences thereof, which are not directly connected with the operation of judicial and enforcement system, will also remain in place after 30 April 2020. For example, newly issued regulations foresee: deferrals of lease payments (until 1 October 2020); simplified buy-back procedure for public joint stock companies (until 31 December 2020); specific rules of holding shareholders' meetings (until the end of 2020) and extension of time to submit financial reports; a 12-month extension of validity of certain types of licenses and many other measures.

We further understand that additional anti-crisis regulations are to be expected even once COVID-19 is finally done with.

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