

A nighttime photograph of a large, illuminated building with a classical facade, situated on a waterfront. The building's lights reflect on the water. A semi-transparent grid of white dots is overlaid on the image. The text is centered in the lower half of the image.

# Pandemic, taxes and bankruptcy in Russia. What to expect and what to get ready for?



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**The rapid spread of the new COVID-19 virus on the planet makes the government develop measures not only to combat the spread of its manifestations in the sanitary and epidemiological area but also prevent its negative impact on the economic and social aspects in the society.**

Against this background, when a pronounced change in the pattern of public relations is taking place, and every individual cannot but respond to those changes without staying away, it is essential to find a compromise in the form of a kind of social contract. The state is obliged to fulfil the basic function, for which the society created it, namely the function of protecting its citizens from any negative impact of the external threat. For many involved in the turnover, the economic negative aspects of the crisis may well result in a significant decline in income and have both short-term and long-term effects. The financial condition of business entities will successively decline from one industry to another. Both tourist and air services followed by event management, e.g. exhibitions, concerts, sporting events etc., then catering, real estate management and so on. Only time and seamless interaction between the society and state mechanisms will show who has a safety buffer.

For example, this week the government adopted a series of measures aimed at supporting citizens and businesses against the backdrop of a sharp decline in the demand for services and products of individual sectors of the economy.

In particular, it was decided to provide a deferral in making tax and other payments into the budget in respect of taxpayers representing the tourism and air transportation sectors without initiating any payment request or recovery procedures earlier than 1 May.

In addition, a draft law on waiving penalty accrual in respect of the specified debt as well as the introduction of any additional grounds for obtaining a deferment of taxes and levies for these categories of taxpayers without charging interest including simplification of the procedures for providing such a deferment will be considered.

Tax holidays and forbearance to impose sanctions provide a good supporting measure. But it is to be seen in the future, at the end of the tax period, when the company is given the chance not to divert funds to tax payments but spend them on the company's immediate needs with a decrease in turnover. In addition, while we are talking about facilitating the fiscal burden only for representatives of two business sectors while it is affecting a larger number of them.

**The government has not overlooked such an area in the public relations as bankruptcy which inevitably accompanies economic crisis phenomena.**

Not all business entities can withstand a decline in production and income. The deeper these phenomena, and the longer the impossibility of working under normal conditions, the higher the number of entrepreneurs who find themselves in a state of insolvency. In this state, bankruptcy proceedings may be brought against them at the creditor's request. The state represented by the Federal Tax Service does have such a right. Moreover, in order to file for bankruptcy of a debtor, the Federal Tax Service does not need to follow a number of formalities in contrast to an ordinary commercial creditor of that debtor. For example, acknowledgement of the fact and amount of debt by a court ruling, the publication of a statement of intent to file for bankruptcy of the debtor and so on.

In this regard, on 18 March 2020, the Prime Minister instructed the Russian Ministry of Economic Development in coordination with interested federal executive bodies to submit a draft federal law to the Russian Federation Government by 1 April 2020 to provide for introducing a moratorium on filing bankruptcy petitions, and instructed the Russian Federal Tax Service to postpone until 1 May 2020 the deadline for filing bankruptcy petitions in relation to persons be in arrears on payment to the Russian Federation budget. It seemed that the measure imposed a restriction only regarding the suspension of the Federal Tax Service's filing applications for the initiation of new insolvency cases for a certain period.

<http://government.ru/orders/selection/401/39204>

However, in a draft law published on 20 March <https://regulation.gov.ru/p/100548> it was proposed to supplement the Bankruptcy Law with Article 9.1 Moratorium on Initiating Bankruptcy Cases.

**This article makes it possible for the government to establish a moratorium on bankruptcy cases up to six months in relation to certain categories of entities (taking into account the order of 18 March 20120, it may be that this moratorium will be initially introduced for taxpayers representing the tourism and air transportation industries).**

Creditors' applications filed during the moratorium are subject to return, and proceedings on initiated cases, in which the applicable bankruptcy procedure has not been introduced, are subject to suspension for three days from the date the moratorium was introduced without a court hearing.

**It is essential that the proposed draft law on the introduction of a moratorium provides for the possibility of introducing a moratorium on initiation of proceedings only at the creditors' request. It will not apply to consideration of debtor statements.**

The project provides for a change in the rule for calculating certain procedural periods.

For example, the term of the publication on the creditor's intention to file its debtor bankruptcy is suspended if such a publication is posted before the moratorium introduction.

If the bankruptcy case against the debtor is initiated no later than three months after the moratorium expires, the time limits established by law for calculating the periods of suspicion of the debtor's transactions disputed in a bankruptcy case on the grounds of Art. 61.2, 61.3 will not be counted from the date of initiation of the case but from the date of the moratorium meaning that the period of suspicion increases to 9 months.

**But what about those whose financial indicators are about to approach critical figures due to the recession caused by the pandemic?**

The law On Insolvency (Bankruptcy) (Article 9) establishes the obligation for the chief to file a petition on declaring bankrupt the person controlled within one month from the manifestation of signs of insolvency – failure to fulfil some pecuniary obligations due to insufficient funds. This means closing business and joining the group of those who look for support instead of a business entity capable of contributing to economic recovery when the tension is reduced.

The draft law also suggests suspension of this provision and involves the suspension of the time periods, within which the persons controlling debtors are required to file for bankruptcy in respect of the controlled person. On the one hand, this will make it possible to eliminate the risk of managers' being held liable for untimely handling a bankruptcy petition, which may not be accepted in a crisis situation under due diligence and a rational assessment of the situation. On the other hand, there is a risk of early winding up a company which was exposed to extraordinary circumstances and temporarily found itself in a state requiring a radical decision to cease operations and declare bankruptcy, although it is still capable of showing effective operation and profitability in the context of ordinary turnover.

At the same time, if the owner or manager can be fully confident that their company is not capable of generating sufficient profits for settlements with creditors, the owner or manager may not be disqualified from applying for bankruptcy in respect of their company.

For example, the German government has tried to adopt such a liability restriction, as reported by the German Federal Ministry of Justice <https://clck.ru/MarN2>

Taking measures to control and prevent the spread of coronavirus inevitably leads to circumstances in which everyone suffers hardships aimed at restricting e.g. the citizens' freedom of movement, freedom of participating in meetings and visiting public places. It all started with recommendations to restrict visits to individual states, in which a large number of cases of infection with a new disease were registered, then restrictions on holding meetings first involving no more than 5,000 people then no more than 1,000 people were imposed. By the resolution of the Governor of St. Petersburg dated 18 March 2020 No 127, it was ordered to suspend indoor events with more than 50 participants.

As an Arbitration Manager, I was most directly affected because by virtue of the law, a Bankruptcy Manager is obliged to report to the creditors at least every three months on the results of bankruptcy proceedings by holding a meeting of creditors. Now it turns out that no meetings with a potential number of participants of more than 50 may be held due to the Governor's instruction. At the same time, no one has abolished any legal provisions to that extent; the emergency situation and its effects on an Arbitration Manager's failure to fulfil the duties stipulated by the law will be considered, in case of violation, by the supervision and control body and SRO.

However, we do not have the right to stop any procedures and activities carried out on them. Therefore, despite the existing restrictions, I personally will conduct the creditors' meetings set up for the restricted period. Although the opinions of colleagues were divided. Someone believes that since the obligation has not been abolished, then meetings may not be cancelled either, and everything needs to be done as per schedule. Someone else definitely supports the idea of cancelling and sticking to quarantine. In principle, others suggest holding meetings in absentia, although for legal entities such an option is not directly provided for by law.

One of the latest news, that has stirred up the entire legal community and arbitration managers and also resulted in taking measures to combat the spread of coronavirus, is the decision of the Presidium of the Supreme Court of the Russian Federation Presidium of the Council of Judges of the Russian Federation ordering to suspend the admission of citizens in courts and consider only urgent cases. As early as the following day, colleagues were exchanging the information on either courts, that hold meetings, or those suspending holding them. Obviously, for me being a lawyer and an arbitration manager, suspension of work in courts is a serious loss of project working hours. Especially in bankruptcy proceedings, since, in accordance with the law, they are carried out under judicial control, and most procedural issues are resolved in court. For example, postponing the issue of consideration of disagreements on the property sale procedure for one month can increase the procedure duration by a longer period, and in the uncertainty of appointments, this date becomes even more uncertain. All lawyers of St. Petersburg are familiar with the recent collapse associated with the relocation of the Arbitration Court of St. Petersburg and the Leningrad Region, when the uncertainty in the dates of the meetings led to protracted proceedings, loss of documents. It was also impossible to find statements sent to the court in the related files but the court administration gained experience, and I think that now they will easily overcome the three-week isolation from parties and third parties. After regaining access to justice, they will quickly resolve all the backlog of disputes. Of course, they will share their experience with those who do not have any.

By the example of China, we see that it will not take long for the virus attack, which caused the crisis, to retreat, if the society has a sense of the joint goal along the route developed by the country's leadership and implement the recommendations of Rospotrebnadzor (Russian Federal Consumer Rights Protection and Human Health Control Service).

In the meantime, it remains for us to comply with the rules of anti-quarantine measures and hygiene rules, handle those cases, that do not require any legal proceedings, and timely respond to requests from our clients, whom we are always happy and ready to help; and we are therefore not ready to be in quarantine and isolation without medical reasons.