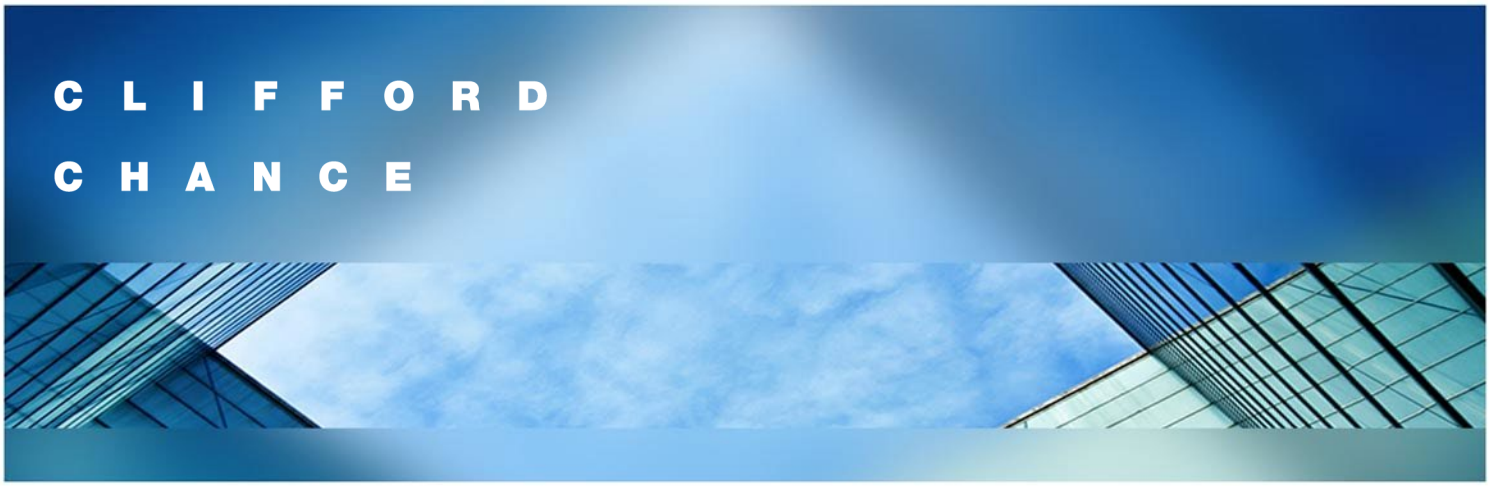

RUSSIAN COMPANIES SUBJECT TO INSOLVENCY MORATORIUM MAY REQUEST THE RESCHEDULING OF INDEBTEDNESS UNDER SUPERVISION OF THE COURTS

Further amendments to the Russian Law on Insolvency (Bankruptcy)[1] (the "**Amendments**") relating to the recently introduced rules (outlined in our previous briefings from March and April 2020) on the application of the moratorium on the filing of creditors' petitions for insolvency of Russian companies have been adopted. Starting from 8 June 2020 when the Amendments became effective, Russian companies with respect to which on April 6, 2020 the Russian Government introduced a moratorium on insolvency, and which initiate their own insolvency (the right to initiate its own insolvency remained available for affected companies while the obligation to file for its own insolvency was excluded by the introduction of the moratorium) will be entitled to petition the court for the rescheduling (a "**Rescheduling**") of certain of its debts.

This briefing outlines the requirements which an affected company should satisfy for obtaining approval from the court for a Rescheduling, the terms of indebtedness in respect of which the Rescheduling may be requested and the terms of the Rescheduling itself.

Key issues

- Rescheduling is available for companies subject to the moratorium on insolvency
- Rescheduling may be obtained in an insolvency initiated by a company itself
- Rescheduling is available for a company with a decrease in revenues of more than 20% over the reporting period
- The maturity of indebtedness eligible for rescheduling and the period of its deferral are limited by law
- The rescheduling is extended to eligible indebtedness of all creditors of the company
- The terms of the rescheduling are to be approved by the court

REQUIREMENTS FOR OBTAINING APPROVAL OF A RESCHEDULING

According to the Amendments, only companies subject to the moratorium (including those which have not waived the protections granted by the moratorium), in respect of which the first stage of insolvency (supervision) has been opened on the basis of a petition filed by the company itself not earlier than one month after the introduction of the moratorium, may petition the court for a Rescheduling, **provided that** the following requirements are met:

- the revenue of the company has decreased by more than 20% in the reporting period in which the insolvency proceedings were opened by comparison with the corresponding period in the previous calendar year; or

[1] Art. 9 of the Federal Law No. 166-FZ of 8 June 2020 "On amendments to certain legislative acts of the Russian Federation with the purpose of taking immediate measures aimed at ensuring sustainable development of the economy and prevention of consequences of the spread of the novel coronavirus infection".

if the relevant reporting period has not ended by the time of the opening of the insolvency proceedings, the revenues over the period of 2 years preceding the year in which the insolvency proceedings were opened are to be considered;

- the meeting of creditors of the affected company voted against entry into an amicable agreement (or abstained from voting on this matter);
- the company does not have overdue claims from individuals for compensation for personal injury or death and for salary or severance payments (which are among the claims of the first and second orders of priority);
- there are no outstanding petitions of creditors for the initiation of insolvency proceedings filed before the date of the introduction of the moratorium and declined by virtue of the introduction of the moratorium.

In terms of when the right to petition the court for a Rescheduling can be exercised in practice, it is important to note that only creditors whose claims are included by the court in the register of creditors' claims may participate in the first creditors' meeting at the supervision stage, at which entry into an amicable agreement may be considered. The claims can be submitted by creditors for inclusion in the register within 30 calendar days from the date on which the information that the supervision stage of insolvency is instigated is officially published (which happens following the verification court proceedings during which the grounds for filing the insolvency petition are confirmed as well founded). Such verification proceedings may be held not earlier than 15 business days from the date on which the court accepted an insolvency petition. The company may file an insolvency petition not earlier than 15 calendar days after publication of a notice of its intention to file for its insolvency in the federal register of information on the activity of legal entities, which is searchable online. If an amicable agreement is not approved in the course of a creditors' meeting by a simple majority of the creditors and governmental agencies whose claims are included in the register of creditors' claims with the unanimous consent of creditors whose claims are secured by the company's assets, then the company may petition the court to approve the Rescheduling. Therefore taking into account the above timelines set by law and the time required to convene the first creditors' meeting, in practice it is unlikely that the company can exercise its right to obtain a Rescheduling earlier than three months from the date of filing an insolvency petition.

INDEBTEDNESS WHICH MAY BE SUBJECT TO A RESCHEDULING AND THE PERIOD OF DEFERRAL

A Rescheduling may be requested by an eligible company with respect to (i) its indebtedness which is overdue at the time of the opening of the insolvency proceedings, and (ii) its indebtedness which is to be included in the register of the creditors' claims with a maturity date falling not later than one year from the date on which the Rescheduling is approved. The claims of all creditors under the indebtedness falling within the above criteria, whether or not included in the register of creditors' claims, will be subject to the Rescheduling. All other indebtedness which is not subject to the Rescheduling is to be repaid in accordance with its contractual terms.

According to the Amendments, the indebtedness subject to the Rescheduling is to be repaid in equal instalments over a period of one year. It is not entirely clear how the indebtedness subject to the Rescheduling with a contractual

maturity falling within a year from the date of the Rescheduling (referred to in item (ii) above) is to be repaid as a result of the Rescheduling - from which date the repayment of such indebtedness in equal instalments within 1 year should start. It is not also clear how the repayment schedule is to be drawn up with respect to different contracts and different creditors - whether a new schedule will be drawn up for each contract and each creditor, for each creditor to get equal instalments during the year or otherwise (e.g. monthly repayments of the aggregate amount of all indebtedness in equal instalments for the debtor, but each creditor will be repaid pro rata the aggregate amount due to all creditors subject to the Rescheduling, as is generally the case at the liquidation stage of insolvency). We expect that answers to these questions will be provided by court practice.

A company which obtains a Rescheduling will continue to be subject to the restrictions which generally apply to companies subject to the moratorium, such as (i) a prohibition on the payment of dividends, (ii) non-accrual of financial sanctions on overdue payments, (iii) a prohibition of set-off which could breach the statutory order of priority, (iv) a cessation of the debt recovery enforcement proceedings with respect to claims which arose before approval of the Rescheduling. Although the Amendments are silent on this, it is most likely that such restrictions will be effective for the period until the indebtedness subject to the Rescheduling is discharged in full and the restrictions relating to the claims of creditors will apply only to those subject to the Rescheduling. At the same time no moratorium restriction prohibiting enforcement of pledges over the assets of the affected company is provided by the Amendments in connection with approval of the Rescheduling. This should mean that such enforcement will be available at the end of the moratorium, which at the moment is expected to be October 6, 2020. It is most likely that existing pledges securing indebtedness of the debtor subject to the Rescheduling should remain in force without the need to amend the security documents, although the Amendments do not contain any provisions to address this. With respect to registered pledges (such as a mortgage) changes to the relevant register will most probably be required depending on the changes to the repayment schedule for the secured indebtedness, but this would need to be considered on a case by case basis.[2]

According to the Amendments, if the decrease in revenues for the reporting period in which the insolvency proceedings were opened amounts to more than 50% by comparison with the revenue in the corresponding period in the previous calendar year (or over the period of 2 years preceding the year in which the insolvency proceedings were opened), an eligible company may obtain a Rescheduling for its indebtedness with a maturity falling within 2 years of the date on which the Rescheduling is approved, and the rescheduled indebtedness must be repaid within a period of 2 years. If eligible companies with such a decrease in revenues are strategic entities, the indebtedness which may become subject to the Rescheduling may have a maturity falling within 3 years of the date on which the Rescheduling is approved and must be repaid within 3 years. If the Rescheduling is approved for such an extended period, unsecured creditors must be granted security for their claims in the form of a bank guarantee and(or) pledge of assets of the debtor or a third party.

[2] The question of the retaining of existing pledge, the term of its effectiveness and the necessity to reflect changes in the registers relating to the Rescheduling should be analysed on a case by case basis depending on the type of secured assets, the terms of security documents and changes to the repayment schedule of the secured obligations.

According to the Amendments, for the period of the Rescheduling in excess of 1 year, interest at the rate provided in the agreements will accrue, and if such interest is not provided for in the agreements, at the rate of refinancing set by the Bank of Russia during the period of the Rescheduling. It is not clear how such interest will be calculated in practice, i.e. from what date and with respect to what indebtedness the period exceeding one year should start (whether it should be calculated with respect to each rescheduled payment or by reference to a single date applicable to the aggregate amount of indebtedness subject to the Rescheduling) and whether any interest will accrue for rescheduled indebtedness with a maturity not exceeding 1 year (e.g. at the refinancing rate of the Bank of Russia as provided by analogy by insolvency legislation for registered claims in the course of the supervision stage).

The terms of the Rescheduling are to be approved by the court and upon such approval the insolvency proceedings terminate.

CONSEQUENCES OF THE OPENING INSOLVENCY PROCEEDINGS AFTER APPROVAL OF A RESCHEDULING

If (i) the insolvency proceedings are renewed (upon the revocation of approval of the Rescheduling by the court based on a petition of the creditors when the Rescheduling terms are not complied with) or (ii) new insolvency proceedings are instigated (following non-performance of the Rescheduling (most likely meaning a failure to pay in accordance with the Rescheduling)), the suspect periods during which transactions which are generally vulnerable during insolvency proceedings (i.e. transactions entailing preferential satisfaction of creditors' claims and suspicious transactions) are extended. The suspect periods will be calculated by reference to the date of the introduction of the moratorium and will additionally include the moratorium period and the period until the revocation of approval of the Rescheduling or the initiation of new insolvency proceedings.

In this briefing we have addressed only a few issues which may arise in the course of application of the new rules. However, in view of the novelty of the regulation other issues may arise in practice. In most cases only court practice will be able to clarify these issues and we will monitor this practice. Should you have any questions in connection with the subject matter of this briefing or if you need to discuss how the new rules may affect your business or what impact they have on transaction documentation, please contact the authors of this briefing or your usual Clifford Chance contacts who are available at any time for specific advice.

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