

SPEAKING NOTES OF LEV GERSHANOK (RUSSIAN FEDERATION) FOR THE UNCITRAL EVENT: “IMPACT OF THE INTERNATIONAL HEALTH CRISIS ON THE LEGAL INFRASTRUCTURE FOR TRADE”

Introduction

- In 2020, the whole world faced the consequences of the global health crisis. Its restrictions had a devastating impact on national economies and cross-border trade.
- The Russian government has undertaken a number of measures to overcome the negative burden that the pandemic has brought with it. Moreover, the effectiveness of these measures is still highly appreciated after almost three years.
- In the context of our topic today and the development of a policy toolkit based on UNCITRAL documents, I would like to note that the measures taken by the Government of the Russian Federation were generally comprehensive and covered all four areas considered in the toolkit presented today: digitalization of trade, insolvency, support for SMEs, contractual obligations, as well as many other areas that were not within the scope of the current project.
- At the event, which took place this February under the auspices of the APEC Economic Council in the context of the UNCITRAL “COVID” project, we made an overview of the measures taken by the Russian government related to digitalization of trade. We talked about personal medical assistants, artificial intelligence technologies used to tackle the negative impact of COVID-19, experimental legal regimes (the regimes, which allow approbation of new technologies in specific areas along with regulatory flexibility).
- Today, I would like to focus on two areas that were particularly affected by the negative effects of the pandemic, and where efficient measures were taken to prevent such effects: in the area of bankruptcy and support for SMEs.

Insolvency

- In order to prevent a sharp increase in the number of insolvencies of economic entities and to ensure the stability of the economy during the spread of a new coronavirus infection in 2020, the Russian government introduced a moratorium on bankruptcy.
- The moratorium was in force since April 6, 2020. It was valid for six months in relation to strategic and core organizations and organizations from the most affected sectors of the Russian economy. For organizations from the most affected industries, it was extended for another three months (valid from April 6, 2020 to January 7, 2021).
- The moratorium applied to more than 0.5 million organizations (14.2% of all legal entities) and 1.6 million individual entrepreneurs (40.3% of all individual entrepreneurs).
- During the period of the moratorium:
 1. creditors could not file for bankruptcy of the debtor subject to such a moratorium;
 2. the debtor's own obligation to file for bankruptcy was suspended;
 3. enforcement proceedings related to insolvency were suspended;
 4. no foreclosure was allowed;
 5. penalties (fines) and other financial sanctions were not charged;
 6. payment of dividends and offset of counterclaims were not allowed .
- At the same time, the Supreme Court of the Russian Federation clarified that the anti-COVID moratorium on bankruptcy did not relieve the owners and top management of companies from subsidiary liability for their debts if the controlling persons knew that signs of insolvency had arisen earlier and there was no chance to overcome the crisis.
- In order to ensure a prompt response and the possibility of adapting to a potential change in the situation, a mechanism was created to exit the moratorium and remove the restrictions associated with it for business entities that considered that they did not need the protection provided for by the moratorium.

- In order to provide additional protection for debtors, in June 2020, the Federal Law *No. 127-FZ of October 26, 2002* “On Insolvency (Bankruptcy)” was amended to create a new tool to support debtors under a moratorium after it ends: a mechanism for judicial installment of obligations in the case when the debtor during the moratorium filed a statement of his bankruptcy to the court. Such an installment plan could be granted for a period of one to three years, depending on the condition and category of the debtor.
- The moratorium affected not only the persons to whom it applies, but also their counterparties. This means that during the moratorium, the counterparties of the “sub-moratorium” organizations could not receive the fulfillment of their claims.
- However, under the given circumstances, a moratorium was necessary. No one knows what could have happened to Russian business and the economy as a whole if the Government of the Russian Federation had not taken such anti-crisis measures in a critical situation like COVID-19. Uncertainty about the future could have pushed businesses to file for bankruptcy more. The moratorium also allowed to relieve unnecessary tension.

Support for SMEs

- In terms of supporting SMEs during the pandemic, the Government adopted a list of various measures, in particular with regard to SMEs operating in the most affected sectors of the economy.
- The package of measures for SMEs was aimed at (1) reducing the administrative burden, (2) minimizing non-production costs, (3) reducing and deferring taxes and insurance payments, (4) expanding special access to credit resources.
- For example, in the context of preferential lending, SMEs were able to receive concessional loans for the payment of wages at a rate of 0% and 2.25% (FOT 0%), 2% (FOT 2.0) and 3% (FOT 3.0) (*FOT 0%: 50 banks participated in the program, 39.5 thousand loan agreements were concluded for the amount of 94.2 billion rubles; FOT 2.0: 38 banks participated in the program, 3.5 thousand loan agreements were*

concluded for a total amount of 4.3 billion rubles; FOT 3.0: 3%, 15.14 thousand applications of borrowers were approved in the amount of 47.50 billion rubles).

- Also, more than 2 million (2.2 mln) SMEs and individual entrepreneurs received subsidies (grants) for wages, which made it possible to provide employment for more than 3.7 million people (*Decree of the Government of the Russian Federation of May 16, 2020 No. 696*).

Conclusion

- In conclusion, we would like to note that we hope that the experience undertaken by the Russian Federation in the framework of preventing the negative consequences of COVID-19 would be useful in the context of the discussion of recommendations enshrined in the policy toolkit based on UNCITRAL texts.