
SHORT NEWS

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Coronavirus – Legal Recommendations for Business in Russia

The World Health Organisation has officially called the spread of SARS-CoV-2 a pandemic; at present it has affected most of the world's countries. There are already serious economic consequences. Everything that appeared impossible only yesterday has already become a reality today: stringent quarantine measures have been introduced, certain types of activity have been suspended, supplies are delayed or cancelled, exhibitions and meetings have been cancelled, travel between countries is being banned, etc.

For the time being it is unclear when the situation will return to normal. This means that companies should on the one hand adopt measures to protect the health of their employees or partners, and on the other hand continue to operate. In this informational letter we present the legal aspects which may help your company to continue doing its core business.

1. General Measures

In general, the situation should not be over- or underestimated. It is important to be cautious and weigh up the risks. The indicated measures must be observed, as your employees must be protected. At the same time, the core business of the companies must be maintained. The governments and the authorities sometimes take rapid action. Therefore, we highly recommend that you stay up to date about the current state of affairs.

As it is still unclear how the situation will develop in connection with the coronavirus pandemic, and how long it will last, the action plan on the pandemic should at the very least cover the period to the end of 2020.

2. Foreign Economic Agreements

The restrictive measures introduced in connection with the coronavirus pandemic may result in different forms of default on contractual obligations, including failure to meet the deadline for the performance of obligations, and in certain instances the inability to perform obligations arising from concluded agreements. One of the key issues is the delimitation of liability between parties in connection with the committed violations.

The coronavirus pandemic and the restrictive measures being adopted by governments to prevent the spread of the virus may be recognised as force-majeure circumstances and result in the release of contracting parties from liability¹.

The legislation applicable to an agreement and the provisions of the agreement may stipulate special procedures for applying the consequences of the onset of force-majeure circumstances. In particular, an agreement may establish the timeframe for announcing the onset of force-majeure circumstances; the need to submit evidence confirming the onset of force-majeure circumstances or the duration of such force-majeure circumstances. Sometimes it also stipulates the special legal consequences of the onset of force-majeure circumstances. Consequently, in each individual case analysis of applicable legislation and the provisions of the agreement, and also the special instructions of the governments of different countries is indispensable.

When concluding new agreements, we recommend including provisions on the release of the contracting party from liability in connection with the default on or undue performance of contractual obligations in connection with the coronavirus pandemic, and also the procedure for settling these issues.

3. Corporate Law

Owing to the imposition of countermeasures in connection with the spread of the coronavirus, the directors or key employees of a company, after travelling to another country or even another city on a business trip or on vacation, will not be able to return to their workplaces, or on their return, will face limitations on their movements.

For a long time Russian legislation stipulated that only one individual could be appointed as chief executive officer (general director). Since 2014, the situation changed and several individuals may exercise the functions of chief executive officer, and effective September 2020 it should be possible to stipulate in the Unified State Register of Legal Entities whether such individuals act jointly or independently². However, a number of Russian companies have historically had one individual only who is the chief executive officer (general director). In connection with this fact, if the general director is unavailable for an extended period, the business of the company may be adversely affected.

We recommend that you already take the necessary preparatory steps now. For example, additional individuals could be appointed to exercise concurrently the functions of the chief executive officer of the company and/or corresponding powers of at-

¹ For example: Decree No. 20-UM of the Mayor of Moscow dated 14 March 2020.

² Corresponding amendments were introduced to Federal Law No. 129-FZ dated 8 August 2001 "On the State Registration of Legal Entities and Individual Entrepreneurs" by Federal Law No. 377-FZ dated 12 November 2019 "On the Introduction of Amendments to Certain Legislative Acts of the Russian Federation", and should enter into force from 1 September 2020.

torney could be issued to one or several individuals to engage in certain actions on behalf of a company in accordance with the rules on the authorities of these representatives. In addition, it is necessary to check whether these individuals can have remote access to the company's bank accounts to make payments. In this case, it is important to establish controls over such payments.

In accordance with legislation, Russian companies for 2019 should approve now their financial results for 2019 at annual general meetings of participants or shareholders. To ensure the participation of foreign shareholders/participants, it is worth considering whether to issue powers of attorney to representatives located in Russia. In view of restrictions imposed on entering Russia, this will make it possible to hold the meetings on time.

4. State procurements

According to the mass media, the state is ready to consider restrictive or special measures to be adopted in Russia to prevent the spread of coronavirus, which constitute circumstances beyond of the control of the parties to the contract, result in the unenforceability of the contract and permit a change in the material terms and conditions of the concluded state contract³.

The Ministry of Industry and Trade is already preparing jointly with the Ministry of Justice and the Ministry of Finance corresponding legal grounds for such decisions.

5. Labour law issues

The COVID-19 pandemic is forcing companies to adopt measures to protect the health of their employees and continue operations. Quarantine requirements and limitations on the time spent in offices and business trips complicate the standardisation working process and compliance with the requirements of labour legislation. Accordingly, we recommend that employers consider implementing flexible work models. In particular, the ideal solutions would be remote working and the Home Office/Remote Work regime.

- Both options may be introduced for a specific time period and subsequently extended.
- To introduce both regimes, supplemental agreements to employment contracts must be concluded, while the establishment of the Home Office regime also requires the adoption of an internal regulation.

³ See, for example, <https://www.kommersant.ru/doc/4283265>.

- In the case of a Home Office regime, the employer is still required to ensure occupational health and safety. In the case of remote working, the employer is not subject to most of the occupational health and safety regulations.
- Unless prohibited for some reason, both options allow for business trips.
- A Home Office regime makes it possible to work both in the office and at home, depending on the situation. Remote working does not provide for work in the office, but business trips or official trips to the office are possible.

Unfortunately, owing to the consequences of the crisis, the issue of optimising staffing costs is also coming to the fore. The pandemic itself does not serve as an additional ground for termination of employment contracts. At the same time, however, the general grounds for terminating employment contracts such as a reduction in the number of employees may be used. Russian legislation, unlike German legislation, does not include the option of introducing partial employment, namely in connection with the pandemic. Nevertheless, a flexible agreement on a reduction in working hours and accordingly a corresponding wage cut may be agreed with the employee.

6. Issues of Migration Law

Transport and travel restrictions between countries, quarantine requirements and emergency restrictions by the authorities in Russia on the issue of work permits complicate the ability of foreign employees to do business in Russia, and are related to violations of migration legislation. The following recommendations may help:

- The lack of a work permit does not impede the appointment of the general director of the company or the head of the representative office/branch in Russia or their registration with the tax authorities (if the respective labour activity is performed outside Russia).
- Remote working is also possible for foreign employees, inter alia, if they are outside Russia. In this case, however, it is important to recall that highly-skilled specialists, for example, should come to Russia at least once every six months, as otherwise there is a real risk that their work permits might be annulled. Almost all regions of Russia have introduced quarantine requirements, the criterion of entry into Russia to comply with the indicated migration requirements can be met by entering the country through regions which have still not introduced restrictive measures (it is important to track the list of regions that have introduced restrictions, as this list is constantly growing).
- If a foreign citizen has arrived in Russia and is required by virtue of existing requirements to comply with the self-isolation regime (according to the general rules within 14 days), the individual can also leave Russia earlier than the indicated period.

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