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# BEYOND COVID-19: **RUSSIA LEGAL GUIDE**

23 JUNE 2020





# Beyond COVID-19: Russia Legal Guide

**As the world grapples with the COVID-19 pandemic and its profound impact, companies are looking for ways to safeguard their people and the long-term future of their businesses.**

The Baker McKenzie team is pleased to provide you with updates in this legal guide on common questions that business will be considering in these unprecedented and uncertain times.

We will help you navigate through these critical challenges and prepare for a changing world.

The comments in this guide do not constitute legal or other advice and should not be regarded as a substitute for specific advice in individual cases



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# EMPLOYEES AND BUSINESSES



# Employment

Status: 23 June 2020

## Is it possible to suspend employment agreements and/or reduce the employees' working hours? If so, what procedure must be followed?

- No, it is not possible to suspend employment agreements in Russia.
- It is possible to reduce employees' working hours. The fastest way to implement reduced working hours (and decrease the amount of salary accordingly) is to obtain an employee's consent and sign an addendum to the effective employment agreement.
- If an employee refuses to accept reduced working hours (and decreased salary), this can be implemented unilaterally with a reference to justified organizational and/or technological changes to working conditions subject to observance of the statutory process and with a two months' advance notice.

## Can employees refuse to come to work?

- Employees may refuse to come to work if they have justifiable reasons for absence, e.g., they have applied for medical assistance at a medical institution and obtained a sick leave certificate.
- Employees subject to mandatory observation or self-isolation can also refuse to come to work.
- As of 19 March 2020, employees arriving from abroad and people living together with them must self-isolate for 14 days. Such employees should obtain sick leave certificates remotely without visiting medical institutions.

### For Moscow:

1. Companies operating in Moscow are advised to limit the number of employees on their premises.
2. Employees are required not to attend office if:
  - they are pregnant
  - they or persons living with them have acute respiratory symptoms or diseases, COVID-19 or pneumonia
  - they have certain other diseases.

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# Employment

Status: 23 June 2020

## Can employees refuse to attend meetings or to travel?

- Employees can refuse to attend meetings or to travel if they have a justifiable reasons, e.g., they have applied for medical assistance at a medical institution and obtained a sick leave certificate, or if they are subject to mandatory observation or self-isolation (see above).
- The employer is obliged to ensure safe working conditions for its employees. Employees may refuse to attend meetings if the working conditions on the employer's premises or at any other place impose direct danger on the employees' life or health. The same rule applies for business travel.

## Can the employer suspend employees?

- The employer must deny access to their premises/workplaces to employees who must self-isolate by statute.

**For Moscow:** The employer is also obliged to suspend employees from workplaces if employees have elevated body temperature or symptoms of infectious diseases. The employer is not allowed to admit to a workplace pregnant employees or employees suffering from particular diseases.

## If employees are suspended from work or if an operation is being shut down, do the employees still need to be paid?

- Yes.
- If the employee is suspended from work due to a confirmed infectious disease, the employee will be entitled to statutory sick leave allowance. The employee is also entitled to statutory sick leave allowance for the period of self-isolation.
- If the employer imposes idle time (shutdown) with respect to its employees, the employees are entitled to 2/3 of their average earnings (in case idle time is imposed due to the employer's fault) or 2/3 of their base salary (if idle time is imposed for reasons beyond the control of the employer or employee).
- If the authorities shut down the company's operations (i.e. impose a regime of paid "non-working days"), employees are entitled to their normal salary.

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# Employment

Status: 23 June 2020

## When is the employer forced to shut down its operations?

- Currently, employers are required to shut down their operations based on specific regulations of the regional authorities.

## Does the employer have the obligation to report infections occurring in the business to the health authorities?

- There is no blanket mandatory reporting requirement for employers in Russia.
- Relevant obligations may be established by Russian regional authorities.

**For Moscow:** upon receipt of a request from the authorities, employers must immediately provide information on all work contacts of employees suffering from COVID-19.

## Can the employer require an employee to see a doctor?

- Generally, the employer can require only certain categories of employees to undergo mandatory preliminary and periodic medical examinations. In other cases, the employer can only recommend that employees see a doctor, but employees are not obliged to undergo such medical examination.
- As of 19 March 2020, employees must seek medical help at home without going to a medical institution if they have respiratory symptoms.

### For Moscow:

- Employers must check the body temperature of all employees working on site, at the beginning of the workday and then at least once every 4 hours.
- In addition, companies must
  - ▶ test at least 10% of their employees for COVID-19 every 15 calendar days;
  - ▶ ensure employees undergo blood tests for coronavirus.

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## Are there mandatory requirements in relation to the workplace?

- There are only general federal recommendations with regard to ensuring workplace safety.
- Relevant obligations may be established by Russian regional authorities.

### For Moscow:

- Employers must ensure social distance (1.5 meters) between its employees or set separating partitions between stationary work places if it is impossible to ensure social distance between them.
- In addition, companies must:
  - ▶ regularly clean premises
  - ▶ disinfect contact surfaces in all premises of the company every 2-4 hours
  - ▶ use bacterial irradiators for air disinfection
  - ▶ ventilate premises every 2 hours
  - ▶ provide employees with facemasks, gloves and hand sanitizers at their work stations
  - ▶ prohibit eating at their work station, provide a special room for eating.
- Companies are recommended to:
  - ▶ minimize the number of employees over the age of 65 at the employees' premises
  - ▶ install devices with hand sanitizers.

## Can the employer force the employees to take a vacation?

- Employers cannot force employees to take a vacation. The dates of the annual vacation of each employee are to be planned in advance and reflected in the vacation schedule for that calendar year.
- Employers can change already scheduled vacation dates only with the employee's consent.
- If an employee has unused and unscheduled vacation days, the employer may unilaterally include those days into a vacation schedule. However, it is recommended to obtain the employee's consent.

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# Employment

Status: 23 June 2020

## Are there any special benefits/leave entitlement mandated during this period?

- Employees are entitled to statutory sick leave allowance for the period of their sick leaves, their stay in the specialized healthcare facilities (in a mandatory observation facility), as well as for the period of their self-isolation at home.
- Additional benefits may be established by Russian regional authorities.

## What are the penalties/sanctions for violating quarantine restrictions?

- Violations of sanitary rules and hygienic standards, and failure to comply with sanitary-hygienic and other measures specifically during an emergency or epidemic entail fines of up to RUB 40,000 (approx. USD 550) for individuals, up to RUB 150,000 (approx. USD 2,065) for company officers, and up to RUB 500,000 (approx. USD 6,875) for companies. State authorities may also suspend a company's business activities for up to 90 days. If the above violation results in an illness or death, liability is higher.
- Failure to comply with the rules during an emergency situation or when there is the risk of one, may entail a fine of up to RUB 30,000 (approx. USD 415) for citizens, up to RUB 50,000 (approx. USD 690) for company officers, and up to RUB 300,000 (approx. USD 4,125) for companies. If the above violation results in harm to health or property, or in case of repeat violations, fines are higher.
- Relevant administrative penalties may be established by Russian regional authorities.
- Failure to comply with the rules under a high alert regime, including the current self-isolation regime in Moscow, may entail a fine of RUB 4,000 (approx. USD 55) for citizens, up to RUB 40,000 (approx. USD 550) for company officers, and up to RUB 300,000 (approx. USD 4,125) for companies.
- Authorities may also resort to criminal prosecution. For violations of sanitary-epidemiological rules that lead to (or are capable of causing) mass disease or poisoning through negligence, the punishment is now imprisonment for up to two years. If such a violation causes the death of one person, it is punishable by up to five years in prison; if two or more persons die, the prison term can be up to seven years.

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## **Does a tenant have the right to reduce rental rates due to COVID-19?**

A tenant is entitled to demand a reduction of its rental payments if the leased property is impossible to use due to the establishment of the “high alert regime” or a state of emergency. The extent of rent reduction and the “impossibility of use” tests are yet to be developed by the court practice.

The “high alert regime” is a precursor to a state of emergency. It was introduced in Moscow and St. Petersburg as part of the set of measures aimed at containing the COVID-19 epidemic. Only a few Russian cities and regions have established a state of emergency, most of them opting for its “lighter” version, the “high alert regime”.

A tenant may also request rent reduction for the period not exceeding one year if such tenant is an SME (small or medium enterprise) belonging to any of the industries classified by the Government as most affected by the crisis. This will apply only to the property where the tenant conducted its operations affected by the COVID-19 circumstances.

## **Is it possible to terminate a lease due to COVID-19?**

At the moment, Russian law does not qualify COVID-19 as an automatic trigger for lease termination. Tenants may attempt to terminate their leases by referring to COVID-19 as a hardship event which has made the performance of the lease for the tenant excessively costly. However, this claim should be dismissed by the court if the parties exempted their lease from Article 451 of the Russian Civil Code, such exemption being quite common for Class A leases and retail leases in prime and high street locations.

Tenants that are SME belonging to the most affected industries may terminate their leases out of court if the landlord refuses to reduce the rent as described in Paragraph 3 of Section 1 above. In case of such termination the landlord may withhold the security deposit.

## **May a tenant defer rental payments?**

A tenant is entitled to defer its rental payments accrued for the period from the introduction of quarantine measures (“high alert regime”) to 1 October 2020 but only if the tenant belongs to any of the most affected industries.

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# STATE SUPPORT OF BUSINESSES



# Lending Arrangements

Status: 23 June 2020

## What government financial support measures are available for Russian businesses to overcome the consequences of the pandemic?

The Russian Government has adopted a program to support Russian banks which provide loans to businesses affected by the pandemic. Banks will receive government subsidies for:

- providing interest-free (or low-interest) loans to companies in affected industries for payment of salaries;
- low-interest loans to companies to encourage preservation of jobs;
- working capital loans provided to systemically important companies at a reduced interest rate; and
- loans provided to residential construction companies at a reduced interest rate.

### Salary Payment Loans

In order to qualify for a loan to pay salaries, the borrower must be from an industry affected by the pandemic and included in a special list by the Russian Government.

The salary payment loan may be obtained before 1 October 2020 for a term of up to 12 months. The amount of the loan is calculated as one minimal monthly salary per employee. For the first six months, the interest rate under the loan is zero percent.

### Employment Support Loans

Employment support loans will be provided starting from 1 June 2020 to companies operating in economically affected industries, producers of consumer products, and socially important non-profit organizations. The amount of the loan will be calculated as one minimal monthly salary per employee. The loans will be provided at 2 percent interest per annum. However, if the borrower preserves up to 90% of jobs, as compared to the number of jobs as of 1 June 2020, the loan will be written-off by the lender in full, and if the borrower preserves up to 80% of jobs, as compared to the number of jobs as of 1 June 2020, 50% of the loan will be written-off.

### Working Capital Loans

The borrower under such loans shall be included in the list of systemically important companies which is available at the official website of the Ministry of Economic Development of the Russian Federation (<https://data.economy.gov.ru/>) or be a subsidiary thereof. Such borrower may obtain a working capital loan in the amount of up to RUB 3 billion for a term of up to 36 months and at a 5 percent interest rate per annum.

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# Lending Arrangements

Status: 23 June 2020

## Residential Construction Loans

Companies in the residential construction sector may apply for an interest rate reduction for loans provided to them before 1 May 2020. The reduced interest rate shall be equal to the key rate of the Russian Central Bank (currently 5.5% per annum) and may apply up to 31 December 2021.

## Are borrowers permitted to suspend their repayment obligations under loan agreements for the duration of the quarantine period?

Generally, no. However, borrowers under consumer loans, mortgage loans and SME loans may apply for a suspension of payments for up to 6 months (a so-called "credit vacation"), provided that the total amount of indebtedness under such loans does not exceed applicable thresholds, which vary depending on the type of loan and the region of Russia. Current thresholds for loans to individuals are RUB 100,000 for credit card loans, RUB 250,000 for consumer loans, RUB 600,000 for car loans and RUB 2 million (RUB 4.5 million in Moscow) for mortgage loans.

Interest under the loans will accrue during the credit vacations, but will be subject to repayment only after repayment of the loan in full under consumer and mortgage loans, or will be capitalized after the end of the moratorium under the SME loans.

To be eligible for a credit vacation, individuals must confirm a reduction of their income of more than 30% as compared to 2019, and SME borrowers must operate in economically affected industries (the list of which has been determined by the Russian Government). Applications for credit vacations can be filed not later than 30 September 2020.

## Can a lender enforce a pledge during the quarantine period?

There are no restrictions for security enforcement during the quarantine period unless a company is subject to the bankruptcy moratorium introduced by the Russian Government in April 2020. The moratorium applies to individual entrepreneurs and companies operating in economically affected industries and to systemically important companies. For details, please refer to [The Bankruptcy Moratorium](#).

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# Lending Arrangements

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## Can expired payment cards be used during the quarantine period?

The Russian Central Bank has issued recommendations for Russian banks to allow the continued use of payment cards which have expired during the quarantine period. Many Russian banks are following this recommendation and allowing the use of expired payment cards until 1 July 2020.

## Have any additional currency control restrictions been introduced in view of the pandemic and the related quarantine?

No. There have been no additional quarantine-related currency control restrictions or limitations.

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# Tax Reliefs

Status: 23 June 2020

## Have tax reporting deadlines been postponed to a later date due to COVID-19?

- **For all taxpayers.** There is a three-month delay for the submission of tax returns (excluding value added tax ("VAT") returns and calculation of social security contributions) whose filing deadline is March-May 2020.

## What about tax payment deadlines?

- **For all taxpayers.** The postponement of the reporting deadlines does not entail an extension of the tax payment deadlines.
- **For small and medium enterprises ("SMEs") in industries significantly affected by the quarantine and socially oriented non-profit organizations.** For SMEs operating in industries significantly affected by the quarantine and non-profit organizations included in the special register, there is a special automatic postponement of tax and social security contributions payments depending on the type of payment. In order to qualify for the postponement, the SME must be listed in the register of SMEs as of March 1, 2020.
- **For companies in industries significantly affected by the quarantine, or for strategic, "system forming", or "city-forming" companies (as defined by relevant legislative acts), or for companies operating in the tourism and hotel industries (included in the special register and subject to additional criteria).** These companies have a right to request a tax deferral or to pay in installments with regard to certain taxes under certain conditions (e.g., decrease in revenue by more than 10%, losses based on income tax returns for the reporting periods of 2020 provided there was no loss for 2019).
- **For landlords granting rent deferral.** Subject to certain conditions, companies and individual entrepreneurs who have granted a rent deferral for commercial real estate have a right to request a tax deferral or to pay in installments with regard to corporate property tax, land tax and advance payments thereon, and individual property tax.

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# Tax Reliefs

Status: 23 June 2020

## Have there been any changes to the procedure for calculating and paying taxes?

**VAT.** There is a VAT exemption for the import and sale of some medical products imported into Russia from March 16, 2020. To qualify for this exemption, a taxpayer should have a document confirming the further gratuitous transfer of goods to medical institutions.

**Profits tax.** Taxpayers can now switch to monthly advance payments based on actual profits.

**Deductible expenses.** The Russian Tax Code directly prescribes that the following expenses may be deducted for corporate profits tax purposes: expenses for the disinfection of premises; purchases of instruments, laboratory equipment, and means of protection; purchases of medical devices for the diagnosis (treatment) of COVID-2019 included on the list approved by the Russian Government; and the construction, manufacture, delivery and refurbishment of these medical devices.

**Social contributions.** From April 1, 2020 until December 31, 2020 (inclusive) all SMEs can apply reduced rates of social security contributions with regard to the amount of monthly payments to individuals that exceeds the monthly minimum statutory wage.

**For SMEs in industries significantly affected by the quarantine and non-profit organizations included in the special registers.** These SMEs and non-profit organizations are:

- exempt from their tax liabilities for specifically listed taxes (in particular, the list includes corporate profits tax, but does not include VAT) for Q2 2020, and
- subject to a 0% rate on social security contributions for Q2 2020.

The Federal Tax Service has developed a special online platform that lets users check if a taxpayer may receive an exemption, see URL: <https://service.nalog.ru/covid4/>.

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# Tax Reliefs

Status: 23 June 2020

## What are the tax control measures in response to COVID-19?

**Tax audits.** Until June 30, 2020 (inclusive), there is a freeze on new on-site tax audits and transfer pricing audits, and suspension of current ones. However, chamber tax audits and pre-audit control may continue.

**Tax procedures.** Tax deadlines are suspended for the following procedures: execution and delivery of an on-site tax audit act, filing of a challenge to an on-site tax audit act, review of the on-site tax audit materials, execution and delivery of supplements to the on-site tax audit materials, submission of appeal to the supplements to the on-site tax audit materials. However, the suspension of the deadline does not prevent the tax authorities from performing procedural actions until June 30, 2020 (inclusive) (for example, execution of an act or decision to conduct an on-site tax audit).

**Tax control measures.** The deadlines for submitting answers to requests from the Russian tax authorities received in the period from March 1 until June 30, 2020 (inclusive) are extended up to 10 working days with respect to VAT and up to 20 working days with respect to other taxes.

**Tax enforcement measures.** There is a six-month extension of the deadlines for forwarding tax payment requests to taxpayers by the Russian tax authorities. Until June 30, 2020 (inclusive), the tax collection measures are suspended for all taxpayers (this rule is not applicable for non-bona fide taxpayers) and it is prohibited to suspend taxpayers' bank transactions or electronic transfers.

**Tax monitoring.** There is a three-month extension for submitting an application for using Tax Monitoring Regime provided for by the Russian Tax Code from 2021 (an application can be submitted until October 1, 2020 (inclusive)).

## What about the filing of reports to the Russian tax authorities by individuals on the movement of funds in foreign bank accounts?

The deadline for submission to the Russian tax authorities of reports on the movement of funds in accounts (deposits) with banks and other financial institutions located outside Russia by individuals who are Russian currency control residents for the reporting period of 2019 is extended until December 1, 2020.

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# SUPPLY CHAIN



# Trade Controls

Status: 23 June 2020

## Has Russia implemented any COVID-19 related export restrictions?

Yes, export restrictions were implemented at the level of the Eurasian Economic Union (the "EAEU") which includes Russia, Armenia, Belarus, Kazakhstan, and Kyrgyzstan. As a member state, Russia must comply with decisions issued by the Eurasian Economic Commission (the "EEC"), including those related to the export of certain products from the customs territory of the EAEU.

## Which products are covered by these COVID-19 related export restrictions?

In March 2020, the EEC introduced a temporary ban on the export from the EAEU of certain personal protective equipment ("PPE") and medical products, including safety glasses, sanitizers, protective masks, bandages, medical gloves, etc. The EEC also temporarily banned the export of onions, rice, garlic, rye, buckwheat, soybeans and sunflower seeds and certain other food products.

## Is it possible to request a license or permit to authorize these products?

The listed products are prohibited for exportation from Russia/EAEU. Generally, Russia/EAEU has not established a common mechanism for obtaining a special license/permit with respect to these products for export to third countries. However, certain exceptions are developed with respect to sanitizers, masks, half masks, respirator masks, respirators, and some other products that can be exported from the EAEU if they are covered by a special confirmation of the relevant authorized body (export permit) (in Russia such export permits should be issued by the Russian Ministry of Industry and Trade).

## Are there any exceptions or exemptions to these export restrictions?

The ban does not apply to:

- international humanitarian assistance by Russia to other states, by government decision;
- export for personal use by individuals;
- international transit of goods that begins and ends outside of the territory of the EAEU;
- transit of goods between EAEU member states through the territory of foreign countries;
- export of goods to support the operation of facilities and installations for which EAEU member states have exclusive jurisdiction.

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# Trade Controls

Status: 23 June 2020

## Is there an expiration date for these restrictions?

Some measures were introduced until June 30, 2020, while others until September 30, 2020.

## Have any exemptions from standard customs procedures been introduced for products deemed necessary to combat the COVID-19 outbreak?

In March 2020, Russia introduced a so-called "green corridor" (expedited customs procedures) for essential goods.

## What products are covered by these measures?

The list includes certain food products (e.g., milk, meat, fish, water, oil, butter, eggs, salt, sugar, some types of vegetables), as well as non-food products (e.g., sanitary masks, hand sanitizers, wet wipes, dry napkins, soap, toothpaste, toothbrushes).

## Is there an expiration date for these measures?

No, the "green corridor" is expected to remain in effect while COVID-19 continues to spread.

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# Trade Controls

Status: 23 June 2020

## Have the customs authorities adopted any measures to assist traders more generally with current customs procedures (e.g. deferment of duty payments)?

Russia and the EAEU have introduced measures that exempt certain PPE, medical products and food from import customs duties, and in certain cases from sales and import VAT.

To be exempt from import customs duties, importers must submit to Russian customs authorities a special permit issued by the Russian Ministry of Industry and Trade, the Russian Ministry of Health, or authorized Russian regional authorities, confirming that the products are being imported to prevent the spread of COVID-19.

To be exempt from import and sales VAT medical devices must (i) be donated to a non-commercial organization and (ii) be covered by a special permit issued by the Russian Ministry of Industry and Trade, the Russian Ministry of Health, or authorized Russian regional authorities, confirming that the products are being imported to prevent the spread of COVID-19.

To be exempt from import customs duties, certain "critical imported products" (primarily food products and medicines) can be imported without any special permits if they are included in the list adopted by the EEC.

## Who is eligible?

All companies or individual entrepreneurs importing the relevant products into Russia.

## Is there an expiration date for these measures?

Most measures expire in September, although exemptions from customs duties were adopted only until June 30, 2020.

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# Trade Controls

Status: 23 June 2020

**Has any derogation been made from normal product conformity rules and certification requirements for personal protective equipment (such as respirators and gloves) or medical equipment (such as surgical masks)?**

Yes, in order to simplify import procedures for PPE and medical devices, Russia has introduced a number of relaxation rules with respect to conformity procedures and state registration of medical devices.

In particular, (i) a certification agency may issue a new certificate of conformity to replace an expiring certificate, based on previous assessment procedure results; (ii) inspection control of products can be postponed for 6 months, and (iii) it is allowed to carry out product sampling, production conditions, and quality management analysis remotely, etc. These relaxed rules apply to products imported into Russia from countries with an unfavourable epidemiological situation.

As regards simplified rules for the state registration of medical devices, an applicant can now obtain a state registration certificate for medical devices within 5 business days (instead of several months under the "standard" procedure). Such state registration certificates are valid for 150 business days. Before the expiration of 150 business days, the applicant must submit an additional set of documents; otherwise the issued state registration certificate will be annulled.

Other measures allow the circulation of certain disposable products without requiring a state registration procedure in Russia, if such products are duly registered in the country of origin.

**What type of equipment is covered by the derogation?**

The new rules apply to all types of products that are subject to certification procedures.

**When does the derogation end?**

Most rules are expected to remain in place while COVID-19 continues to spread, although some measures are valid until September 30, 2020.

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# Commercial Contracts

Status: 23 June 2020

## **Can the COVID-19 pandemic exempt businesses from liability for breach of a contract?**

The COVID-19 pandemic does not automatically exempt a business from liability for breach of its obligations.

At the same time, if a business is in breach as a direct consequence of the restrictions imposed by the authorities, then it may be released from liability due to force-majeure.

Restrictions imposed by the Russian authorities may be recognized as force-majeure if (a) they are unusual in the given circumstances, and (b) similar businesses could not have avoided such limitations or their consequences. A debtor may also be released from liability if restrictions imposed by the Russian authorities have left it without funds (i.e. due to a ban on specific activities, self-isolation regime, etc).

## **Can a party claim a force majeure event if the contract does not have a force majeure clause?**

For contracts governed by Russian law, a force majeure event can be claimed as a matter of law, even if not directly provided for in a contract.

## **Can parties claim that the COVID-19 pandemic is a valid reason for contract amendment or termination?**

If a debtor's breach is due to force-majeure, the creditor may terminate the contract without recourse to courts if it loses interest in the debtor's performance under such contract. However, if the creditor does not terminate the contract, then the debtor must perform its obligations within a reasonable period after the end of the force-majeure event.

A party may terminate a contract without recourse to courts if it is unable to perform its obligations due to restrictions on its activities imposed by the authorities.

A party may amend or terminate a contract through court. To do so the party must prove that, if it could have foreseen that its activities would be restricted, then such party would not have entered into the contract or would have concluded it on substantially different terms.

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# Commercial Contracts

Status: 23 June 2020

## Which remote signing options are permitted in Russia?

Businesses are permitted to use Russian e-signatures (including encrypted keys) issued by Russian certification centres accredited by the government. If a contract is signed by such e-signature, it is considered equal to a contract executed by hand.

Businesses are also free to execute contracts using electronic or technical means, if such means:

- (a) reproduce the content of the executed transaction in the unchanged version;
- (b) make it possible to authentically identify an individual executing the transaction.

Finally, parties may execute a contract via an exchange of documents.

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# **WORK OF STATE COURTS AND ARBITRATION TRIBUNALS**



# Work of State Courts and Arbitration Tribunals

Status: 23 June 2020

## How will the COVID-19 pandemic influence proceedings in state courts?

### (1) Functioning of the Russian courts

Since 9 June 2020, all state courts have resumed their work through either online proceedings or in-person hearings. The courts have resumed their normal operations, complying with social distancing and other precautions.

Currently, in most courts, visitors taking part in a hearing must wear masks and gloves and maintain social distancing of at least 1.5 meters. Some courts admit only one party's representative to participate in a hearing. Generally, courts encourage parties to submit their written submissions on the merits and, if possible, submit motions for consideration of disputes in the parties' absence.

Some Russian regions have retained a two-week quarantine regime for persons arriving from the regions badly affected by COVID-19, e.g., Moscow, and participation in hearings for visitors from Moscow may be difficult.

Many courts limit the procedural right to examine case files. However, "online examination" may be an option for parties in some courts.

As of 17 June 2020, online hearings may be held in 88 courts, including the Russian Supreme Court. To participate in the hearing online, both parties should submit their motions for conducting an online hearing and sign it with an electronic signature. However, we do not recommend online participation if the hearing is crucial or the amount of the claim is significant.

### (2) The Bankruptcy Moratorium

On 6 April 2020, the Russian government enacted a six-month moratorium that prevents creditors from initiating bankruptcy proceedings against certain debtors (the "**Bankruptcy Moratorium**"). The Bankruptcy Moratorium will be enforced until 6 October 2020; however, its term may be extended.

The Bankruptcy Moratorium covers "strategic" companies (e.g., Transneft, Rosneft, Gazprom, Inter RAO and VTB) engaged in certain types of activities (oil and gas, air transportation, trucking, travel services, sports, hotel services and others), as well as systemically important companies, the list of which is determined by the government.

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# Work of State Courts and Arbitration Tribunals

Status: 23 June 2020

Alongside the restriction on filing bankruptcy claims, the Bankruptcy Moratorium prohibits enforcing the pledged assets of debtors subject to the moratorium, and restricts any set-off and the occurrence of penalties on any monetary obligations of such debtors. The Bankruptcy Moratorium also restricts share buyouts and the payment of dividends by the debtors subject to the moratorium.

However, the Bankruptcy Moratorium does not prevent creditors from filing civil claims against the debtor and seizing its assets.

The debtor may withdraw from the Bankruptcy Moratorium by publishing a refusal in a publicly available bankruptcy registry. Upon withdrawing from the Bankruptcy Moratorium, the debtor may remove all restrictions on the rights of such debtor and their creditors.

## To what extent are arbitration proceedings affected by the COVID-19 pandemic?

Since 15 June 2020, the International Commercial Arbitration Court at the Russian Chamber of Commerce and Industry (ICAC) resumed its normal operation, complying with social distancing and other epidemiological precautions.

The Arbitration Center at the Russian Union of Industrialists and Entrepreneurs continues to work remotely and invites the parties to send all documents electronically to email addresses or by filling out a special form in the "Online Arbitration" system on their website.

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# FURTHER AREAS





# Antitrust & Competition

Status: 23 June 2020

## How has COVID-19 impacted the activities of Russia's antitrust authority?

While self-isolation measures are still in effect throughout the country, Russia's antitrust authority – the Federal Antimonopoly Service ("**FAS**") – continues to exercise its powers on a daily basis, taking measures to mitigate the effects of the coronavirus pandemic. But as with other organizations, the pandemic has prompted FAS to switch the majority of its officers to working remotely and to introduce certain operational changes, in particular:

- On March 20, FAS announced that it would temporarily suspend all inspections of companies for compliance with antitrust legislation, save for inspections of violations in the most crucial spheres such as healthcare, public procurement and national defense. In these spheres, in the opposite, the inspections have rapidly increased since then, due to the expansion of FAS's control over prices during the pandemic.
- On April 8, FAS also stated that it would either postpone hearings of all pending cases to the latest possible dates with due regard for applicable deadlines, or conduct the hearings by videoconference.
- While no additional official announcements have been made since then, it is anticipated that upon gradual relaxation of the self-isolation regime FAS will update the information on its operational activities to meet stricter sanitary requirements and notify the public accordingly.

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# Antitrust & Competition

Status: 23 June 2020

## Which industries are under FAS's radar due to COVID-19?

FAS carries out continuous monitoring of the markets of essential products and of markets affected by the pandemic. These product markets include:

- food products
- medical masks and other medical products and consumables
- mobile networks
- electronic trading platforms
- airline tickets
- fuel and energy resources
- other essential products

The main purpose of FAS's close attention is to prevent product shortages and price increases.

In its enforcement activities, FAS cooperates with other executive authorities, including public prosecution officers, at both the federal and regional levels. Some FAS inspections have already resulted in cartel cases (e.g., against major suppliers of buckwheat), cases on breach of antitrust legislation (e.g., against regional retailers of sugar and cereals), and price decreases (e.g., medical masks).

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# Antitrust & Competition

Status: 23 June 2020

## Expectations of FAS's activities post-COVID-19

- Once the pandemic is over, FAS is expected to actively participate in the economic recovery by balancing and stabilizing the markets, promoting businesses that were significantly affected, and protecting consumers from continued abuses committed by malicious market participants trying to profiteer in the emergency circumstances.
- To achieve this, FAS has already announced that it would revise the draft National Competition Development Plan for 2021-2025, taking into account the aftermath of COVID-19.
- As FAS's representatives noted, the number of cartels, anti-competitive practices, and cases of abuse of a dominant position may increase (particularly in the essential products markets, but the retail, healthcare, and IT sectors are likely to be impacted too), and the antitrust authorities are responsible for retaliatory strikes against and suppression of such actions.

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# Intellectual Property

Status: 23 June 2020

## How is the Russian Patent and Trademark Office (Rospatent) treating deadlines during the COVID-19 pandemic?

To date, there are no official documents extending the deadlines for specific actions.

Rospatent's position is that if the deadline for the performance of an action required by Rospatent, including payment of state fees, occurs during the non-working period declared in connection with the COVID-19 outbreak in Russia, i.e. from 28 March to 30 April 2020, the action may be performed on the first working day following the non-working period (at that moment - May 6, 2020). It is not fully clear until which date the above approach should apply, or whether it should take into consideration all subsequent Russia-wide and local extensions of the non-working period. While most of these restrictions have been now lifted in Moscow, in some other regions they are still in place.

Rospatent is considering extending this deadline until 11 January 2021. Rospatent and the Ministry of Economic Development are now working together on a draft regulation that would extend the deadlines.

There have been no official extensions of Rospatent's deadlines for its registration procedures. However, in practice we are noticing a certain delay (from one to two months) in Rospatent's handling of such procedures (e.g., examinations of applications, registrations of licenses and assignments).

## How can I participate in my existing IP-related disputes?

Due to the COVID-19 outbreak, both the Chamber for Patent Disputes of Rospatent (the "Chamber") and the Intellectual Property Court (the "SIP") have either postponed their cases or arranged hearings via videoconference with prior consent from both parties.

On May 25, 2020 the Chamber resumed in-person hearings; however, if both parties agree, the Chamber may still consider the case via videoconference or ex parte. The parties may submit documents either in-person or online.

As of June 15, 2020 the SIP has resumed in-person hearings, submissions of documents, and reviews of case files. However, parties may still opt for online consideration of cases, submission of documents, and reviews of case files.

If the above actions are done in person, the parties are required to follow social distancing rules and wear personal protective equipment in both the Chamber and the SIP.

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# Intellectual Property

Status: 23 June 2020

## **Are there any trademark applications containing the words "COVID" or "CORONAVIRUS"?**

Over the past couple of months, various applicants have filed a number of trademark applications with Rospatent for COVID-19-related trademarks, including such marks as "COVID-19", "COVID", "ANTICOVID", "САМОИЗОЛЯЦИЯ", "Коронавирус.нет", "Covidate", "Covidasy" and others.

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