

COVID-19 impact on business in RUSSIA

Mackrell International

14.05.2020

1. Does COVID 19 justify the disruption of delivery? (1)

In the absence of direct contractual provisions (which are rare), the supplier may attempt to justify non-delivery by reference to force majeure.

As a general rule, force majeure only entails exclusion of liability, i.e. damages and penalty. It does not generally lead to a change in delivery deadlines and does not prevent contract termination for cause by the adverse party (unless explicitly agreed by the parties).

To invoke force majeure, the supplier has to prove three prongs:

- the event is unforeseeable (extraordinary),
- the event is impossible to overcome or avoid, and
- it renders contract performance objectively impossible and not merely onerous.

1. Does COVID 19 justify the disruption of delivery? (2)

Therefore, whether the consequences of COVID-19 qualify as force majeure depends on the circumstances of each case. In many cases force majeure will not be applicable despite the difficulties with delivery:

- While the situation will likely qualify as unforeseeable, it is often difficult to prove that performance became impossible. For example, a direct prohibition to import certain goods could qualify as force majeure. However, where performance is merely more onerous, this will not reach the required level of gravity.
- Further, in many cases there may be an obligation to consider alternative ways to perform the contract (for example, if air delivery is prohibited, the supplier may have to consider railroad delivery).

2. Are losses arising from restrictions on travel, disruption to supply chains and other operational problems covered by insurance?

A number of general insurance policies (including insurance of entrepreneurial risks and professional liability insurance policies) may potentially cover losses arising from restrictions on travel, disruption to supply chains and other operational problems.

However, it is a common practice for standard conditions of the insurance companies and/or insurance policies to have exemptions relating to force majeure events, epidemics, etc.

Therefore, in practice COVID-19 related events may be deemed excluded from the insurance policy. After COVID 19 outbreak insurance companies prefer to expressly include COVID 19 into the list of exclusions.

3. What is impact of pandemic on lease relations? (1)

Suspension of rental payments

Depending on their business tenants belong either to green list or red list:

- Green list tenants are eligible to suspend rental payments until the crisis is over pursuant to the newly passed COVID-19 Relief Act. This list includes business in the most affected areas, such as tourism, air travel, hotel services, entertainment
- Red list tenants have no excuse to suspend rental fees.

The deferred amounts are to be repaid starting from October 2020 without interest in monthly installments between 2021 and 2023. Deferral does not affect utility payments as well as reimbursement of the landlord's actual costs.

3. What is impact of pandemic on lease relations? (2)

Reduction of rental fees

COVID-19 Relief Act entitles tenants to claim reduction of rental fees in cases when the use of the leased property has become “impossible” due to the governmental measures arising from the COVID-19.

The interpretation of the word “impossible” is yet to be determined in practice.

- Most likely courts will support tenants that use leased property for restricted business activities (provided that this purpose is clearly enunciated in the lease agreement and the use is frustrated by the governmental measures).
- However, if it was possible to use the premises at least for some activities, there is a risk that this will not be considered to be sufficient to reduce the rent.

3. What is impact of pandemic on lease relations? (3)

Right to terminate lease agreement

On 7 May, a new COVID-19 Relief bill was introduced to the State Duma. According to this act, tenants, whose monthly income dropped by more than 50% due to the governmental measures related to COVID-19 may unilaterally terminate the lease contract without penalties.

However, this bill caused considerable negative reaction of the owners of real property. They say tenants are protected enough, taking into account their right to demand deferral of payments or reduction of rent.

4. What are a company's obligations from a health and safety perspective in relation to their staff? How does COVID-19 impact sick and holiday pay?

In Russia, no state of emergency was declared. All days until 11 May 2020 were declared to be “non-working” (which was later interpreted to mean that only in-person working is prohibited, while remote work, where possible, must continue). The employers were obliged to continue paying employees’ salaries notwithstanding the inability to work.

Employers continuing work are required to ensure such additional health and safety steps as:

- Temperature checks;
- Enforce social distancing at work place;
- Provide information about all the contacts with the COVID-19 affected employee immediately;
- Forbid employees obliged to self-isolate to enter the employer's premises.

If a person is affected by the COVID-19, the sick-pay will be paid by the Russian Social Insurance Fund.

5. Looking at longer term impacts of COVID-19 - How should companies prepare?

For new contracts, coronavirus will unlikely be deemed force majeure or hardship, as coronavirus-measures may be found to be no longer unforeseeable.

Therefore, in future contracts it is strongly advised to add express adaptation / exclusion clause to agree on specific consequences of coronavirus-related measures, such as extension of delivery deadlines, reduction of rent, postponement of payment obligations depending on future impact of COVID-19.

For lease agreements, it is necessary to also clearly specify the purposes of rented premises to ensure eligibility for potential future governmental relief measures.

Sirota & Partners

Ducat Place II
Ul. Gasheka 7, bld. 1
123056, Moscow, Russian Federation
T: +7 (495) 234-18-75
F: +7 (495) 234-18-76
www.sirotapartners.com
artem.sirota@sirotapartners.com