

Prolongation of non-working days until 30 April 2020 due to COVID-19 outbreak: what are the practical legal implications for businesses?

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During his national address on 2 April, President Putin announced his decision to prolong the initial non-working days from 4 April to 30 April 2020 inclusive in order to fight against the spread of COVID-19. He signed a new [Executive Order](#)* providing for this.

Decision makers within companies need to update their strategy for the continuity of their businesses. To assist them with this task, we have summarised below, based on the latest legal developments related to the COVID-19 outbreak, legal considerations to bear in mind. These cover commercial contracts, employment, real estate leases, tax, bankruptcy and financing arrangements.

Commercial contracts

Under Russian civil law, a legal entity is relieved from liability for failure to fulfil an obligation if such failure is caused by extraordinary and inevitable circumstances (i.e. *force majeure* circumstances). The spread of the coronavirus and the restrictive measures authorities take to combat the pandemic may be considered as *force majeure* events.

If the extension of the non-working days until 30 April impedes or may potentially impede the performance of your contracts, we recommend taking the following steps:

- Determining which contracts can be affected and how they can be impacted, analysing these contracts' provisions on *force majeure* (if any) and the respective procedures to be followed, and reviewing other relevant clauses, such as those setting forth the governing law and disputes resolution procedure (arbitration clause).
- Preparing notices to your counterparties to address the situation, pointing out already existing *force majeure* conditions and describing their effect on the implementation of contracts, offering mutually acceptable solutions or showing your intention to enter into negotiations.
- If the non-fulfilment of a contractual obligation was caused by restrictions introduced in connection with the COVID-19 outbreak, obtaining the relevant certificates evidencing *force majeure* events from the Chamber of Commerce and Industry of the Russian Federation, or another competent authority as may be provided in the relevant contract.
- Please bear in mind that the issue of the application of *force majeure* conditions will be decided on a case-by-case basis by a court or an arbitration tribunal, depending on the circumstances of the particular case and the terms of the contract concluded between the parties. For more details, please see our [eAlert](#) dedicated to the *force majeure* effect of the pandemic in Russia.

If you foresee that the extended non-working days will have a detrimental effect on your counterparties' ability to perform contracts, you should discuss potential issues openly with them before making advance payments, deliveries on terms of commercial credit or performing contractual obligations from your side.

Employment

During the renewed non-working days, employees in Russia will continue to be entitled to fully paid days off.

As we commented in our previous [eAlert](#), certain categories of companies may continue to operate. A detailed list of such companies can be found in [Recommendations](#)* of the Russian Ministry of Labour and in an [Update](#)* to them.

All companies that do not fall under the exceptions have to release their employees from work in their workplaces during the above period, while continuing to pay them their salaries.

Based on the above recommendations of the Ministry of Labour, we believe that employees working remotely (from home) can continue to work this way. However, working remotely during this period will be allowed only subject to the employees' consent. The employees who agreed to work remotely should be paid their regular

salaries.

Real estate leases

According to applicable legislation, *force majeure* may only generally serve as a basis for postponing the execution of obligations under a lease contract and the parties may avoid liability under the contract for failure to fulfil their obligations. However, on 1 April 2020 new [Federal Law No. 98-FZ*](#) was adopted to regulate, among others, rental relations in 2020 and introduce the possibility of reducing rents when it is impossible to use leased properties.

Taking into consideration the above and in the current circumstances:

- Tenants may avoid liability under their leases for failure to timely fulfil their payment obligations.
- Tenant may request to defer rent payments in 2020 in relation to real estate lease agreements concluded before the adoption of a decision on the introduction of a high-alert regime or state of emergency in 2020. Please note that [Moscow](#) and the Moscow Region have declared such high-alert regime.
- Tenants can demand a reduction in rent for 2020 due to the inability to use the leased property.
- Landlords will not be liable for losses suffered by tenants or for any other penalties under the contract due to the closure of the leased premises.

However, without a detailed analysis of the act of the government on the procedure for a deferment or reduction in 2020 and terms of the lease that is yet to be adopted, it is currently impossible to assess the likelihood that such claims will succeed.

For more information on how the COVID-19 pandemic affects Russian-law leases, please see our previous [eAlert](#).

Tax

Due to the prolongation of non-working days until 30 April 2020, the deadlines for submitting tax reporting or making tax payments due in the first quarter of 2020 has now been shifted to 6 May 2020 (the first working day after the May public holidays in Russia). This is, for example, the case for annual financial statements or yearly corporate profit tax returns for 2019.

According to modifications recently made to the Russian Tax Code by [Federal Law No. 102-FZ*](#) dated 1 April 2020, if any tax reporting or payment deadline falls on a non-working day, such deadline will be deemed to expire on the next working day after that day. Previously, a similar provision applied only to official days of rest or public holidays in Russia.

Federal Law No. 102-FZ also grants the Russian government with additional authorities to extend the tax reporting and payment deadlines in 2020 in Russia. This being said, further details and clarifications on the matter can be expected in governmental acts pursuant to this Federal Law.

However, based on the recently reflected [position*](#) of the Russian tax authorities, such deadlines can only be extended provided that a taxpayer does not continue to work during the non-working days (some organisations being explicitly allowed to do so by Presidential [Executive Order*](#) dated 25 March 2020). To rely on this position, taxpayers would need to prove to the tax authorities that they did not continue work within this period (e.g. based on internal labour documentation issued during this period). It remains unclear how this position would apply to companies where only part of the employees continue to work either in the workplaces or remotely.

Previously the Russian Federal Tax Service had [announced](#) that the deadline for submitting annual financial statements would be shifted to 6 April 2020.

Bankruptcy considerations

On 1 April 2020, Federal Law [No. 98-FZ*](#) came into force authorising the Russian government to impose a moratorium on the initiation of bankruptcy proceedings. For more details, please see our previous [eAlert](#).

Financing arrangements

The slowdown in the activities of certain borrowers due to COVID-19 may lead to delays in meeting payment obligations and breaches of financial, performance based and general covenants under their financing arrangements which, as a consequence, may lead to restructuring discussions, waivers and/or enforcements.

An introduction of the right for the Russian authorities to potentially declare a moratorium on commencement of bankruptcy proceedings with respect to certain borrowers or categories of borrowers may invoke discussions whether or not any of the events of default in the loan agreements will be triggered or may require revisions (from the lender's perspective).

The effect of COVID-19 on the provisions of the loan agreements dealing with extraordinary circumstances, such as the terms of any business interruption or material adverse change provisions, may give rise to discussions between

borrowers and lenders. At the same time, borrowers affected by anti-COVID-19 measures may wish to consider what remedies or reliefs are available to them in case of non-performance under their loan agreements and applicable law (such as *force majeure*).

Under Federal Law No. 106-FZ* dated 3 April 2020, small and medium-sized enterprises working in sectors to be determined by the government will be entitled (for the period until 30 September 2020) to ask for a moratorium of loan repayment (or reduction of repayment amounts) during a period of up to six months (the “**Repayment Moratorium Period**”). During the Repayment Moratorium Period no penalties, early repayment or enforcement of security can be claimed by the lender. After the end of the Repayment Moratorium Period, the borrower will be obliged to repay all principal and accrued interest for the Repayment Moratorium Period in accordance with the terms of the loan agreement effective before the Repayment Moratorium Period.

If you have any questions on this eAlert, do not hesitate to contact CMS Russia experts [Georgy Daneliya](#), [Ekaterina Elekchyan](#), [Artashes Oganov](#), [Dominique Tissot](#), [Sergey Yuryev](#), [Konstantin Baranov](#) or your regular contact at CMS Russia.

CMS has created a Coronavirus Hub dedicated to the issues raised by the COVID-19 pandemic, which is available [here](#). This hub gives you full and permanent access to content created by CMS Russia lawyers and CMS offices around the world in response to the crisis. The hub is updated regularly.

We remain available at all times to address any requests or difficulties you may have on a one-to-one basis. You can be in immediate contact with our experts by emailing cmsrussia-coronavirus@cmslegal.ru.

* In Russian

KEY CONTACTS



[Georgy Daneliya](#)

Counsel | Commercial, Moscow



[Ekaterina Elekchyan](#)

Senior Associate | Employment, Moscow



[Artashes Oganov](#)

Partner | Head of Real Estate & Construction, Moscow



[Dominique Tissot](#)

Partner | Head of Tax, Moscow



[Sergey Yuryev](#)

Partner | Head of Dispute Resolution, Moscow



[Konstantin Baranov](#)