

Russian Supreme Court's COVID-19 case law review

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On 21 April 2020, the Russian Supreme Court clarified in an official [Review*](#) certain issues of judicial practice related to the application of legislation in the context of measures to combat the spread of COVID-19 and more specifically in relation to:

- the impact of non-working days and restrictive measures on the performance of contractual obligations; and
- the definition of procedural and limitation periods.

Working days from 30 March 2020 to 11 May 2020 inclusive were declared as non-working by the Russian President in several announcements (Executive Orders dated [25 March 2020*](#), [2 April 2020*](#) or [28 April 2020*](#)), and the non-working period could be further extended. Also, Russia took a series of actions to prevent the spread of COVID-19 (the "Preventative Measures" or "Restrictive Measures"), such as restrictions on the free movement of persons, their presence in public places, state and other institutions, and changes in the work of bodies and organisations. These circumstances have given rise to a number of uncertainties, which the Supreme Court addressed.

Impact of non-working days and Restrictive Measures on the performance of contractual obligations

How do non-working days affect the obligations of the parties?

The Supreme Court clarified that non-working days declared by the Russian President are not weekends or public holidays in the usual sense. Accordingly, the declaration of non-working days is not a reason for postponing the term of performance of a contractual obligation. Contractual time limits continue in the usual manner.

Are limitation periods suspended automatically in view of the introduction of Restrictive Measures?

Limitation periods are not automatically suspended in the current context. Restrictive Measures imposed by the state that prevent litigants from applying to the court may be recognised as grounds for suspending the limitation periods.

If an applicant wants the period for filing a claim to be restored, he must present evidence to the court that it was impossible to file a claim in court on time due to the introduction of the self-isolation regime and other Restrictive Measures.

Are the pandemic and Restrictive Measures force majeure events? Is it possible to stop performing obligations?

The Restrictive Measures taken are not *force majeure* by default.

As previously [explained](#), the existence of *force majeure* must be determined by the competent court on a case-by-case basis based on the circumstances of the specific case (including the period for the performance of the obligation, the nature of the unfulfilled obligation, the reasonableness and good faith of the actions of the debtor, etc.).

If the court recognises the impact of *force majeure*, the debtor will be released from liability (it will not have to compensate losses or pay a penalty to the counterparty), and must perform the obligation once the *force majeure* event ends.

Are the introduction of non-working days and Restrictive Measures grounds for amending or terminating a contract?

Contracts affected by the Preventative Measures can be amended or terminated due to a significant change of circumstances (Article 451 of the Russian Civil Code). Circumstances unforeseen at the conclusion of the contract may form the basis for amending or terminating the contract. This is because the contract would not have been concluded (or concluded on significantly different conditions) if the parties had foreseen these circumstances.

Procedural periods and court hearings

Do court hearings take place if they are scheduled on a non-working day?

Court hearings may be held under certain conditions.

Taking into account the circumstances of the case, the opinion of participants in the proceedings and the conditions imposed in each Russian region, the court may decide to consider only urgent cases, cases of simplified or writ procedure, and other disputes, such as if parties lodge a motion for consideration of a case in their absence.

A court hearing scheduled on a non-working day can be postponed, and the term for consideration of the case may be extended if the case cannot be examined due to Preventative Measures. A court can adjourn a hearing on its own initiative or on the basis of a participant's application for postponement, which can be submitted electronically.

If technically possible, court hearings can be held using a videoconferencing system if the participants of a dispute agree.

The courts also have the right to suspend proceedings if the participants in the case are unable to attend the court hearings.

Are procedural periods suspended?

Procedural periods are not suspended by default during non-working days.

During the period when Preventative Measures are taken, procedural periods are calculated in the usual manner. If the last day of the period falls on a non-working day, the period is not extended, and the procedural action must be performed before the expiration of the corresponding period.

For example, an appeal against a decision of a commercial court must be filed within one month from the date of issue of the judicial act, and not on the first business day after the lifting of Restrictive Measures.

However, if the procedural deadline is missed due to Restrictive Measures, it is subject to extension. At the same time as the procedural action (e.g. filing an appeal, submission of documents, etc.), one should submit a request for an extension of the period with a description of the legitimate reasons for having missed the deadline.

Comments

The spread of COVID-19 in Russia is not recognised as *force majeure* by default and does not result in automatic exemption from liability of the contract's parties. For this reason, we recommend companies:

- fulfil contractual obligations to the extent possible;
- inform their counterparties in case of partial or complete inability to fulfil the assumed obligations in due time, having analysed in advance the terms of *force majeure* provisions in existing agreements;
- promptly notify counterparties when establishing the presence of a *force majeure* event and start collecting evidence confirming *force majeure*; and
- consider whether it is possible to renegotiate or terminate existing contracts affected by COVID-19 due to a significant change of circumstances.

If companies are involved in or planning to participate in litigation in Russian state courts, they should consider the following:

- observing the procedural and limitation periods established by law;
- monitoring information over official court websites on postponements of court hearings and documents that have been submitted on ongoing cases;
- filing with the court a motion of adjournment of a court hearing and a request not to consider the case in the absence of the company's representative, if necessary;
- submitting to the court a request for the restoration of the limitation period and relevant evidence if a deadline has been missed; and
- ensuring the collection of evidence confirming the existence of circumstances that prevent the initiation of legal actions on time.

If you have any questions on this eAlert, do not hesitate to contact CMS Russia experts [Sergey Yuryev](#), [Igor Sokolov](#), [Mikhail Ivannikov](#), [Tatiana Sviridova](#) 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 are 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

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