

## COVID-19: Administrative Liability Tightened

Bryan Cave Leighton Paisner (Russia) LLP advises that, on 1 April 2020, the Russian President signed a Federal Law "Amending the Code of Administrative Offences of the Russian Federation" with immediate effect.

Given the current epidemic in Russia, the amendments increasing liability for breaching the quarantine measures affect both the Russian Criminal Code and the Code of Administrative Offences (the CAO).

For instance, as revised, COA Article 6.3 imposes administrative liability for breaching public sanitary and epidemic safety laws manifested in violation of the current sanitary rules and hygiene standards and in disregard for the sanitary, hygiene and anti-epidemic measures, including if:

- this action (omission) is committed during an emergency regime or when there is a threat of a dangerous disease spreading or there are restrictive measures (quarantine) in place on the relevant territory; or a federal sanitary and anti-epidemic supervisory authority (officer)'s lawful orders (resolutions) or requirements issued during this period to launch sanitary and anti-epidemic precautions are not followed or met in due time<sup>1</sup>;
- the above actions result in harm to human health or in a fatality unless they show signs of criminal wrongdoing<sup>2</sup>.

The new offences are punished by a fine of from RUB 15,000.00 to 300,000.00 for individuals; RUB 50,000.00 to 500,000.00 or disqualification for one to three years for officials; RUB 50,000.00 to RUB 1,000,000.00, a warning or administrative suspension of operations for up to 90 days for unincorporated businesses; RUB 200,000.00 to RUB 1,000,000.00 or administrative suspension of operations for up to 90 days for legal entities.

Please note the difference between Russian Criminal Code Article 236 and CAO Article 6.3, whereunder liability may be imposed on legal entities, while criminal liability may be imposed only on individuals.

In addition, in contrast to Russian Criminal Code Article 236, there need be no consequences for an action to qualify under COA Article 6.3.

Particular attention should be paid to Part 3, Article 6.3 of CAO Article 6.3, where, we believe, the key difference from Criminal Code Article 236 is the wrongdoers involved (legal entity/individual) and the subjective aspect of the crime, i.e., carelessness. In other words, when individuals could not have anticipated the consequences or had ample grounds for preventing them (which will, mostly, be a value judgement), they will be held administratively, not criminally liable.

The previous version of COA Article 14.4.2. imposing punishment for breaking the effective medicament wholesale rules and the medicine retail procedure has now been extended to cover a new offence<sup>3</sup>.

If medicines are sold or dispensed in violation of the laws regulating circulation of medicines to the extent that these cap wholesale or retail mark-ups on actual manufacturers' prices for the given medicines, this will now attract administrative liability.

All prices for human-use medicines will now be regulated.

Wholesale and retail mark-ups are to be set by Russian constituent entities' executive authorities<sup>4</sup> in a manner regulated by the Government<sup>5</sup>.

This offence triggers a fine of from RUB 250,000.00 to RUB 500,000.00 - for officials and of double the sales proceeds deriving from regulated prices for medicines being unlawfully overstated, to be paid for the entire offence period but for no more than a year - for unincorporated businesses and legal entities.

Another new COA Article, i.e., 20.6.1, imposes liability for behavioural non-compliance under the High Alert Regime on a territory where there is a threat of an emergency or in an emergency zone.

"High Alert Regime" means the operational status of the RUEPR<sup>6</sup> system, its separate sub-systems or links, launched when there is a threat of an emergency.

"Emergency"<sup>7</sup> means a set of circumstances arising on a specific territory as a result of accidents, natural hazards, disasters, natural or other calamities resulting (potentially resulting) in fatalities, harm to human health or environmental damage, significant financial losses and human living environment violations.

Non-compliance with the regime attracts a warning or an administrative fine of between: RUB 1,000.00 and RUB 30,000.00 for individuals; RUB 10,000.00 and RUB 50,000.00 for officials; RUB 30,000.00 and 50,000.00 for unincorporated businesses and RUB 100,000.00 and RUB 300, 000.00 for legal entities.

The fine rises significantly and other penalties will follow if the consequences include harm to human health or damage to property other than in the events listed in Part 3, COA Article 6.3 (harm to health or a fatality), unless this action (omission) show signs of criminal wrongdoing; or this administrative offence is committed more than once.

Consequently, individuals will face an administrative fine of from RUB 15,000.00 to RUB 50,000.00; officials from RUB 300,000.00 to RUB 500,000.00 or disqualification for one to three years; and unincorporated businesses and legal entities an administrative fine of from RUB 500,000.00 to RUB 1,000,000.00 or administrative suspension of operations for up to 90 days.

From our investigation into who has the power to launch a High Alert or Emergency Regime and whether, for instance, the Mayor of Moscow is so empowered, we note that:

To protect people and territories against emergencies, RUEPRS management authorities are being set up at each of the federal, interregional, regional, municipal and site levels<sup>8</sup> whose steering bodies at the regional level (within a Russian constituent entity) will be the Russian constituent entities' emergency prevention/response and fire safety commissions.

These will be headed by senior officials of the constituent entities (heads of the supreme executive bodies of Russian constituent entities).

A Moscow Government Emergency Prevention/Response and Fire Safety Commission headed by the Mayor himself has been set up and is operating under Moscow Mayoral Decree No. 12-UM dated 5 March 2020.

Once a High Alert or Emergency Regime is launched, the commission or the relevant official may<sup>9</sup> designate an emergency response manager responsible for handling this work under the laws of the Russian Federation and its constituent entities and for having additional measures in place to protect people and territories against emergencies.

So breaches of any requirements set out in Moscow Mayoral Decrees might be treated by law enforcers as behavioural non-compliance under the High Alert Regime on a territory where there is a threat of an emergency or as violations of the sanitary rules.

If you have any questions or comments on these changes, please feel free to contact us and we will be happy to discuss them.

Bryan Cave Leighton Paisner (Russia) LLP, formerly Goltsblat BLP in Russia, will continue monitoring the situation and keep you informed of any significant legal developments.

### **Get in touch**

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<sup>1</sup> Part 2, Article 6.3 of the CAO.

<sup>2</sup> Part 3, Article 6.3 of the CAO.

<sup>3</sup> Part 4, Article 14.4. of the CAO

<sup>4</sup> Article 63, Federal Law No. 61-FZ dated 12 April 2010 (as amended on 26 March 2020) "Circulation of Medicines"

<sup>5</sup> Russian Government Resolution No. 865 dated 29 October 2010 (as amended on 16 December 2019) "Regulating Prices on the Essential Medicine List"

<sup>6</sup> RUEPR is an EMERCOM term meaning the Russian Unified Emergency Prevention and Response System

<sup>7</sup> Federal Law No. 68-FZ dated 21 December 1994 "Protecting People and Territories against Natural and Man-made Emergencies" (as amended on 3 July 2019)

<sup>8</sup> Federal Law No. 68-FZ dated 21 December 1994 "Protecting People and Territories against Natural and Man-made Emergencies" (as amended on 3 July 2019)

<sup>9</sup> Sub-clause 10, Article 4.1, Federal Law No. 68-FZ dated 21 December 1994 "Protecting People and Territories against Natural and Man-made Emergencies" (as amended on 3 July 2019)