

Russian Supreme Court clarifies concept of bad faith negotiations

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In late January 2020, the Russian Supreme Court adopted a [decision](#)* in which it clarified what constitutes bad faith actions during negotiations.

These clarifications, which should be taken into account when preparing for and conducting negotiations with Russian counterparties, will minimise the risk of adverse consequences if the negotiations are not successful and are terminated. The concept of liability for bad faith negotiations was [introduced](#)* into Russian law in 2015.

In its clarifications, the Supreme Court lists cases in which negotiations would be deemed to have been conducted in bad faith. These include if:

- someone starts or continues negotiations, knowing (or when he should have known) that he will not conclude the agreement with a particular counterparty;
- someone provides the other party with incomplete or inaccurate information, including the omission of material circumstances;
- negotiations on the conclusion of an agreement are suddenly terminated without cause in circumstances in which it was obvious that the other party did not expect this to happen; or
- a party violates an agreement on exclusivity with regard to negotiations.

However, according to the clarifications, any one of the following situations would not in itself constitute bad faith:

- withdrawing from negotiations without any grounds in the absence of other bad faith elements;
- interrupting negotiations at a late stage;
- conducting negotiations with several counterparties and then selecting one;
- failing to mention parallel negotiations (in the absence of an exclusivity clause); or
- proposing different terms to counterparties.

If you have any questions on this eAlert, do not hesitate to contact CMS Russia experts [Sergey Yuryev](#) and Mikhail Ivannikov or your regular contact at CMS Russia.

* *In Russian*

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