

## Dear Clients and Partners,

As the situation with the spread of coronavirus develops, the issue of **contractual performance becomes** of particular importance. We have prepared for you our comments on the most frequently asked questions.

### 1. Can a company be excused for non-performance if it is caused by the actions of state bodies?

The company may suspend its performance under the contract. In this case, it will have to **show that performance is impeded by the state bodies**. Thus, in Moscow, the state suspended the activities of the following companies:

- **Restaurants, cafes, bars, and** other catering establishments, with the exception of takeaway services and food delivery;
- **Retail**, with the exception of pharmacies, communication stores, pet products, the sale of basic necessities, and products delivery;
- **Movie theaters, night clubs, hookahs**, and other leisure facilities;
- **Beauty salons, cosmetic, spa salons**, and other facilities in which similar services are provided, requiring face-to-face interactions;
- **Bookmakers and betting houses.**

Furthermore, it is completely **prohibited to hold any public events (sports, entertainment or cultural)**.

In addition to direct prohibitions, the activities of many organizations indirectly make it impossible:

**non-working days order** introduced nationwide until April 30<sup>th</sup> 2020;

**self-isolation order introduced** in most regions of the Russian Federation.

Please be aware that it is easier to prove it is impossible to render due performance under contract in case of direct prohibition. In case when the company was affected by either **non-working days order** or **self-isolation order**, it will be more difficult to prove the impossibility to render performance.

### 2. Can a party default on its obligations due to the difficult financial situation?

The inability to pay due to the difficult financial situation **is not a valid ground for default**. At the same time, the government is now introducing new measures to support businesses, including, for example, a right to defer lease payments.

### 3. Can a company default on its lease payments if its activities have been suspended?

Under the new law, adopted on 04/03/2020, the tenants are granted the right to **demand the conclusion of an additional agreement on deferral of lease payments and the right to demand a decrease in lease payments if it is impossible to use the premises**. However, the law does not provide a mechanism for their implementation. The procedure for obtaining a deferral is subject to clarification by the Government of the Russian Federation. Today, the only available information is that deferral can only be requested under contracts concluded **before** the introduction of counter-virus measures by the government.

**The right to demand a decrease in lease payments will be granted to companies that, in principle, cannot continue activities** (non-food retail, cinemas, beauty salons, etc.). It can be

assumed that tenants will be in a more favorable position if the purpose of using the premises is directly provided for in the contract.

It will be more difficult to prove the right to a “discount” for tenants renting an office space. Their activities were not formally suspended, while the objective opportunity to use the premises for office work has been lost.

Despite these reservations, with adequate representation in negotiation, or, if necessary, litigation, all tenants affected by the effects of the virus have the opportunity to defend their right to a “discount”.

#### **4. Is it necessary or to obtain a certificate of force majeure?**

Obtaining an official opinion/certificate of the Chamber of Commerce and Industry (CCI) on the occurrence of force majeure helps to establish the **fact** of the occurrence of such circumstances. The need to obtain such an opinion is expressly provided for in certain contracts.

If the contract does not provide for the obligation to obtain an opinion from the CCI, it is possible to prove the occurrence of such an event by other means. In particular, one can refer to an **act of a state body**. In Moscow, the introduction of a high alert was recognized as force majeure by a mayor’s decree.

Even if you managed to get a CCI certificate on the occurrence of force majeure or prove it by other means, you will need to further substantiate how exactly force majeure prevented due performance under a contract.

Our experts will be happy to further discuss with you any questions in relation to the issues above.

**Arthur Abouzov**

**Partner, Head of Legal Outsourcing**

Office +7 495 755 55 68

Mobile +7 915 278 00 41

