



RUSSIAN DESK

Restarting business in Russia

The number of coronavirus cases in Russia is decreasing. With the gradual relaxation of the strict restrictions put in place to fight the COVID-19 pandemic, economic life is slowly resuming its accustomed course.

For investors in Russia, it is important to quickly restart their Russian business. With all its contradictory elements, the crisis is forcing them to defend their market positions. At the same time, it presents opportunities to those able to nimbly adapt to the new situation. In many respects, the lay of the land is evolving.

However, not all difficulties will be removed along with the restrictions. In this kind of situation, it is important to take an energetic and thoughtfully considered approach. For this reason, we have provided below a summary of the most important legal aspects of restarting your business in Russia.

MIGRATION LAW

At the present time, foreigners are only able to enter the country from abroad in particular cases (for example, if they have residence). Highly qualified specialists may enter if, at the employer's request, they were entered on the list of the corresponding ministry. It's still not at all easy to enter the country, but the first flights are already under way.

An important exception is what is known as an "installation visa". Foreigners may enter the country, regardless of the industrial sector, in order to configure or provide technical servicing of equipment, etc. To do so, an application must be submitted to the corresponding ministry, following a complex procedure. A foreign specialist may enter the country on a visa received from a Russian consulate abroad.

After entering the country, it will be essential to comply with the anti-corona measures in effect in the corresponding region; a coronavirus test or a quarantine period may be required. The public health and quarantine rules of the home country will also apply on your return.

Foreigners already in Russia may continue to work. At present their work permits and visas can be extended on the spot. For foreigners with a permanent residence permit, absences during the period from 15 March through 15 September 2020 will not count in Russia toward the maximum possible period abroad.

LABOUR LAW

Regional restrictions are still in place in some sectors of the economy, but their number is rapidly dwindling. The general instructions should be followed when working. The recommendations that as many employees as possible should work from home remain in effect. To this end, Russian legislation proposes either "remote work" or "work at home". In both cases, a supplementary agreement to the employment agreement is required; there are differences in terms of occupational safety rules.

All employees must be provided with protective masks and gloves when working. Temperatures should be taken regularly in order to promptly send sick employees home or to see a doctor. The necessary distances must be maintained between workers, premises must be regularly cleaned, and employees must be given disinfectant supplies. In Moscow, for example, enterprises that have restarted operations must conduct sample tests for coronavirus on a subset of their employees on a regular basis, in order to quickly identify potential infections and take measures to deal with them.

The changing labour market currently makes it possible to adjust personnel expenses by agreement with those employees who are prepared to agree to concessions in order to keep their jobs. It has also become easier to find qualified new employees.

LOCALISATION

The pandemic has laid bare the vulnerability of global supply chains, thereby giving a new stimulus to localisation trends. The Russian import substitution policy is expected to be continued and even possibly strengthened.

Another government resolution issued at the end of April introduced additional restrictions on the participation of foreign products in state procurements. Preference will be given here to Russian-made goods. A similar procurement rule has already been in effect for several years now in pharmaceuticals and medical technology, in automobile manufacturing, and in the IT sector. The restrictions will now affect paints and varnishes, fertilisers, chemicals, radiators and boilers, pumping equipment and compressors, as well as drilling and weighing equipment.

At the same time, regardless of Russian government policy on localisation, manufacturing companies have against the backdrop of the global economy started contemplating whether they should relocate production back to Europe. Countries in Eastern Europe, which are members of the European Union, and Russia are under consideration as suitable locations for manufacturing. Such aspirations may be facilitated by further improvement of the legal framework for investment in Russia. New rules on special investment contracts (the so-called SPIC 2.0 regime) have recently come into effect.

In investment contracts, the investor commits to localizing the manufacturing of specific products or technology in Russia as part of a defined investment project. For its part, the government undertakes to maintain stable business conditions for the duration of the investment contract and to provide government support. Moreover, the products manufactured under a special investment contract will receive “Made in Russia” status pursuant to a simplified procedure. The products or technology in respect of which a special investment contract may be concluded were supposed to have been declared to the Ministry of Industry and Trade by 5 June 2020.

In addition, in the spring of 2020 an investment protection law was passed, which should simplify investing activity and capital expenditures. This law will allow investment agreements to be concluded with the state that create legal guarantees for investment projects and the opportunity to receive state support.

CONTRACT LAW

The return to normalcy will also have an effect on the drafting of contracts. This will have an impact, in particular, on the provisions on force-majeure events. After the lifting of restrictions, it will be more difficult to invoke force majeure. In most cases, shipments are once again possible.

Unfortunately, however, as a second wave of coronavirus infection and the corresponding reinstatement of restrictions cannot be ruled out, a special coronavirus clause should be included in new contracts. Based on the court practices of the supreme courts, an event must be not only extraordinary and unavoidable, but also unpredictable, in order to be deemed a force-majeure event. This unpredictability is missing in the anticipated second wave. For this reason, we recommend that a special coronavirus clause be included in contracts to regulate the legal consequences of the reinstatement of restrictions.

LEGISLATION ON REAL ESTATE AND LEASE

The coronavirus has upset the equilibrium on the real estate market, especially as concerns office premises. A steep drop in turnover and the need to transition employees to working from home has forced lessees to cut costs. On the other hand, lessors are demanding a fair consideration of their interests.

The government did not take any radical measures aimed at comprehensive regulation of lease relations, limiting itself instead to support for small and medium-sized businesses and companies in the hardest hit industries, based on a list compiled by the government. The companies included in the list can suspend

the payment of lease payments until 1 October 2020. Small and medium-sized enterprises in these industries can even demand a reduction in the lease payment for one year. If the lessor disagrees, lessees will be entitled to unilaterally terminate the lease agreement through out-of-court proceedings up to 1 October 2020. Liability for damages and penalties in connection with the early termination of the agreement is excluded; however, the deposit remains with the lessor. Other lessees may only demand a reduction in the lease payment in 2020 if they cannot use the leased premises due to government restrictions as part of the fight with coronavirus.

The courts will be busy with disputes regarding lease payments in 2020. In many cases, the parties to lease agreements are currently engaged in negotiations on the provision of discounts and restructuring of lease payments. This situation can often be used to reduce the lease payment. Lessors are ready to immediately accept reliable lessees.

One more market trend is the transition to more flexible models of office use. To optimise costs, many lessees are considering a full or partial switch to coworking or “hot desking” arrangements.

The construction sector has emerged fairly unscathed from the coronavirus. It was practically untouched by the economic restrictions. However, its susceptibility to occupational safety issues was exposed. As a result, the intensive use of IT technologies during project implementation is becoming an important competitive advantage of modern construction companies.

ADMINISTRATION OF THE LAW / BANKRUPTCY LEGISLATION

An increase in litigation is expected after the crisis; there will be a need to sift through the numerous legal disputes caused by the crisis. That being said, Russian courts are well prepared for this problem. Procedural law, for example, makes it possible to use video technology.

A moratorium on instigating bankruptcy cases against certain debtors will remain in place until the beginning of October. A wave of bankruptcies is expected to follow. To reduce the number of problems in the future, close monitoring of counterparties and tight control over accounts receivable must be implemented right now. Subsidiaries in Russia should make sure that they have an adequate capital structure.

CONCLUSION

Those who have worked in Russia for some time know that the country is adept at dealing with crises. In the past those investors who acted consistently and proactively were especially proficient at ensuring a quick and successful exit from crises. It is just such an approach that promises to be the most successful in the aftermath of the current crisis.

We would be happy to consult you on reopening and ramping up your operations in Russia.



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