



Eurasia/Russia Committee

DOING BUSINESS IN CIS UNDER COVID-19 CONDITIONS

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ARZINGER 

B O R E N I U S

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Moderators & Speakers

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Response Measures

Response Measures - Ukraine



- Quarantine introduced until 24 April, 2020
- Shutdown, except for certain enterprises (pharmacies, grocery stores, post offices, banks, etc.)
- Public transportation restricted, except for taxis and transportation for use of medical stuff, etc.
- International travel restrictions
- Generally unlimited movement of goods, but may be subject to quotas

Response Measures - Russia



- A state of readiness has been introduced in all regions of the Russian Federation until April 30, 2020
- The rights of citizens regarding labor and movement are limited: it is recommended to leave home only in order to go to the hospital, visit the nearest shops, go to work (if the organization's activity is not suspended), or walk the dog
- Flights to/from other countries are discontinued
- Penalties for violation of the self-isolation regime of up to 40,000 rubles



Government support measures for business - Russia

- A moratorium on bankruptcy
- Benefits for small and medium-sized enterprises: audits have been canceled, some tax benefits have been established
- Loan holidays (for individuals and for small and medium-sized businesses)



Response Measures - Kazakhstan

- State of Emergency is introduced from 16 March to 30 April
- Quarantine introduced until 30 April
- Restrictions on entry and exit into/from the territory by all means of transport
- Restrictions on public transport in the daytime
- Restriction on the mobility of people and on entry / exit of vehicles in
- All the objects of trade and services are closed, except for food stores and pharmacies

DOING BUSINESS IN CIS UNDER COVID-19 CONDITIONS

Contractual/Real Estate Matters

Interim state measures - Ukraine

- Quarantine may be recognised as force majeure for contractual purposes
- Ban to raise interest rates under loan agreements
- Possibility to be relieved from lease payments
- Extension of limitation periods

Force Majeure - Ukraine

- Separate regulations in the law
- Event: extraordinary, unexpected, beyond parties' control and has direct causal link to the non-performance, duly certified
- Spread of coronavirus, quarantine or national emergency may constitute force majeure events, but are subject to proof

Force Majeure - Russia



- Factors affecting the recognition of the epidemic as force majeure are: the date when the agreement was concluded, the impact of the epidemic on the activities of a particular person, the terms of the agreement regarding force majeure
- Consequences of recognizing a pandemic as force majeure are: suspension of the deadlines for the performance of an obligation, exemption from liability for a breach of contract
- In some regions, a pandemic qualifies as a force majeure event (Moscow)
- CCI certificates of force majeure are issued free of charge from March 26

Real estate/lease - Russia



- A delay has been granted for the payment of rent for 2020, if the lease of real estate was concluded before the decision by the relevant regional government in 2020 to introduce a state of emergency or state of readiness within the region
- The possibility of a reduction of the rental payment resulting from the impossibility to use the property due to the introduction of a state of emergency or state of readiness within the relevant region



Interim state measures - Kazakhstan

- Quarantine is recognised as an event of force majeure
- Exemption from payment of taxes (for some taxpayers)
- Suspension of interest on unfulfilled tax liabilities until 15 August 2020
- The deadline for submitting tax reports to be postponed for the third quarter of 2020
- The status of litigation periods and lease payments are not identified



Force Majeure - Kazakhstan

- Entrepreneurs unable to fulfil their contractual obligations may apply to certify force majeure clause
- It is necessary to prove the occurrence of force majeure circumstances, by obtaining the letter from authorized body (the National Chamber of Entrepreneurs of the Republic of Kazakhstan “Atameken”)
- The force majeure circumstances is to be testified under the terms of foreign trade transactions and international treaties

Labour matters

Work during quarantine – Ukraine

- **Remote work** – upon written agreement or by employer's order (during quarantine only)
- **Flexible working hours** – upon parties' agreement
- **Temporary shutdown** – upon employer's order
- **Paid leave** – upon employee's application and employer's order, if there are unused days of annual vacations
- **Unpaid leave** – upon employee's application and employer's order, for the whole quarantine period
- **Sick leave** – upon medical certificate in case of disease or during self-isolation

Further optimization – Ukraine



Due to changes in organization of production and work:

- **Change of essential working conditions** (with 2 months prior notification, in case of refusal to continue work – dismissal, severance pay – 1 average monthly salary):
 - Reduction of hours of work
 - Reduction of remuneration
- **Lay-off** (with 2 months prior notification, severance pay – 1 average monthly salary, ban on dismissal of certain categories of employees and specific requirements to the procedure)
- + Simplified procedure for **unemployment benefits** during quarantine period



Work during quarantine – Russia

Non-working days with employees retaining their salary from April 4 to April 30, 2020

The following organizations continue to work:

- continuously operating organizations
- medical and pharmacy organizations
- organizations providing the population with food and essential goods
- organizations performing emergency work
- organizations engaged in emergency repair and handling operations
- organizations providing financial services in terms of emergency functions

Work during quarantine – Russia



Non-working days are not grounds for the termination of a payment or a reduction of salary. It is necessary to observe the measures prescribed by the consumer regulator Rospotrebnadzor, if work is continued.

- an employee can be transferred to part-time work with a corresponding decrease of salary: but the employee must consent or there must be a justification that current working conditions cannot be maintained for reasons related to changes in organizational or technological working conditions
- remote work: an order to this effect must be published, with additional agreements being concluded with employees for their temporary transfer to remote work, ensuring the security of data constituting a commercial secret of the employer

Further optimization – Russia



What to do if the employer cannot continue to conduct its activities

- Compulsory paid vacation: vacation is provided for by the schedule, the employee is notified in writing 2 weeks in advance
- Declared idle time: during idle time, whether this circumstance is due to the fault of the employer or not affects the amount of employees' salary. It is debatable whether idle time due to the coronavirus could be recognized as the fault of the employer

Work during quarantine – Kazakhstan



Most common ways of the change of the workflow in Kazakhstan:

- 1) **Change of the working conditions** (initiated by employer with 15 calendar days notification; refusal of employee leads to his/her dismissal):
 - Transfer to Remote work; and/or
 - Introduction of the Part time work;
- 2) **The downtime mode**, i.e. stoppage of business activity (initiated by employer);
- 3) Providing the **unpaid leave or the annual paid leave** for employees (upon agreement of the parties);
- 4) Termination of employment (based on the agreement of the parties or reduction of employees).



Further optimization – Kazakhstan

➤ Remote work

The salary amount may be decreased by the agreement of the parties.

➤ Part time work

Reduction the number of working hours per day or working days per week and consequent decrease of the salary amount.

➤ The downtime mode

Payment of 42 500 KZT (approx. 100 US dollars), unless otherwise provided by the employment/collective agreement.

➤ Unpaid leave or the annual paid leave

Provides the possibility to work in a cost-effective way.

State Courts

State Courts - Ukraine

- Remote work/ consideration upon written materials/ oral hearings postponed where possible
- Filings/ review of court files on-line (test version of electronic system; e-signature)
- Extensions of procedural deadlines, but not all
- Delays/ technically not prepared

State Courts - Russia



- The personal attendance of citizens in all courts is suspended until April 30, 2020 inclusive
- Documents are submitted to state commercial courts in electronic format
- Only cases of an urgent nature are considered, as well as cases under an orderly and simplified procedure
- Non-working days established by the Decree are included in procedural deadlines. Moreover, the courts do not accept and register documents during non-working days
- The CCI of the Russian Federation has instructed the CCIs of the regions of the Russian Federation to issue certificates of force majeure



State Courts - Kazakhstan

- All considerations are reviewed on remote work basis, upon written materials submitted online via Trial Office
- Verbal hearings are held online via Trial Office and TrueConf
- All court documentation has to be filed online via Trial Office and signed by e-signature
- The proceedings with procedural time limits of an active maturity might be extended

About speakers



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PRACTICE:

**Antitrust & Competition
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International Dispute
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Timur Bondaryev, Attorney-at-law Founding and Managing Partner, Head of the Real Estate and Construction practice, co-head of the Antitrust and Competition practice at Arzinger. Besides, he heads Automotive and Energy industrial practices. He has extensive experience in working at state authorities and large corporations.

He was Head of Division in the Legal Department at the State Property Fund of Ukraine and Head of the Legal Department at Ukrainian Aluminium, a subsidiary of Russian Aluminium Company. Timur Bondaryev is a highly respected law practitioner enjoying an excellent reputation in the local and international market.



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PRACTICE:

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Oksana Karel is Counsel, Co-Head of International Litigation & Arbitration Practice. Oksana has been in practice for more than nine years and focuses on international investment and commercial arbitration. She also has profound experience in domestic commercial, civil, and administrative proceedings. Oksana represents clients in a variety of international arbitrations under ICSID, UNCITRAL, LCIA, ICC, VIAC, SCC, ICAC at the UCCI and MAC at the UCCI, etc. rules, covering a wide range of industries.

She also advises clients on conflict of laws, setting aside and recognition and enforcement of arbitral awards. Oksana is included into the list of VIAC practitioners, the database of candidates for arbitrators and mediators at the JCAA, recommended arbitrators in pursuance of the Law of Ukraine "On Financial Restructuring" and acts as Ambassador of the ICC Belt and Road Commission.



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PRACTICE:

Labour

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Alesya has more than 13 years of a vast practical experience within Arzinger and is the key lawyer within the firm who is deeply involved in all projects with German and German-speaking clients. Alesya is an author of numerous publications on corporate law and various labour law issues (including recent publications re. prevention of the COVID-19 at the workplace).

Alesya conducts business breakfasts and workshops for individual clients. Alesya is a member and actively participates in meetings of ACC and EBA.

Alesya is also the Deputy Head of the Legal and HR Committees and an active participant of the German-Ukrainian Chamber of Industry and Commerce that represents interests of German enterprises, organizations, associations and their Ukrainian partners.

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Andrei has over 25 years of experience of providing strategic consulting services, cross-border structuring and international tax planning, handling business conflicts, asset tracing & recovery, crisis management, corporate investigations, handling cases that involve white-collar crime, and conducting and settling disputes by applying alternative procedures (known as ADR), including mediation. For a large number of his clients, Andrei has been a trusted professional adviser on a wide range of matters, including those on which he worked together with lawyers from a range of other jurisdictions.

For the whole of his long career, Andrei has built up and maintained professional contacts with hundreds of practicing lawyers from dozens of countries across the globe.

In Russia, Andrei has assembled one of the most experienced and best-known teams of lawyers providing services to business in all key sectors of the economy and branches of law.

Practice

- White-Collar Crime & Crisis management
- Asset tracing
- Mediation and Negotiations
- Dispute Resolution
- Restructuring, Insolvency & Bankruptcy
- Corporate Advisory & Compliance
- Corporate Law



**ARTEM
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Practice

- Sanctions
- Corporate Advisory & Compliance
- Corporate Law
- M&A & Private Equity

Artem specialises in corporate, antitrust, banking and financial law, as well as cross-border M&A transactions. Over the past 27 years, Artem has taken a hands-on role in providing legal support for international transactions, representing a wide range of foreign and Russian clients from various business sectors. These have included social networks, software development, telecommunications, direct investments, financial institutions, the motor industry, oil & gas, the iron & steel industry, food products, as well as development and construction.

Artem has advised certain major investment and international banking institutions on the structuring of complex transactions. He was engaged in drawing up draft legal documents and undertook general management of the entire process of transaction support.

In 2014, Artem was one of the pioneers in Russia who became closely involved in compliance and sanctions regulation. In the context of this practice, he advises Russian and international companies on corporate governance, as well as the structuring of beneficial ownership and contractual relationships with foreign counterparties in order to identify and mitigate risks from sanctions.



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Practice

- Corporate Law
- M&A & Private Equity
- Commercial Contracts
- Employment

Irina Dudareva is a Senior Associate of Transactions & Corporate Law practice at Borenius Russia.

Irina advises Russian and foreign clients on corporate, commercial, employment and migration matters within a wide range of projects including M&A transactions. Prior to joining the corporate practice Irina specialized in legal support of investment projects based on public-private partnership and concession mechanism, as well as advising on corporate issues arising during implementation of investment projects.



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PRACTICE:

Corporate law

Labor law

**Dispute Resolution and
International Arbitration**

Pharmaceutical

Artem is a licenced advocate and represents clients' interests in courts at all levels on a widerange of civil law, administrative and criminal matters, including protection from corporate raiding.

He specialises in corporate and commercial, including corporate restructurings complicated by a foreign element, M&A transactions, release, placement and securities' circulation. His parallel expertise lies with compex customs matters and tax litigation.



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**Dispute Resolution and
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IT and Data Protection

Aybek has gained substantial experience in supporting the corporate projects, within the frameworks of which Aybek has been obtaining consents and approvals of authorised agencies. Moreover, Aybek has gained prominent experience within the dispute resolution and litigation practice including the ongoing ICC Arbitration case.

Aybek has been working with each Client requesting the representation of interests in court or debt recovery and been involved in legal disputes connected with corporate and labor issues. Furthermore, Aybek has successfully participated in representing the interests of the foreign Client in the CIETAC Arbitration.

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