



CONNER & COMPANY VERSUS THE CORONAVIRUS

22 March, 2020

The advent of Covid-19 earlier this year from Wuhan in China, has now spread across Europe and much of the world, hammering financial markets and many currencies in its wake, and sadly leading to a significant loss of life. Our thoughts go out to the people effected and their loved ones. At the time of writing, Moscow faces an extended period of disruption as efforts concentrate to minimise the spread. This will undoubtedly lead to disruption for businesses and individuals.

At Conner & Company our role is to minimise and mitigate damage and losses to businesses at times of crisis. Below, we set out some of the areas in which businesses and individuals might be impacted, and the rest of this short article explores these issues.

If you think that you need our help, please email Luke Conner at lconner@connerco.ru to arrange for an online consultation with one of our team of 10 legal professionals.

Here are some of the issues, which we have highlighted, and which may require your immediate attention (later in this article, you can read more information on each topic):

1. Your contractual relationships and liabilities – can you apply force majeure to your contractual obligations? Can your lease payments be deferred? Do you have issues with international suppliers, creditors, or clients?

For more, please see section I.

2. Are you and your family, ready for the worst-case scenario? Do you have wills in place to cover your assets in Russia, your assets abroad, and practical arrangements in place should tragedy occur?

Please note that, as a firm, we traditionally have more people come to us to litigate over the estates of family members who have died intestate (i.e. with no will), than people who come to write wills. We all seem to think that we are invincible until it is too late but, at the moment, we need to be more careful than ever, and now is as good a time as any to use the depression in business and social activity and put it to good use. For more, please see section II.

3. Employment issues: have you been unfairly dismissed by your employer? Does your organisation need protection from employee dismissal claims?

For more, please see section III.

4. Immigration restrictions and restrictions on movement – entrance into the country, leaving again without issue. Potential city lock downs.

For more, please see section IV – general legal overview.

5. Courts and notaries – potential closures.

Please see section V.



SECTION 1. CORONAVIRUS AND FORCE MAJEURE

This section sets out the general background on force majeure in Russia, within the context of coronavirus, and gives some practical examples and case studies. For more detailed legal advice, please contact Luke Conner at lconner@connerco.ru.

1. What does “force majeure” mean exactly in Russia?

Force majeure generally follows international principles, and enables a business person to escape from liability for breach of obligations in circumstances where there is an extraordinary situation, beyond the control of the parties to a contract, such as an act of God. In Russia, force majeure is interpreted as being an insuperable power, extraordinary and inevitable circumstances, within the context of the applicable circumstances.

2. Does coronavirus (2019-nCoV), the current high alert regime and other consequences constitute a force majeure?

- The Russian Chamber of Commerce considers an abstract epidemic as being a force majeure.
- Mr. Sergey Sobyenin, the Mayor of Moscow, has officially recognised the current high alert regime in Moscow as constituting a force majeure event.

N.B. *High alert regime – this is a situation in which the people and authorities are told to be ready because there is strong possibility of escalation of troubles, in this case coronavirus.*

- This is not a limited list. Some other measures the Russian state authorities have been taking for fighting the virus may be considered to be a force majeure within the context of particular contractual relations. The burden of proving a force majeure is on the person or entity trying to rely on it, and within the context of the contractual relations and the actual facts at hand.
- Please note that: (1) the high alert regime, not the pandemic, has been recognised as a force majeure; (2) this Order of the Mayor of Moscow does not automatically apply to each particular case; and (3) it is not certain whether the Mayor of Moscow is authorised by public law to stipulate force majeure.

3. The consequences of force majeure

- Force majeure does not automatically lead to termination of obligations, if it is possible to perform them after the end of force majeure. Yet, if it is objectively impossible to perform ongoing obligations because of a force majeure event, such obligations can be considered to be permanently terminated.

N.B. *Under Russian law a debtor is liable for the consequences of default arising during the term of the loan. It means that a debtor cannot escape liability by referring to force majeure, if such force majeure occurred after the debtor had already started to default before the force majeure occurred.*

- ***Escaping liability for breach during force majeure means that the person / entity breaching its obligations because of force majeure is not obliged to pay a penalty or compensate damages related to such breach.***
- An obligor under finance documents must notify its creditor as to the force majeure. Otherwise, the debtor will still have to compensate the creditor's damages.
- Please note that the pandemic itself is not a ground for escaping liability. In each case a person must prove a cause and effect relationship between the pandemic / high alert regime and the breach of the particular contract.
- Please note that, in international business, a person can prove the fact of force majeure using a special certificate issued by the Chamber of Commerce of Russia. In domestic business, it is possible to prove force majeure using other evidence.

4. How to protect your business from consequences of force majeure?

- A person can unilaterally terminate his / her contract as a response to notification of force majeure.
- Force majeure does not prohibit a creditor from using other remedies, e.g. to require a decrease in price or stop performing his / her obligations in return.

5. Case-study

- "ABC Trading" LLC (the "Tenant") has its office at a Moscow business centre owned by "XYZ Property" LLC (the "Landlord"). The Tenant has ordered its employees to work from home because of coronavirus. Can the Tenant reject the Landlord's request to pay rent?
- Potentially, yes. Firstly, the Tenant should analyse the lease agreement, especially specification of the purpose of the lease and force majeure clause (if any). Secondly, the Tenant should officially notify the Landlord of force majeure, it is better to do so by post and to keep evidence of delivery. Such notification should contain references to the Order of the Mayor of Moscow dated 14 March No. 20-UM, as well as to other related regulation and the lease agreement.
- Please note that if the Landlord does not agree with this force majeure position, the Landlord may decide to file a claim in court requiring the Tenant to pay the rent and related damages. There are court decisions in Russia where different types of force majeure have been considered, but there is no coronavirus precedent in Moscow at the time of writing. It means that consequences for the Tenant in such case are slightly uncertain, but there is certainly hope.

6. How we can help?

You may have counterparties claiming force majeure, and likewise you may want to plead it yourself. We can provide a speedy review of your contractual relations and the situation, and then assist you with related notifications and litigation. We can do the same regarding your credit obligations, whether Russian or international, and also with your agreements with international supplier or client contracts. We can draft new contracts to avoid future problems. Conner & Company has English and Russian qualified lawyers. We are also part of the Cicero International Legal Alliance, and have worldwide access to local counsel. Please contact lconner@connerco.ru for further information.

SECTION 2. PROTECTING YOUR LOVED ONES WHEN YOU ARE GONE

The vast majority of readers, will hopefully come through the coronavirus pandemic unscathed. There will be those of you, who will unfortunately succumb to the tragic loss of loved ones. Many people fail to arrange for a will at all. Huge numbers of Moscow residents have assets and property both here and abroad. Elderly people, people with respiratory diseases, people who have suffered from cancer, and people with other underlying health conditions, are groups particularly at risk. In our opinion, they would be well-advised to take action promptly. In fact, planning for the future, does no harm even during the best of times.

Conner & Company can assist with the following, and at reasonable prices:

- *inheritance and estate planning;*
- *drafting of Russian and English law-governed wills;*
- *arranging for wills in other jurisdictions;*
- *assisting with enduring powers of attorney so that your loved ones can handle your affairs following your demise;*
- *visiting clients to execute documents at their residence (subject to government guidelines); and*
- *assisting you to claim against an estate's assets, should a loved one die intestate.*

Please contact Luke Conner, Managing Partner, at lconner@connerco.ru, or on +7 968 756 31 68 to arrange for an online preliminary consultation.



SECTION 3. EMPLOYMENT LAW ISSUES

During these troubled times, there will be many potential employment disputes. The balance between employers trying to retain their well-trained staff, will be put to the test by the competing interests of their potentially dwindling financial resources and the commercial reality which entails following this crisis. Meanwhile, unscrupulous employers will undoubtedly act in breach of the Labour Code, and use the circumstances as an excuse to lay people off and dismiss them unfairly.

At Conner & Company we have already started work on cases acting for employees who have been unfairly laid off in connection with coronavirus. We have also taken instructions from executives who are coming under fire from their employer's legal counsel as a result of the coronavirus pressures on their holding company.

We would love to hear from you, if you are an employee who is concerned about his / her employment status.

Conner & Company also has experience in defending employers from unfair or wrongful dismissal claims which are not grounded in legal reality.

For more, please contact iconner@connerco.ru.



SECTION 4. GENERAL LEGAL OVERVIEW OF 2019-NCOV IN RUSSIA

1. Due to the latest amendments in the Moscow Mayor's Order dated 5 March 2020 No. 21-UM the following restrictions have been added to the existing restrictions already in place:

Declaration of high alert regime in Moscow

It may be one of the first steps towards closing Moscow in order to stop spreading of coronavirus, considering the fact that population of the Moscow is comparable with the population of some European countries.

Ban of all public events in Moscow, exceeding 50 people

There has been a slow, but steady, increase in the number of places prohibited or limited for public use (for now only until 10 April, 2020). Many companies, for instance, theatres and cinemas have been selling only 50 tickets per session in an attempt to comply with the legislation, whilst maintaining some level of work. The hospitality sector may very hard hit, both in terms of people losing work and restaurants, bars, and shops, failing to pay rent. We may be able to help you and your business in these scenarios.

Temporary ban of all the schools and universities in Moscow from 21 March

Most children are now engaging in distance learning, but children are allowed to attend school as long as there are no more than 12 students per class, and assuming the school receives parental consent. On the bright side, schools and universities started to use alternative methods of studying such as online conferences, webinars and etc. with the help of modern technologies, which means that they are trying not to stop process of studying despite the situation with coronavirus.

2. The decree also contains a list of obligations for citizens, who were in places, considered to be high risk. Those obligations are:

You should inform Moscow authorities about your arrival and the length of your trip. You can contact local authorities using the following phone number:

+ 7 (495) 870-45-09. The authorities are attempting to track people in order to mitigate risks.

If you have any symptoms of the virus (temperature, dry cough, fever), then you should call for medical care, which will come to your residence. Contact phone number is 103 or 112 (you can call even if you don't have signal or money on your phone). Please note, that you aren't allowed to come to the hospital by yourself! By doing that you could put other people at risk.

You should put yourself under the self-quarantine for a two-week period.

3. Restrictions on entering the Russian Federation for non-citizens and people without citizenship

From 18 March foreigners and people without citizenship shall not be allowed to cross Russian border until 1 May.

Depending on how the situation with coronavirus will develop in the Russian Federation the government may reduce or expand this period.

The good news is that Russian authorities will expand the validity of travel documentation to allow foreign citizens already here to extend their stay until the outbreak has relinquished. In order to expand duration of your document you should contact a local administration (MVD) of place of your residence. We can assist you with this process, if you contact us directly.

From 20 March Terminals D and F of Moscow's airport Sheremetyevo will be temporarily closed for all the flights. All flights will be rescheduled to other Terminals. All other airports are working according to schedule for the moment.

4. Restrictions on using gyms, swimming pools and sports and fitness centres

The latest restrictions, which will impact on many readers, and are a sad irony, given the need to keep fit during this crisis, but mean that gyms, fitness centres, aqua parks and swimming pools will now be closed to the public. Rospotrebnadzor published these rules, applicable as of 21 March, 2020.



SECTION 5. COURTS AND NOTARIES – POTENTIAL CLOSURES

On 18 March, 2020 Presidium of the Supreme Court of Russia and Presidium of Council of Judges of Russia issued a new Regulation stating that, in particular:

- personal visits to the courts must be suspended;
- judges should hold hearings only regarding emergency disputes (in particular, regarding the interests of the underaged or disabled persons being denied medical treatment) or simplified proceedings;
- all courts must try to initiate video conference hearings.

These new rules are valid until 10 April, 2020.

Please also note that there is a risk that Russian notaries may also decide to suspend their activity.

Please contact us for assistance with notaries – info@connerco.ru



ABOUT CONNER & COMPANY

Conner & Company is a fast-growing provider of independent legal services based in Moscow, Russia. Founded in 2015 by Luke Conner, an English qualified solicitor, the firm offers a breadth of legal services ranging from top draw advice on English and Russian law in mergers and acquisitions, to handling complex disputes through litigation and arbitration, as well as working closely with private individuals from all walks of life.

Our aim is to provide high value-added legal advice at the right price point for the modern client, with a focus on personal service, an in-depth understanding of the relevant legal frameworks, and an international approach that is rarely found in Russian law firms. Nearly all of Conner & Company's matters involve multi-jurisdictional elements.

Our exclusive membership of Cicero – League of International Lawyers, an established network of independent international law firms, acts as a gateway for our clients to first rate legal advisors around the world: www.ciceroleague.com.

Please contact Luke Conner LLB, Managing Partner – lconner@connerco.ru

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