

Georgia – Coronavirus (COVID-19) and Its Legal Impact on Businesses

The coronavirus crisis and its anticipated underlining risks to local businesses, require evaluating of legal tools and action plans that can be implemented to address the existing situation.

The foregoing document intends to outline practical approach and recommendations for preventing and/or mitigating relevant contractual and/or economic risks by local businesses and employers.

Contractual Relations

Force-majeure is well established civil law concept in Georgian law. However, while COVID-19 may be classified as a Force Majeure event, there are important legal preconditions and exceptions to such classification.

In the context of private contracts, the WHO guidance of 30 January 2020 (date when WHO defined COVID-19 as an epidemic) is likely to help Georgian courts to define the occurrence of COVID-19 as a Force Majeure. However, in order for the relevant party to be exempted from contractual duties, following circumstances/preconditions shall be present cumulatively in relation to the event:

- It has to be extraordinary in nature;
- It shall be beyond the parties' control;
- It has to be non-foreseeable at the moment of conclusion of the relevant agreement;
- It has to materially impact, or render impossible, the performance of the contract (at the time and in the manner required).

Established court practice indicates that courts employ detailed analysis of the contractual relationship to assess the characterization of the event and its impact on due performance of the obligations. Also, only contractual obligations affected by Force Majeure will be exempted (partial impossibility), therefore a total impossibility is not automatic. Furthermore, temporary or permanent nature of the impossibility/event shall also be considered for assessing its impact on non-performance and hence, qualifying the event as force-majeure.

Actions to avoid default

- Review of contract hardship/force-majeure clauses to identify the scope of their application;
- Assess whether COVID-19 qualifies as force-majeure for the purposes of relevant contract;
- Assess whether there is partial impossibility or total impossibility of performance;
- Comply with any notice provisions/issue notices, or other preconditions (e.g. taking steps to mitigate its losses), specified by the "force majeure"/"hardship" clause;
- Implement termination/re-negotiation strategy according to the variety of possible situations (coming weeks will be crucial for this assessment).

Please consider that legal assessment of contracts concluded after 30 January 2020 (i.e. announcement of epidemic) shall be also very important, to identify compliance with the foreseeability criteria of force-majeure event.

Note: In case and if state of emergency is announced by the government of Georgia, this may additionally impact performance of the contractual obligations by the parties and simplify exemption under the force-majeure.

Employment Relations

Remedies under the Labor legislation

One of the major challenges of Covid-19 outbreak for local employers is the treatment of employees under these extraordinary circumstances. For example, whether an employer can terminate an employment agreement during the Covid-19 outbreak and how to pay remuneration to those employees who are under self-quarantine or who are unable

to return to work due to quarantine measures imposed by authorities, are those issues that need to be assessed carefully.

Given the extraordinary nature of the current circumstances, we came up with relevant scenarios below, to address corresponding rights and obligations of the employers and provide solutions available pursuant to the Labor Code of Georgia.

Scenario #1

Employees who are currently receiving medical treatment or who are under quarantine or medical observation AND meet any of the following criteria:

- **are confirmed to be infected with Covid- 19;**
- **are suspected of being infected with Covid- 19; or**
- **have been in close contact with people confirmed or suspected of being infected by Covid-19.**

Work & Other Policy

Employment is considered to be suspended on the basis of “temporary incapacity to work”. The Employee cannot be required to work in the event he/she refuses to work on the basis of health hazard and the employer shall not terminate the employment relationship without cause.

Further, if an employment agreement expires during the period when an affected employee is receiving medical treatment or under quarantine or medical observation, the term of the employment agreement will not be extended and the term shall expire accordingly.

Compensation Requirements - must be paid normal salary, unless the Employee agreed to unpaid leave or no medical certificate confirming medical incapacity (being quarantined or being under medical observation) is provided.

Upon the employee returning to work, an employer may request medical certification or other documentation.

Scenario #2

Employees who cannot return to the work place on time due to circumstances related to Covid-19. This would cover employees who are required to self-quarantine and thus are unable to return to the office.

Work & Other Policy

Employer should make reasonable arrangements to allow the employee to work from home if possible.

If work from home is not possible, employer should try to negotiate with employee to take advantage of any unused leave (paid or unpaid).

Compensation Requirements

Normal salary must be paid to employees working from home or taking paid leave.

Scenario #3

The employer suspends operation or business, whether in whole or in part, and requests employees to postpone their return to work due to the impact of Covid- 19

Employers are encouraged to negotiate with employees to reduce salaries, adopt shift schedules, or reduce working hours.

In addition, employers who cannot pay salaries may negotiate with employees to delay payment of salary. Employer is advised to keep record of all communications in case any dispute arises during this process.

Unless the agreement is reached with the employee, employer may use the remedy of last resort and terminate employment under “objective circumstances” envisaged under Labor Code of Georgia. It is highly advisable, however, that termination is used only after negotiating paid/unpaid leaves has proven unsuccessful. Unfortunately, suspension

of employment or suspension of payment under such circumstances (due to epidemic outbreak) is not automatic remedy available to the employer under the Labor Code of Georgia.

Please consider that no mandatory instructions have been issued by the government of Georgia in relation to suspension of employment in private companies. Statement of the government of Georgia dated March 12, 2020 (http://gov.ge/index.php?lang_id=ENG&sec_id=288&info_id=75526) merely recommends private entities to temporarily shift to distance work schedule. This recommendation may be used as justification to implement relevant measures upon discretion of the employer.

As a general note, employers are advised to adopt flexible arrangements for working hours in the face of the Covid-19 situation to meet their obligation to ensure safe working environment of the employees, imposed under the Labor Code of Georgia. Based on the foregoing, it is advisable to adopt relevant labor safety (emergency) policy, implementing preventative measures based on the WHO and local government recommendations. Employer can require only some employees to come to the office on the justification that Covid-19 makes it too dangerous to have a large number of employees in the office. Employer may also encourage its employees to use paid/unpaid vacation or negotiate part time performance of employment duties (with temporary decrease of salary). Termination may only be used as a remedy of last resort based on specific circumstances of each relevant case.

Operation of Force-Majeure

In case and if outbreak of Covid-19 qualifies as force-majeure for the purposes of employment relations, due to announced state emergency or any other government measure causing mandatory suspension of employment relations, employers would be justified to suspend payment of salaries during relevant period. Specific effect and consequences of force-majeure will also depend on the scope of the mandatory measures implemented by the Government.

Without prejudice to the conclusions and findings outlined in this Report, we would like to limit our statements by the considerations that our comments and conclusions reflect our best understanding of the laws currently in effect based on the legislation in force, on available official interpretation and on unofficial discussions of the issues with the relevant authorities and private sector. Owing to the lack of available official interpretations and the lack of experience of the authorities and courts in interpreting the laws, we can provide no assurance that the authorities and courts will take a position consistent with the comments contained in this Report. Furthermore, we can express no comment on changes in the laws or their interpretations thereof that may occur subsequent to this Report.

This Report is limited to the matters stated herein and is not to be read as extending by implication to any matters not specifically referred to in this document. It is provided to French Embassy solely for the benefit of French Embassy. This opinion may not be furnished to or relied upon by any other person without our express prior written consent.