



CORONAVIRUS (COVID-19) –

GEORGIA DECLARES STATE OF EMERGENCY

Dated 23 March 2020

In our previous report related to the legal effects of coronavirus outbreak (“Report”),¹ BLC has issued relevant assessments and recommendations to the businesses with regard to the implications of Covid-19 and its impact. Previous recommendations were qualified with the fact that no state of emergency was declared, nor were there any mandatory regulations in place applicable to private sector.

I. Measures implemented by the Government of Georgia without formally announcing the state of emergency:

1. Education process was suspended;
2. Military draft was suspended;
3. Large part of public servants were shifted to remote work and provision of e-services. Same recommendation was issued to the private sector;
4. Air, as well as land traffic was gradually restricted; foreign citizens were banned from entering Georgia;
5. Quarantine procedures and strict oversight of self-isolation was established;
6. Ski resorts were closed;
7. The operation of mini buses was prohibited;
8. Various large-scale cultural and sports events were cancelled;
9. Recommendations were issued to close all retail facilities, with the exception of strategic infrastructure projects, as well as grocery stores, pharmacies, fuel/gas stations and banks.

II. Announcement of State of Emergency

On 21 March 2020, the President of Georgia declared the state of emergency in the entire country until 21 April 2020. This is considered to be additional step to prevent domestic spread of the virus, which requires additional and special measures from the Government, as well as businesses and the general public.

The state of emergency was declared under Article 71 of the Constitution of Georgia and Article 2(3)-(4) of the Law of Georgia on State of Emergency. Decree of the President of Georgia #1 “on the Measures to be Taken to Declare a State of Emergency in Georgia” of 21 March 2020 (the “State Emergency Decree”) was approved by the Parliament of Georgia and became effective on the same date.

During the state of emergency, the President of Georgia has the right to limit certain constitutional rights. The State Emergency Decree establishes the following restrictions²:

¹ <https://www.facebook.com/326504578058398/posts/511597009549153/?d=n>

² Please, note that only the restrictions relevant for commercial sector are summarized herein.

- (1) The Government of Georgia has been authorized to establish rules on isolation and quarantine and enforce relevant measures in case of breach of such rules;
- (2) Restrictions have been applied to international air, land and sea traffic, with the exception of transportation of goods;
- (3) The Government of Georgia has been authorized to regulate carriage and transportation of passengers on the territory of Georgia and impose necessary restrictions;
- (4) The Government of Georgia has been authorized to impose restrictions and adopt rules for the performance of public services and administrative proceedings;³
- (5) The Government of Georgia has been authorized to restrict property right of the physical and legal person in case of necessity, for the purposes of ensuring quarantine, isolation and medical measures;
- (6) Any kind of gathering and manifestation has been restricted, save for the exceptions determined by the Government of Georgia;⁴
- (7) Private entities, list of which shall be determined by the Government of Georgia, shall be restricted, limited or instructed to carry out certain activities;⁵
- (8) Established sanitary and hygiene rules shall be imposed on physical, legal persons and public entities;
- (9) If necessary, the Government of Georgia becomes authorized to regulate prices of medicines, medical products and essential goods;
- (10) Criminal court proceedings may be held remotely using electronic means of communication.⁶

During the state of emergency, the President of Georgia will be authorized to, upon recommendation of the Prime Minister, issue decrees and further impose restrictions on public, as well as private sector and institutions. In addition, various decrees of the Government of Georgia will additionally be adopted to impose and implement specific restrictions in line with general restrictions summarized above. Therefore, we advise to monitor upcoming normative acts.

Sanctions Introduced under the State Emergency Decree

All private persons and legal entities are bound by the state of emergency. Failure to comply will be penalized with 3,000 GEL – in case of private persons and 15,000 GEL - for legal entities. Repeated violation will result in criminal liability - imprisonment for a term of up to three years.

III. Impact on Business Operations

³ This is general restriction. Rules for providing public services, as well as terms for administrative proceedings shall be further adopted;

⁴ Details of this restriction shall be further set forth in the normative act to be issued by the Government of Georgia.

⁵ Restrictions to be further clarified. So far, only recommendations provided in section II of the report have been issued.

⁶ No regulation is issued so far in relation to civil or administrative proceedings. However, it is expected that civil and administrative proceedings will be postponed due to current recommendations to avoid gatherings.

Force-Majeure under the commercial contracts

As discussed in our Report referenced above, courts employ rather detailed approach when assessing force-majeure and its bearing on performance of contractual obligations.

Test applied: Force-majeure is an objective event or situation which is (1) unforeseeable (at the time of entering into the contract), (2) unavoidable in terms of occurrence or impact, (3) impossible to overcome and (4) there has to be causal link between the event and the affected party's failure to perform (non-performance shall be caused by force-majeure event).⁷

Therefore, clients are advised to assess scope of the measures imposed by the State Emergency Decree and further normative acts to be issued and impact of such measures on their respective business activities. Also, assess scope of the force-majeure clauses in their contracts with relevant counterparties and act accordingly (issue notice of force majeure, notice of suspension, etc.).

If the force-majeure clause is not included in the agreement, then:

- party may rely on article 401 of the Civil Code of Georgia if default is caused due to circumstances akin to force majeure. This article provides that no default shall be deemed to have occurred if the obligation is delayed due to circumstances not caused by the obligor's fault. The relief that can potentially be claimed under this Article 401 of the Civil Code of Georgia is (a) suspension of performance during the operation of force majeure or until the liquidation of its adverse impact on party's performance, and (b) release from liability to pay damages and penalties otherwise payable under the contract; *or, alternatively,*
- Party may rely on article 398 (1) of the Civil Code of Georgia which provides for the right of adaptation of the contract to changed circumstances. In particular, if the circumstances that were the grounds for the conclusion of a contract have evidently changed after conclusion of the contract, and the parties, had they taken the changes into account, would not have executed the contract or would have executed it on different terms, then party may request that the contract be adapted to the changed circumstances. Otherwise, taking into account individual circumstances, a party to the contract may not be required to strictly observe the contract. The parties shall first try to adapt the contract to the changed circumstances. If such adaptation is impossible, or if the other party does not agree, then the party whose interest has been affected may repudiate the contract.

Employment Relations

Scope of the existing and upcoming restrictions have to be carefully analyzed in relation to particular business operations/business sector, in order to identify whether performance of the employment relations is affected in a manner that disables parties to negotiate other possible options of employment (i.e. distance work).

⁷ The Supreme Court of Georgia, Case №სს-1303-1223-2015, February 3, 2016

If and only when the imposed measures completely stop business operations of the company, then suspension of employment relations (without payment of the salary) may be claimed based on Article 32 of the Labor Code of Georgia. This provision states that, unless otherwise defined by a labor agreement, an employee shall be fully remunerated for the idle time through the fault of an employer. Arguably, the reverse interpretation of the same rule suggests that, unless the suspension of the operations is caused by employer's fault, employees are not entitled to compensation for the idle time.

Please however note, that due to the extraordinary character of the events in question and lack of official interpretation and practices, we can provide no assurance that courts will take a position consistent with this recommendation and consider suspension of employment without payment of the salary in light with the spirit of the Labor Code of Georgia. As discussed in our previous Report, outbreak of the virus is not considered as a valid ground for automatic or unilateral suspension of employment relations.

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.

Last, but not least, the companies are advised to monitor specific instructions from the Government, if any, on suspension of employment and remuneration terms.