

## **COVID - 19 OUTBREAK - RUSSIA/07 April 2020**

### **INSURANCE LITIGATION**

#### **CURRENT AND EXPECTED TRENDS**

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Coronavirus in Russia and its spread during the recent weeks is affecting businesses and put strict limitations on the citizens following the Executive Order dated 26<sup>th</sup> March 2020 of President Putin. It includes but not only: limited commercial operations in general; only essential services and shops only for food, pharmaceuticals, hospitals and clinics, agro- and some other (in total 17 kinds) production, public (incl. volunteers to assist elderly people for ex) and civil servant. Limited movements individuals (limit of 100 meters around the home address, only for the essentials for life shopping and to be out with the pets) is also announced. In Moscow for the citizens and strong recommendation to the business were introduced on 4<sup>th</sup> March 2020. All schools, universities are closed and re-arrange to the distance learning mode. All public events, theaters, cinema, sport, concerts, fitness, restaurants, bars, cafés, etc – are fully closed subject to a penalty. Only take-away and courier service for the food delivery is allowed.

In addition - total stop of flights to and out of Russia, self-isolation for the ages up to 65 with the limited ability to be out of the homes, strict and full self-isolation for the ages exceeding 65 and for those people who have chronic diseases. Tourists or business travelers arriving from abroad starting from 6<sup>th</sup> of March are obliged to put themselves for the self-isolation for 14 days at their primacies and contact doctors if fever goes above 37 degrees. Non-fulfilment of the requirement can lead to penalty, isolation to the clinic, and penalty on the employer in case the person is forced to be in the office.

To keep people at home President imposed so called “non-working days” for the period 30<sup>th</sup> March to 5<sup>th</sup> April first. Now, it is extended to 30<sup>th</sup> April.

At the same time President granted to the local authorities' decision power to cancel earlier this forced day-off if coronavirus threat is overcome in certain administrative regions in Russia.

Insurance was included in the list of the essential importance and can provide service in CMTPL, voluntary and compulsory health insurance in accordance with the special order from the Central Bank of Russia (as insurance supervisory body). In all other lines' activity should be temporarily stopped. At the same time Central Bank released a bit of supervision pressure – and gave 10 extra days for the reporting, block all inspections and investigations for the time being. But so far (and different to the banks) insurers have to follow without limitation to the assets regulation, capital requirements etc. Also, Central Bank strongly advised not to pay dividends and bonuses to the shareholders and top management.

Tax and credit vacations were adopted for the SMB, private persons in case of unemployment due to coronavirus business close. Also, state pushed banks to grant to SMB 0% interest rates credits to pay salaries, rent and other costs of business.

### **How does this impact insurance litigation and what can we expect in the long term?**

#### **A. Courts**

The Courts in Russia since 19<sup>th</sup> March have suspended the proceeding. “From 19 March 2020 until 11 April 2020, the courts will only accept documents filed via a dedicated electronic system or by Russian post.

Moscow and St. Petersburg Commercial Courts have announced that holding court hearings will be restricted during this period of time.

According to the Supreme Court, only urgent cases will be considered, such as the election, extension, cancellation or change of a preventive measure; the protection of the interests of a minor or a person recognized as legally incompetent; or if the representative of a person refuses medical intervention necessary to save the life of that person. Also, writs and expedited proceedings will be heard.

It is recommended that courts hold proceedings via videoconference.

Pending further information from the courts, it is not clear yet whether hearings scheduled before 10 April 2020 will be postponed.”<sup>1</sup>

In contrast Financial Ombudsman operating on e-platform has not ceased its activity and is open to accept any claim from the consumers. Not clear if consumers are able to get pre-appeal response from the insurers, but in case it was already received, and consumer disagrees with the insurer decision, he is able to send his claim to the Ombudsman.

## **B. Insurance Coverage**

It is too early to judge what will be the impact on loss development in different lines of insurance, but one may give rise to claims for coverage of the losses and expenses resulting from massive event cancellation, contingency business interruption, non-fulfillment of the obligations in timely manner under the professional liability contracts, bankruptcy of the debtors in the credit life, credit insurance, etc.

### **B1. Property Insurance**

Business interruption cover is usually purchased in Russia as a sub-risk within a property policy for the business. Like so many other countries the standard cover for businesses requires physical damage of the property as a trigger for the coverage. The spread of so-called Contingency BI is very limited, and as long as the property is not destroyed under the court order or public act as being infected one can hardly expect Coronavirus can cause physical damage to property and provoke BI loss.

At the same time there are certain expectations that an increase in robbery and theft can be foreseen from the private persons if forced limitation to work will cause strong deficit of available cash to buy food and other essential goods. It is known already that street and small criminal activity increased in NY by 75%, and similarly these concerns are expressed by insurers in Russia as well. So far there is no evidence or police reports that can prove the trend. Independent from the cause this exposure is fully covered in every standard property insurance wording.

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<sup>1</sup>CMS Russia | Russia strengthens measures to contain the spread of COVID-19, Newsletter 19.03/2020

## **B2. Liability Insurance**

### **B.2.1 D&O Insurance and Employer Liability Insurance**

Very unclear wording of President Executive Order to stop working operations by all commercial entities can cause substantial troubles to the top management of the legal entities.

In the President Order the employer is obliged to take many mandatory measures in case he allows or requires employees to continue their normal job in the office premises. Exception was made only to the “essential” for the enterprise type of work, and employee must obtain written evidence from the employer of this essentiality. At the same time if the employee gets infection being in the office or being on the way to-and-out of the office the employer can be claimed under the new articles in the Russian Administrative Code and even Criminal Code (up to 5 years in prison).

These days out-of-work named in the President Order as “non-working days”. Russian Labor Code doesn’t use this definition, and legal reasons to be out-of-work are limited to the sickness leave, vacation or public holidays. This is why in cases the employer insists on the work in the remote mode it can cause troubles further on and potential claim from the employee to get double salary or to compensate extra working hours.

Claims for the bankruptcy of the legal entities are prohibited for the while, so far till the end of 2020. But at the same time owner can take a decision to stop operations and close business activity, which also can cause further claims from different internal and external claimants. Clear some potential misuse of this block and fraudulent activity can be expected.

“Fortunately”, D&O Insurance and Employer Liability Insurance are very limited in Russia, and real exposure of the potential disputes/claims is hardly expected in noticeable size.

## **C. Life, Health and Loss of Work Ability**

Most of the health insurance policies provide cover for the medical services in the named clinics and hospitals. In accordance with President Order and local orders as well most of the clinics are closed for any planned and non COVID visits. This is why insureds are not able to obtain health case in accordance with the police scope. Many insurers instead of providing

physical access to the clinics offer telemedicine services, on-line consultations and similar. It is difficult now (in particular within unclear interpretation if current situation should be considered as *force majeure*) to predict increase of consumer claims not being able to get medical service, but formally in accordance with the policy wordings it is expectable.

For Credit life covers negative consequences can be expected for the policies covering personal bankruptcies and inability to pay credit. It is reported the number of this type of bankruptcies has increased by 70% in recent times. Share of policies with such cover is not clear, but as it was a standard requirement from many banks, exposure can be high.

For the general cover in life insurance policies for the death or permanent disability exposure cannot increase substantially, as most of the death cases due to COVID-2019 reported so far (47 cases in Russia) relate to people above 60 years old.

#### **D. Force majeure<sup>2</sup>**

Under Russian civil law, a legal entity is relieved from liability for failure to fulfil an obligation if such failure is caused by extraordinary and inevitable circumstances (i.e. *force majeure* circumstances).

The spread of the coronavirus and the restrictive measures authorities take to combat the pandemic may be considered as *force majeure* events. This approach with respect to agreements concluded with the Moscow Government is enshrined in an Executive Order of the Mayor of Moscow\* and, for public procurement, in a letter of the Russian Federal Anti-monopoly Service\*.

In the event of a dispute, the COVID-19 situation and the imposition of restrictive measures by the relevant authorities are universal grounds for the non-fulfilment of contractual obligations and for exemption from liability. The issue of the application of *force majeure* conditions will be decided on a case-by-case basis by a court or an arbitration tribunal, depending on the circumstances of the particular case and the terms of the contract concluded between the parties.

To this end, a number of elements will be taken into account:

- the nature of the unfulfilled obligation;

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<sup>2</sup> CMS Russia | Coronavirus (COVID-19) as force majeure, Newsletter 01.04.2020

- the time period for its fulfilment;
- how the spread of the virus and the introduction of related measures prevented the fulfilment of the obligation; and
- whether the debtor under the contract could have taken measures to fulfil the obligation despite the COVID-19 outbreak.

Many agreements also provide for a specific procedure applicable to the parties in the event of *force majeure*, and failure to comply with it will deprive the party of the right to invoke such circumstances.

In foreign trade contracts governed by Russian law, the recognition of *force majeure* circumstances will also depend on the decision of the chamber of commerce of the country of the party defaulting on obligations and referring to *force majeure* events and other factors.

As at the time of writing, the Chamber of Commerce and Industry of the Russian Federation recognizes the spread of COVID-19 as *force majeure* and issues the relevant certificates if non-fulfilment was caused by restrictions introduced in connection with the COVID-19 outbreak.