

# COVID-19

## Azerbaijan Legal Guidebook Key issues to consider

24 March 2020

# Content

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1. [Government's legal actions re COVID-19](#)..... [3](#)
2. [Key Employment Matters](#)..... [5](#)
3. [Performance of Contractual Obligations](#) ..... [8](#)
4. [Time limits in administrative and legal proceedings](#) ..... [10](#)
5. [What legal actions can we undertake remotely?](#) ..... [11](#)



# Foreword

The world has faced an unprecedented challenge from a new disease COVID-19 which has been declared by the World Health Organization as a pandemic.

Businesses, Governments, employees, and general population have been facing enormous issues that have not been seen before. As a result, a myriad of legal issues surrounding the actual and potential impact of the disease has immediately started to arise posing challenges for the legal profession, both for inhouse and external law professionals.

We are continuing to closely monitor the COVID-19 situation in the country and, based on advice from Government and health authorities, taking all required action to protect the health and wellbeing of our people, clients and the communities. All PwC Azerbaijan's teams, including PwC Legal, are operating as normal, though we do encourage our staff to work from home to prevent the spread of the virus.

From the very first days of the outbreak, PwC Legal have mobilized all our resources to support our clients in these difficult times. With this goal in mind, we have prepared this guidebook which can be used by a wide range of professionals: CEOs, CFOs, inhouse legal counsels, Human Resources and others. In this guidebook we offer practical tips on what the companies can do now to prepare for the impacts of the virus on their operations, including potential workforce issues, dispute with fulfilling contractual obligations, and others issues. We will do our best to keep updating the guidebook to reflect the rapidly changing situation.

The circumstances and challenges are evolving every day so you should consult with your lawyers before taking any action. The guidance is not a substitute for professional advice and must be not relied upon for making any decision. Please seek professional advice from your advisors.

As we always said, we are all in this together. We, the legal professionals of Azerbaijan have the obligation of ensuring the safety of our people, operations and the society.

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# Government's legal actions re COVID-19

## Is COVID-19 an Epidemic?

- On 11 March 2020 the World Health Organization declared COVID-19 to be pandemic.
- As of 22 March 2020, COVID-19 is not declared as epidemic in Azerbaijan, nor has the state of emergency been imposed.

## What are the key restrictions applied by the Government in Azerbaijan?

- An “Action Plan on Prevention of the Spread of New Coronavirus Disease in the Republic of Azerbaijan” was approved on January 30, 2020 by an order of the Cabinet of Ministers.
- All educational processes in schools have been suspended until 18 April 2020.
- All international flights from Baku and other cities of the country have stopped;
- A number of measures have been introduced that are applicable from 00:00 on 14 March 2020, including the following:
  - All mass events, including cultural and sports, are postponed;
  - Solemn events in cafes and restaurants are prohibited;
  - Cinemas, museums and theaters, entertainment centers, spas, gyms have been closed;
  - Mass celebrations (including weddings) and events are prohibited;
- A special quarantine regime has been declared from 00:00 on 24 March 2020 until 00:00 on 20 April 2020, that envisages the following restrictions:
  - Individuals above the age of 65 are banned from leaving home. Lonely persons of this age will receive social services in accordance with the law;
  - Entry and exit to/from Baku, Sumgayit and Absheron is limited. This restriction doesn't apply to special-purpose vehicles, including ambulances, emergency and rescue vehicles, as well as cargo transportation vehicles;
  - Passenger transportation between regions and cities is suspended;
  - Azerbaijani citizens located abroad will be evacuated with the mandatory placement under quarantine for the period of 14-21 days;
  - Gathering in groups of more than 10 people in public places is banned;
  - Citizens are advised to keep a distance of two meters;
  - Catering enterprises can only serve from 12:00 to 15:00; home delivery is available without time limits;
  - the operation of all shopping centers and “Malls” is suspended (with the exception of supermarkets, grocery stores and pharmacies located there);

## **Is International travel restricted in Azerbaijan?**

- Entry into Azerbaijan has been restricted from all foreign countries. Only Azerbaijani citizens, their family members and specific groups of people may enter Azerbaijan;

## **What sanctions apply for breach of quarantine, or anti-epidemics, sanitary and hygiene rules?**

- From 19 March 2020, an administrative fine ranging from AZN 100 to 200 shall be imposed on individuals, and from AZN 1,500 to 2,000 on company officers, and from AZN 2,000 to 5,000 on legal entities for violating anti-epidemic, sanitary, hygiene and quarantine regimes. If the violation causes spread of diseases or creates a danger of spread of diseases, it will be subject to a criminal liability of a fine ranging between AZN 2,500 and 5,000, or up to 3 year's limitation of freedom or imprisonment.

## **Is there a specific plan for stimulating economy?**

- On March 19, 2020 the President of the Republic of Azerbaijan decreed a number of measures to reduce the negative impact of the coronavirus pandemic as well as subsequent fluctuations in the global energy and stock markets on the economy, macroeconomic stability, employment issues and businesses in the country. An amount of AZN 1 billion has been allocated the State budget to the Cabinet of Ministers for financing the measures on reducing the negative impact caused by COVID-19. 4 working groups have been created, as instructed by the President, to prepare proposals for provision of state aid to the businesses, employees and low income population that may be affected by the pandemic in the country.



# Key Employment Matters

## What are Employers' Key Health & Safety Obligations?

Under the Labour Code, employees have the right to work in safe and healthy conditions and employers are obliged to provide such conditions. This implies taking reasonable steps to eliminate or minimise hazards and risks to health and safety in the workplace.

It is advisable that the health and safety measures adopted by employers be in line with the action plan and recommendations adopted by the **Operational Headquarters under the Cabinet of Ministers**, including the following:

- Prefer to hold meetings online, i.e. only via telephone, mobile and internet communication
- Implement “remote working” policy to the extent possible
- To prohibit employees to come to work if they or their family members have flu, colds, fatigue and other such symptoms
- To stop all business trips, except where there is a special necessity.

## Is it a temporary disability if an Employee is infected with COVID-19?

Yes, the employee that is infected with Covid-19 is to be deemed as having temporary disability under the Labour Code.

- During the period of temporary disability, employee's workplace and position must be preserved and he/she is entitled to a special allowance on the basis of a relevant medical certificate. For the first 14 days of disability the allowance is paid by the employer. If the disability lasts for more than 14 days, for the part of term exceeding the first 14 days, the allowance is payable by the State Social Protection Fund.
- In case the temporary disability exceeds continuous 6 months, the employer has the right to terminate an employment agreement (please see more details below).
- Therefore, in relation to an employee that is infected with COVID-19:
  1. The employee's workplace and position is preserved.
  2. A medical certificate shall be issued by a licensed clinic.
  3. The employer must pay the employee a temporary disability allowance for the first 14 days of disability term equalling 60%, 80% and 100% of employees' salary depending on his/her seniority (i.e., general work experience).

## May an Employee refuse to perform his/her duties during COVID-19, because he/she is concerned to become infected?

Under the Labour Code, in case the employer does not provide safe working conditions an employee may refuse to perform his/her tasks if it creates a risk for his/her life and health. Employee may not be held liable for such refusal and the case should be resolved as an individual labour dispute.

## **May an Employer terminate an employment contract on the grounds related to COVID-19?**

- Amid COVID-19 many companies are reducing working hours or are suspending operations that in turn creates the need to reduce the workforce.
- If cases of change to the normal work conditions that lead to suspension of company's operations with no fault of the employer, employees may be sent *en masse* on paid or unpaid leave on terms and conditions provided by employment contract or collective agreements. Maximum duration of the unpaid leave may not be longer than double employee's main leave (21 or 30 days) entitlement. This option has been exercised by many state bodies in Azerbaijan and their employees are sent on a one-month paid vacation until April 29,2020.
- Alternatively, an employer may choose to change the working conditions of the employees (e.g. reducing working hours and salary proportionally). In this case, employees should be notified on upcoming changes at least one month in advance. In the event the employee refuses to agree on changes in the employment contract, the employer should do their best to transfer him/her to another position. If the employee disagrees with such transfer, the employer is entitled to terminate the employment contract.
- Termination of the employment contract is generally viewed as the last resort, and therefore the employers are advised to take all measures not to terminate the agreements.
- For those individuals who have been infected by the virus, the ground for termination may be "long term working disability", if the term of such disability exceeds continuous 6 months. (see the respective section above)



# Performance of Contractual Obligations

## COVID-19: Force Majeure?

- COVID-19 or circumstances arising from it, may be regarded as a Force Majeure (an irresistible force) and thus exempt the party from liability stemming from inability to perform a contractual obligation.
- For an event to be a Force Majeure, the following key preconditions must be met:
  - **The event must actually restrict an ability to perform the contractual obligations** – notwithstanding the fact that COVID-19 is a large-scale event, a party must prove that performing one's obligations under a particular contract is impossible. A direct link between failure to perform the obligations and Force Majeure event must be proved.
  - **The event must be unforeseen and must occur beyond a party's control** - by its very nature, COVID-19 is an unforeseen event and has occurred beyond parties' control. Though in each case, it is necessary to assess whether the circumstances directly impeding the performance of the obligation have occurred beyond a party's control.

## What are the legal consequences for the party if COVID-19 or circumstances arising from it are regarded as Force Majeure?

### (1) **Performance of obligations is impossible**

If performance of obligations is not possible other than due to circumstances falling under the control of either party, an obligor may claim such an obligation be terminated.

### (2) **Change of circumstances**

If the nature of a contract suggest otherwise, or unless otherwise provided for in the contract, change of circumstances to a substantial extent may serve the basis to change or rescind the contract.

## **May a party indicate COVID-19 as an excuse for the failure to perform obligations when a contract does not provide for the Force Majeure clause?**

- Force Majeure clauses in a contract make it easier to regulate the relations between the parties during the Force Majeure event.
- In this respect, specific clauses relating to Force Majeure must be analysed, including but not limited to - what is the time-limit to notify the counterparty ? what are consequences of non-compliance with the notification procedure ? what actions should a party take to mitigate potential damage caused ? should a party seek alternative means to perform its obligation, etc.
- In cases where Force Majeure is not provided for by a contract, a party may still rely on the provisions of the Civil Code of the Republic of Azerbaijan and request exemption from the liability. According to the general rule, a person shall only be liable for failure to perform an obligation if this is caused by his/her fault. Thus, if a party proves that the failure to perform the obligation is caused not by his/her fault but by an independent and unforeseen event, (s)he must not be liable for damages, penalties or other liabilities.

## **What impact can COVID-19 have on travel and tourism?**

- Lots of countries including Azerbaijan, have imposed restrictions on international flights. In order to avoid the widespread prevalence of COVID-19, further recommendations were made to refrain from traveling to certain countries. The Azerbaijani legislation permits both the tourist and the travel organizer to terminate the contract in the event of Force Majeure, which, subject to specific circumstances may exempt the tourist from paying a service or termination fee.

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## How can the existence of Force Majeure be confirmed?

- Force Majeure can be confirmed by different types of evidence, such as statutory acts made by state authorities, certificates issued by administrative bodies, media reports, etc.

## Key recommended steps an in-house counsel to undertake during Covid - 19 in relation to contracts

1. **Identify the contracts that can be affected** by the COVID-19 pandemic and the obligations that cannot be normally performed.
2. **Analyze the clauses that reference force majeure**, and clauses referring to assuming the risk for such events.
3. **Gather required documents** to confirm force majeure event.
4. **Notify counterparty** of the event as soon as possible. Keep in mind that there may be specific deadlines in the contracts to do so. Keep close track of these deadlines.
5. **Renegotiate** contractual clauses to avoid litigation.
6. **Keep records/evidence** of situations created to prepare for any potential disputes.
7. **Consider measures to mitigate** a potential damage resulting from COVID-19 and alternative ways to fulfill obligations.



# Time limits in administrative and legal proceedings

- The issue of limitation periods or time limits arises when a person intends to file a claim to the court or when a person is involved in administrative or legal proceedings. Failure to meet the statutory time frames may extinguish person's right to make a claim or to take certain procedural actions.

## Is it possible to suspend running of a statutory limitation period?

- Under the Civil Code, the limitation period must be suspended if filing a claim is prevented by an extraordinary and unavoidable event. If, subject to certain preconditions, the event arising out of COVID-19 is deemed to be Force Majeure, the running of limitation period will be suspended.

## Is it possible to restore a term in administrative proceedings?

- A term established by law or by an administrative authority shall be restored, if it is elapsed because of the events beyond a person's control (e.g. force majeure, illness, other excusable cause). If, subject to certain preconditions, the event arising out of COVID-19 is deemed to be force majeure, an interested party may request the administrative authority to restore the elapsed term.
- A person shall apply in writing to the administrative body for restoring elapsed term within 10 calendar days from eliminating the reasons of the act of elapsing. The appropriate documents and materials evidencing existence of the excusable cause for the laches must be attached to the application. The administrative body shall review and decide during 5 calendar days.

## Is it possible to extend or restore a procedural time limit?

- A procedural time limit can be established by law or by the court.
- The court may extend the time limit set by it on its own initiative or at the reasonable request of the party. Further, the court may restore the time limit prescribed by law for the performance of a certain procedural action, if it finds that the procedural action was not performed due to an excusable cause. The circumstances such as illness or other extraordinary events, which prevent the party from performing a procedural action shall be considered as an excusable cause.



# What legal actions can we undertake remotely?

## Court Case Registration Service

An application/lawsuit/complaint can be filed to the court electronically via the following website - [www.e-mehkeme.gov.az](http://www.e-mehkeme.gov.az) A person may use an e-signature to submit the documents.

## Online Services of the Ministry of Taxes

- Remote services of the Ministry of Taxes can be accessed through the website <https://www.e-taxes.gov.az>. Remote services include, among others:
  - Registration of locally invested commercial legal entities - services related to registration of legal entities are available for nationals and local legal entities after getting e-signature (ASAN signature).
  - Registration of individual entrepreneurs - services related to registration of individual entrepreneurs are available for national after getting e-signature (ASAN signature).
  - Application for various types of registration/deregistration - including, but not limited to: obtaining certificate-duplicates for opening of local bank accounts, suspension of activity of the legal entity, change of registration information of the legal entity, registration/de-registration of cash register, restoration/suspension of the object's activity, registration/de-registration for VAT purpose, application for VAT exemption certificate.

## Electronic Services of the Ministry of Labour and Social Protection

- Remote services may be accessed via the website – <https://www.e-gov.az> or <https://e-sosial.az> and include among others :
  - Registration and de-registration of employment contracts and amendments to them
  - Application for social security number/card for employees
  - Issue of employment letters for employees
  - Mandatory announcement of vacancies
  - Entering into agreement on mandatory insurance of employees against accidents at workplaces and professional diseases and making amendment to the agreements (via the website <https://isb.az>)



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COVID-19 may affect your business  
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