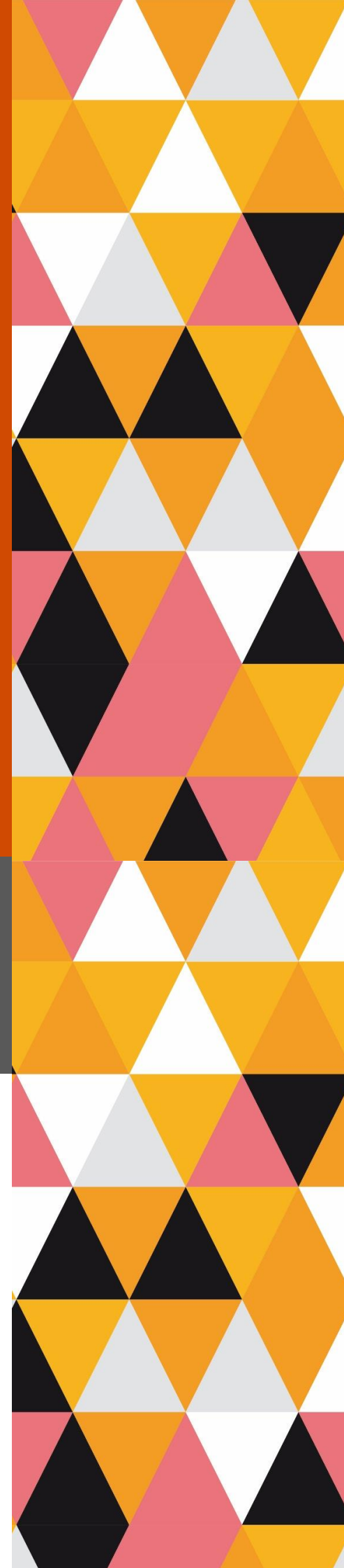


COVID-19

Georgia Legal Guidebook
Key issues to consider

22 March 2020



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Government's legal actions re COVID-19

What are the restrictions effective in Georgia during the State of Emergency?

- On 21 March 2020 the President of Georgia issued a Decree on the emergency measures that will last until 21 April 2020. The Parliament of Georgia approved the Decree on the same day. According to the Decree, special authorities are granted to the Government of Georgia, which will be further specified in the relevant Government orders.
- As of today, the following main restrictions apply under the Decree:

Breach of Quarantine or Self-Isolation rules

- For violation of quarantine or self-isolation requirements, a person will be brought involuntarily to the relevant institution designated by the Government.

Traveling and Transportation

- International air, land and sea travel has been suspended. The exceptions will be provided by the order of the Government.
- The Government may regulate carriage of passengers and cargo transportation within the territory of Georgia in a manner different from the current legislation.

Public Services

- The Government may stipulate rules on public services and administrative proceedings different from the current legislation of Georgia.

Right of ownership

- The Government may restrict the ownership rights of individuals/legal entities and, when necessary, use their property for medical, isolation and quarantine purposes.

Assemblies

- Any kind of assembly, manifestation or gathering of people is restricted. The exceptions from this rule shall be provided by the order of the Government.

Restrictions on business activities

- The Government may restrict companies to carry out certain activities.

State Budget

- The Government may suspend the spending of appropriations within the state budget, as well as within the budget of the autonomous republics and the budgets of municipalities according to budget classification codes. Further, the Government may suspend or restrict public procurements according to CPV codes.

Sanctions

- Breach of the Decree requirements is subject to fine in the amount of 3 000 GEL for individuals and 15 000 GEL for the legal entities.

Is there a specific plan for stimulating economy?

- The Government of Georgia has introduced a specific plan to stimulate economy, which includes inter alia:
 - Restructuring of business loans;
 - Deferring payment of property tax and income tax for companies operating in tourism sector;
 - Doubling VAT refunds;
 - Creating state co-financing program to support hotels and repay their loan interests.
- The plan is still work in progress, the final version of which will be published by the Government of Georgia in the form of relevant acts.

Co-financing program for entrepreneurs operating in small, medium and family hotel industry

- On 19 March 2020, the Government of Georgia adopted a state co-financing program to support the entrepreneurs operating in small, medium and family hotel industry who due to COVID-19 cannot repay interests on loans issued by commercial banks.
- The program implies co-financing of the accrued annual loan interest (for the loans existed as of 1 March 2020 and during the following 6 months) by the state.
- The conditions of co-financing are: 80% - for loans issued in national currency and 70% - for loans issued in foreign currency (USD, EUR).
- Entrepreneurs operating in small, medium and family hotel industry may benefit from the co-financing program if they meet all the following conditions:
 - The loan approved by a commercial bank does not exceed 1 000 000 GEL. As for loans approved in foreign currency, the limits are: (i) 300 000 USD or (ii) 250 000 EUR.
 - The loan issued by a commercial bank shall be prior to 1 March 2020.
 - The purpose of the loan agreement shall be construction, expansion, equipping, repair or reconstruction of hotels.
 - In case of refinanced loans, only the loans issued for construction, expansion, equipping, repair or reconstruction of hotels shall be refinanced.

- Prior to 1 March 2020, commercial banks should not have classified loans as problematic.
- Additional condition for the beneficiary of the access to finance component involved in the state program “Produce in Georgia” is that the 24-months co-financing period shall have expired.



Key Employment Matters

What are Employers' Key Health & Safety Obligations?

- **Under the Labour Code of Georgia, employers have duty to ensure health and safety of the employees.** 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 Government of Georgia, including the following:
 - Not to request from the employees who are in self-isolation to physically come to work;
 - Not to allow the employees who have travelled outside the country at the workplace or have symptoms of the virus;
 - Implement "remote working" policy.
- According to the Decree of the President dated 21 March 2020 any kind of assembly or gathering of people is restricted. The exceptions from this rule shall be provided by the order of the Government. Further, the Government may restrict or oblige companies to carry out certain activities.

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.

- Under the Labour Code of Georgia, temporary disability that does not exceed 40 calendar days or 60 days within 6-month period, is a ground for suspension of employment relations. **The term for suspension of the employment contract must not be included in the annual leave.**
- In case the temporary disability exceeds continuous 40 days or 60 days within a 6 months period, an employer may be entitled to terminate employment agreement (please see more in detail below).
- During the temporary disability, **an employee is entitled to receive monetary support** from an employee that usually equals to the monthly salary. The basis for granting the monetary support is the relevant medical certificate.
- Therefore, in relation to an employee that is infected with COVID-19:
 1. The employment contract is suspended on grounds of temporary disability.
 2. Medical certificate shall be issued.
 3. The employer must pay the employee monetary support for the temporary disability equalling employees' monthly salary.

Does Quarantine or Self-isolation amount to temporary disability?

Yes, under the Georgian law a person under quarantine or self-isolation is temporarily disabled.

- Self-isolation is one of the measures of quarantine, which is undergone in non-medical environment, including in house.
- Both quarantine and self-isolation are also grounds for suspension of employment relations.
- The person who is in quarantine in the medical institution is given **temporary disability certificate**; in case of quarantine (including self-isolation) that undergoes in non-medical environment, a legal document that equals to medical certificate is issued by the Ministry of Internally Displaced persons from Occupied Territories, Labour, Health and Social Affairs of Georgia.
- **The period in quarantine or self-isolation shall not be treated as annual leave.**

Is an employer under duty to pay a salary to a person in quarantine or self-isolation?

The period under quarantine or self-isolation is deemed as temporary disability during which **an employee should receive monetary support in lieu of salary**. Such support usually equals to salary.

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

- Under the labour code, an employee may refuse to perform his/her tasks if this would create apparent risk to his or third party's health due to workplace being non-compliant with health and safety requirements.
- Therefore, an employee may refuse to come to work or perform employment duties if the duties to be performed creates risks to be infected and the employer is not undertaking appropriate preventive measures. Any such refusal of an employee shall be assessed on case-by-case basis.

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

- Due to COVID-19 many companies are reducing working hours or are suspending operations that in turn creates need to reduce the workforce.
- The Labour Code exhaustively lists the grounds for suspension of the employment contract. Epidemic or Pandemic is not within the listed grounds and therefore an employer may not suspend relations with reference to epidemic/pandemic.
- 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. **In this respect it is advisable to first talk to employees, review the employment arrangements, working hours, compensation, offer employees to use their paid and unpaid leave, etc.**
- In the event an employee refuses to agree on changes in the employment contract, or take paid or unpaid leave, an employer may have right to terminate the employment

agreement. In the context of COVID-19, the termination ground for an employment contract may be “economic circumstances, technological or organization changes” or “objective circumstances” as provided under the labour code. The employers shall assess on case-by-case which of these grounds are applicable to their specific case.

- For those individuals who have the virus or are in the quarantine (including self-isolation), the ground for termination may be “long term working disability”, if the term of such disability exceeds continuous 40 days, or 60 days within a 6 months period and if the employee has already used his/her annual leave in full.



Employees' Personal Data Protection

What kind of personal data can be processed by an employer in the context of Covid-19?

- Due to the labour safety obligations, an employer must take all reasonable measures to prevent the spread of COVID-19 at the workplace. Therefore, for this purpose and in certain cases an employer may also process those personal data about an employee, which in ordinary circumstances would not be permissible under data protection requirements.
- Under the Law on Personal Data Processing ("PDP Law"), data related to individual's health is a special category data. With respect to such personal data, the PDP Law sets higher standard of protection and provides for the exhaustive list of the grounds for its processing. One of the grounds to process such data is for health protection purposes. In such case data processing is permitted without an employee's consent.
- Therefore, an employer may process information about the employee's recent travel history and presence of symptoms, in case the employee has symptoms – with whom and when he/she had contact at the workplace etc.
- **An employer must not collect or process employee's personal data that is not objectively related to the prevention of the spread of COVID-19.**

What security measures must an employer undertake to ensure the security of personal data?

- With respect to COVID-19, personal data from an employee shall be obtained only by the authorised person in the company (e.g. security officer).
- The access to employee's personal data must be granted only to those individuals who per their official authority need such information in order to ensure the safety of the staff and prevention of the spread of the virus.
- If one of the employees' test is positive for COVID-19, it may be assumed that the employer is authorized to notify other employees about the fact, if this is necessary for the timely identification of other employees who may had contact with the infected colleague.
- An employer shall not disclose the employee's personal data to third parties, other than to the relevant state authorities.



Performance of Contractual Obligations

COVID-19: Force Majeure event?

- COVID-19 or circumstances arising from it, may be regarded as Force Majeure and thus exempt a party from liability due to failure to perform a contractual obligation.
- An event to be a Force Majeure, the following key preconditions must be met:
 - **The event must directly cause non-performance of 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 unusual and must occur beyond a party's control** - by its very nature, COVID-19 is an unusual 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.
 - **It should be reasonably impossible to foresee and avoid the event.**

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

(1) **Performance obligations is impossible, but there is NO frustration of purpose**

In such cases, the contract might be regarded as "suspended". During the Force Majeure period, a party is temporarily exempted from performance and is not liable for breach. However, once the Force Majeure ends, the party will be responsible for performing the obligation.

(2) **Performance of obligations is impossible and there IS a frustration of purpose**

Sometimes a failure to perform obligations on time results in frustration of purpose and in such cases maintaining contractual relations may make little or no sense. If there is no doubt that due to Force Majeure event, performance of an obligation is not possible at all, i.e. during the force majeure or afterwards, then the parties may repudiate the contract. Since there is no fault for repudiation, a party shall not be liable for damages.

(3) **Hardship**

Hardship means that due to some events a party's performance is made extremely difficult. In such cases, the party may use the right prescribed by law and request **to adapt/modify the contract to the changed circumstances**. If modification is impossible, or if the other party disagrees, then a party may repudiate the contract.

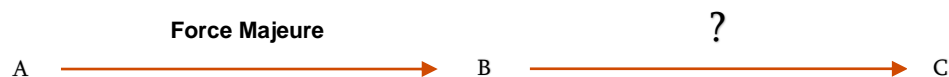
One shall keep in mind that the request to adapt/modify the contract to the changed circumstances shall satisfy a strict standard, in particular the party must prove that: (i) after signing the contract, circumstances have evidently changed, (ii) which make it extremely difficult to perform obligations, (iii) circumstances have occurred beyond the party's control (iv) it was not possible to foresee and (v) the changed circumstances have caused difficulties/hardship to perform obligations.

COVID-19 may cause construction materials or labour costs to increase, it will be necessary to change the route of transport of cargo/materials or labour inflow from another country, etc. In such cases, performance of obligations may be extremely difficult and if all preconditions indicated above are met, party will have the right to request to adapt/modify the contract according to the changed circumstances.

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 the 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 Georgia and request exemption from liability. According to the general rule, a person shall only be liable for failure to perform 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 unavoidable event, (s)he must not be liable for damages, penalties or other liabilities.

What happens when a party fails to deliver the agreed goods to the creditor because the party's supplier in turn refers to Force Majeure for non-delivery of the same goods to the party?



- Force Majeure for party A will not automatically extend to party B and will not relieve him/her of his/her contractual obligation to C. It must be assessed separately whether B's failure to deliver the item to C is caused by Force Majeure. For this purpose, further analysis must be undertaken as to whether B could have received the goods from another supplier, other than A.

What impact can COVID-19 have on tourism agreements?

- Due to COVID-19 lots of countries including Georgia, 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. Georgian 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 the service fee.

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.
- The Georgian Chamber of Commerce & Industry (“GCCCI”) may issue a certificate confirming the existence of Force Majeure in the context of a specific contract. However, it should be noted, that the GCCCI only confirms the existence of Force Majeure and does not provide opinion on whether a liability shall be exempted under a particular contract. The matters of liability are subject to court's assessment.

The information on the GCCCI and its services is available at www.gcci.ge.

Key recommended steps 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. 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** the 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 of Georgia, the running of 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 15 calendar days from eliminating force majeure. The appropriate documents and materials evidencing existence of the excusable cause for the laches must be attached to the application.

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

- A procedural time limit can be established by law or by the court (e.g. if an appeal does not comply with the requirements provided by law, the court will give a party appropriate time to correct the deficiency).
- 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.
- The court may not extend or restore the time limit when it is expressly prohibited by law. For example, **the time limits set by law for filing an appeal, cassation claim, and a private complaint may not be extended or restored.**



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.ecourt.ge. A person may use an e-signature to submit the documents. In the absence of an electronic signature, a printed application/complaint must be signed, scanned and uploaded in the system.

Online Services of the National Agency of Public Registry

- Remote Public Registry services can be accessed through the website - <https://napr.gov.ge/p/1911>. Remote services include:
 - Registry of Entrepreneurs and Non-entrepreneurial (Non-commercial) Legal Entities - services related to preparation of extracts and technical error correction are available to any interested person. Other services (e.g. services related to registration of a new entity, entity reorganization, convening a shareholder meeting electronically, registration of a pledge on shares, etc.) are only available to a person registered on My.gov.ge.
 - Registry of Economic Activities - services related to registration of economic activities, preparation of an extract, requests of the information from the registry, etc. These services are only available to a person registered on My.gov.ge.
 - Real Estate Registry - the service includes updating a real estate extract and correcting a technical error.
 - Registry of Public-law Restrictions, Registry of Tax Liens/Mortgages - services related to preparation of a public-law restriction certificate, information requests regarding public-law restrictions or tax liens/mortgages.
- The National Agency of Public Registry delegates certain services to its authorized persons (the list of the authorised persons is available on this website - <https://napr.gov.ge/p/716>). The authorized persons are entitled to submit an application and relevant documents on behalf of an interested person through the Agency's electronic programs. Further, they may issue an extract/decision made by the Agency.

Electronic Services of the National Bureau of Enforcement

- A person may use the website - my.gov.ge to:
 - Submit enforcement notes (enforcement process will only begin after the original document has been submitted), any application, requests for a statement of facts, requests for an extract from the debtors' registry.
 - Submit additional documents on current simplified cases.
 - Receive responses regarding submitted applications and requests on information.

- The website nbof.reestri.gov.ge provides information on the course of enforcement proceedings.
- A person may apply for an online consultation at <http://nbe.gov.ge/livehelp/>.
- The services for confirmation of facts by National Bureau of Enforcement are suspended.



For further discussion on how
COVID-19 may affect your business
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