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BEYOND COVID-19: UKRAINE LEGAL GUIDE

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Beyond COVID-19: Ukraine Legal Guide

As the world grapples with the COVID-19 pandemic and its profound impact, companies are looking for ways to safeguard their people and the long-term future of their businesses.

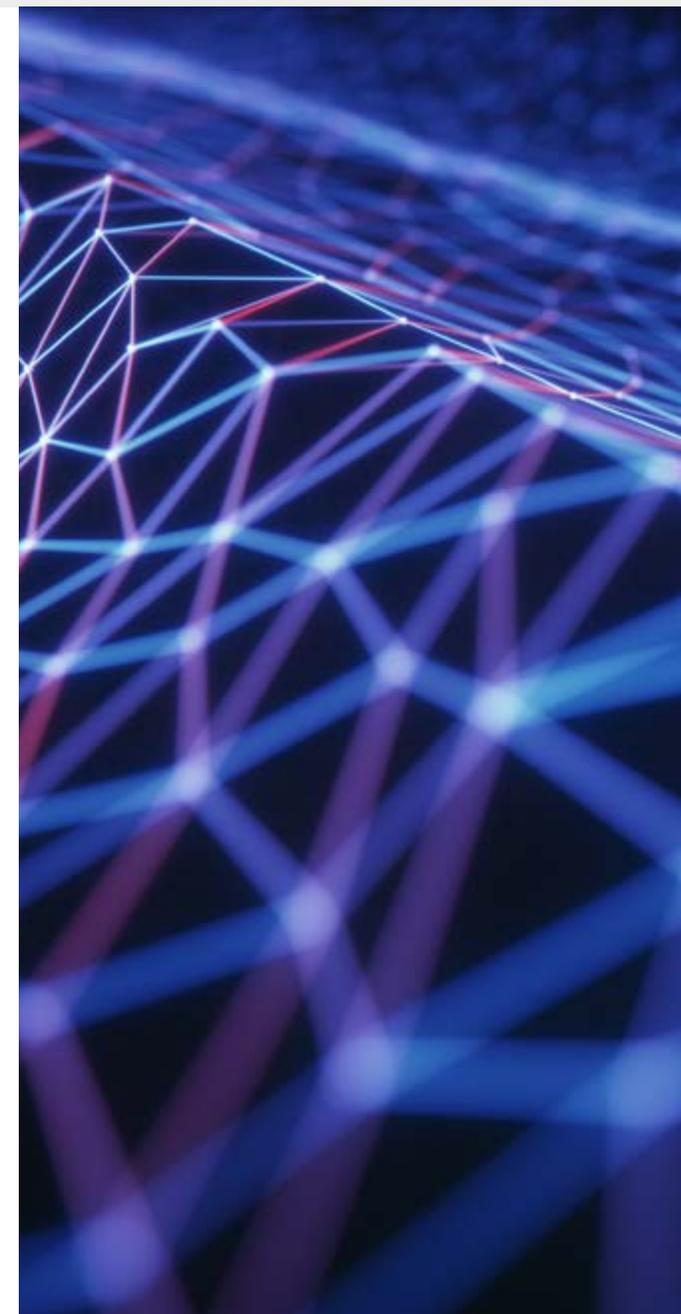
The Baker McKenzie team is pleased to provide you with regular updates in this legal guide on common questions that business will be considering in these unprecedented and uncertain times. We will help you navigate through these critical challenges and prepare for a changing world.

The comments above do not constitute legal or other advice and should not be regarded as a substitute for specific advice in individual cases.



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The background features a complex network of glowing blue and red lines and nodes, creating a sense of digital connectivity and data flow. The lines are of varying thickness and opacity, with some appearing as bright, solid beams and others as faint, ghostly connections. The nodes are small, bright points of light that serve as junctions for the network. The overall color palette is dominated by deep blues and vibrant reds, set against a dark, almost black background.

EMPLOYEES AND BUSINESSES



Employment

Status: 22 June 2020

Is it possible to suspend employment agreements and/or reduce the employees' working hours? If so, what procedure must be followed?

- No, it is not possible to suspend employment agreements in Ukraine. However if the operation is being temporary shut down, the employees may be sent on labor idle, as long as the employer will not have the required organizational or technical conditions to perform any work. The labor idle will become effective from the date indicated in the internal order issued by the Director of the Ukrainian entity.
- It is possible to reduce employee's working hours, however this will be considered as change in substantial terms of employment of the employees, which requires 2-months prior notice to the employees. The reduction of work hours will become effective upon expiration of the 2-months' notice, unless the employees sign amendments to their employment agreements indicating an earlier date.

Can employees refuse to come to work?

- Generally, no. Employees can refuse to come to work due to illness of the employee or his/her family member confirmed by the sick leave paper, extract from the medical card and other evidence. Employees subject to mandatory observation or self-isolation also can refuse to come to work.
- The employer may adopt a flexible policy allowing employees not to come to work and work from home if feeling unwell or if the employee's place of work is in close proximity to where the infected employee was located (i.e., same open space office). Moreover, the Ministry of Health of Ukraine generally recommends that the employers to provide remote working arrangements to the employees.

Can employees refuse to attend meetings or to travel?

- Generally, no. Prohibition on travel within Ukraine by public transport have been lifted. However, easing of restrictions on public transport routes between cities is decided on a regional level depending on the current epidemic situation in each region. Moreover, starting from 15 June 2020, international air passenger transportation is permitted.
- Public events with more than 10 participants (with some exceptions) are prohibited. Business meetings with fewer participants are permissible. Therefore, we recommend the employers to hold meetings by means of video-conferences, if possible, and to limit in-person meetings to as few participants as possible.

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Can the employer suspend employees from work?

- The employer may suspend the employee from work under certain circumstances, in particular:
 - i the employee has a confirmed disease qualified as “especially dangerous” or “dangerous” (the current list of such diseases does expressly include COVID-19); or
 - ii the employee provides public service and has contacted patients with infectious diseases (including COVID-19), and he/she may not be temporary transferred to another position.
- As of 11 March 2020, the Kyiv City authorities have imposed some restrictions to prevent the spread of COVID-19, in particular, the employer must initiate suspension from work of the employee having symptoms of the disease. Also, the Ministry of Health of Ukraine has published general recommendations, according to which the employer must not admit to work the employee with symptoms of the virus infection.
- Moreover, employees who have been in contact with a confirmed case or have visited a high risk area are subject to self-isolation (at home) or observation in specialized institutions. For such purpose, the employer should not admit such employees to work.

If employees are suspended from work or if an operation is being shut down, do the employees still need to be paid?

- If the employee is suspended from work due to confirmed infectious disease, such employee will be entitled to a sick pay. The employee is also entitled to a sick pay for the period of the self-isolation.
- If the operation is being temporary shut down, the employees may be sent on labor idle, as long as the employer will not have the required organizational or technical conditions to perform any work. In such case, the employee is entitled to receive at least two thirds of his/her monthly salary.

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Employment

Status: 22 June 2020

When is the employer forced to shut down its operations?

- Due to the quarantine, some business were completely prohibited to operate (e.g. restaurants, shopping and entertainment centers, fitness centers, etc.) Currently, the operation of most businesses are allowed in Ukraine under certain conditions (mask-wearing, enhanced sanitizing, augmented distance between customers, etc.). However, regional authorities may strengthen/easy the restrictions depending on the current epidemic situation in each region.
- According to the decision of the Permanent Commission on Technogenic Environmental Safety and Emergencies of the Kyiv City State Administration dated 11 April 2020, the companies having employees with COVID-19 are subject to anti-epidemic restrictive measures for the period of 14 calendar days. No additional official clarifications were provided in this regard, however, arguably, the companies operating in Kyiv should send home all employees who were in contact with the infected person and to allow them to return to work for at least 14 days.

Does the employer have the obligation to report infections occurring in the business to the health authorities?

- There is no blanket mandatory reporting requirement for employers in Ukraine.
- However, in Kyiv, employers are required to immediately report cases of their employees' respiratory infection signs (even if not yet confirmed as COVID-19) to the healthcare institution in charge of the area.

Can the employer require an employee to see a doctor?

- Generally, only employees providing public service and whose activities can lead to the spread of infectious diseases may be subject to additional medical check if the epidemic situation aggravates.
- Persons who have been in contact with patients with particularly dangerous and dangerous infectious diseases or carriers of these diseases are subject to mandatory preventive medical examinations and further medical supervision.
- According to the recommendations of the Ministry for Development of Economy, Trade and Agriculture of Ukraine and the State Labor Service of Ukraine, an employee with symptoms of the disease must be immediately referred to medical examination (in the state healthcare system).

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Are there mandatory requirements in relation to the workplace?

- There are only general recommendations with regard to ensuring workplace safety. However, it is mandatory for companies operating in Kyiv.
- Employers are advised (i) not to admit to work any employee with symptoms of a respiratory infection, (ii) to conduct daily temperature screenings of all employees and to require masks or respirators on every employee or visitor, (iii) to place posters that encourage hand hygiene at the entrance to the workplace and in other workplace areas, (iv) to ensure availability of antiseptics for visitors at the entrance, (v) to ensure wet cleaning of premises (including workplaces, door handles, kitchen counters, etc.), using cleaning and disinfecting materials and ventilating premises every 2 hours, (vi) to ensure availability of hygiene products (soap, antiseptic, etc.) for employees and visitors (vii) to organize a centralized collection of used personal protective equipment and disposable paper towels and (viii) minimize the number of employees who are in contact with visitors.
- Moreover, the Kyiv City authorities imposed certain obligations on businesses that cannot operate remotely: (i) providing entrance sanitary control for visitors (if their admittance cannot be stopped) by visual inspection and temperature screening (if necessary), (ii) providing all employees with personal protective equipment (medical masks and disposable gloves), (iii) organizing a centralized collection of used personal protective equipment and disposable paper towels; (iv) conducting daily temperature screenings of all employees before and after working shifts, (v) not permitting people with signs of acute respiratory infectious disease, as well as employees subject to self-isolation to come to work, (vi) disinfecting workplaces and premises every 3 hours, disinfecting contact surfaces every 2 hours (vii) ensuring availability of hygiene products (soap, disposable towels, wipes, etc.); (viii) ensuring availability of antiseptics for visitors at the entrance and not admitting visitors without medical mask or respirators, etc.

Can the employer force the employees to take a vacation?

- Employer cannot force employees to take a vacation. Employees' written application is required to evidence their will to take vacation.
- Employer can only discuss with the employees the option of taking vacation for the period of quarantine.

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Are there any special benefits/ leave entitlement mandated during this period?

- For the quarantine period terminated employees are entitled to unemployment payments from the first day of their registration as unemployed (generally, from the eighth day). Unemployment payments are made by the State Social Unemployment Insurance Fund of Ukraine (the **Fund**).
- If the employees' working time has been reduced due to suspension of the company's work in response to quarantine measures, the employees are entitled to partial unemployment payments. Partial unemployment payments are made by the employer at the expense of the Fund from the first day of the working time reduction. However, it can be applied only to small and medium-sized companies, as well as to self-employed persons. If an average number of the employees is up to 50 individuals and the annual revenue of the Ukrainian company is up to 10 million euro equivalent, the company will qualify as small. If an average number of the employees is up to 250 and the annual revenue is up to 50 million euro equivalent, your company will qualify as medium.
- Employees are entitled to sick leave allowance for the period of their stay in specialized healthcare facilities (in mandatory observation facility), as well as for the period of self-isolation at home.

What are the penalties/ sanctions for violating quarantine restrictions?

- Violation of any of the quarantine restrictions (e.g., not wearing a mask in a public place) may trigger imposition of an administrative fine on the person amounting up to UAH 34,000 (or USD 1,271).
- Violation of sanitary rules and norms on the prevention of infectious diseases may lead to criminal liability in the form of a fine up to UAH 51,000 (or USD 1,906), arrest for up to six months, or imprisonment for up to three years (if such actions caused or could have resulted in spreading the disease). Actions that caused death or other grave consequences are punishable by imprisonment for up to eight years.

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What is “personal data”?

Under Law of Ukraine “On Personal Data Protection” No. 2297-VI dated 1 June 2010 (“**Data Protection Law**”), “personal data” is any information about an individual who is identified or can be specifically identified.

Health information, including body temperature, travel information and device location data fall within the category of “special categories of personal data that constitute special risks to rights and freedoms of data subjects” (“**Sensitive Personal Data**”).

Are companies required to report COVID-19 cases?

Yes, Law of Ukraine “On Protection of the People from Infectious Diseases” No. 1645-III dated 6 April 2000 stipulates that:

Owners, managers and other officials of enterprises, institutions and organizations, regardless of ownership, are obliged, within the limits of their authority, to assist medical professionals in carrying out measures to protect the population from infectious diseases.

To establish safe working conditions, companies in Ukraine can request that their employees/subcontractors/visitors follow certain procedures to prevent them from COVID-19, including:

- temperature screening
- reporting on any symptoms of COVID-19
- reporting on recent close contact with infected/potentially infected persons or travel information to COVID-19 affected areas
- location monitoring

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How should personal data be processed when reporting COVID-19 cases?

- The purpose of personal data processing is the prevention of COVID-19.
- The most appropriate legal basis for processing would be a legitimate interest, in particular, the need to fulfill the obligation of a company as required by law. The data subject's consent, protection of a vital interest of a data subject and processing for the purposes of the execution of a contract could also be used for processing in some cases.
- The scope of the collected personal data should be limited to the personal data that is required for the selected processing purpose.

The collected personal data should be deleted when it is no longer necessary for the prevention of COVID-19.

The amendments to the Law of Ukraine "On protection of the population from infectious diseases" on prevention of the spread of Coronavirus Disease (COVID-19) allow the processing of personal data without obtaining the consents of people who have tested positive for COVID-19.

Health information, place of hospitalization or self-isolation, full name of a patient with COVID-19, date of birth, place of residence, work or study are subject to processing. This data is also used to identify the contact persons.

The collected data of a person with COVID-19 can be used for the purpose of the implementation of anti-epidemic measures, which are defined in the Law of Ukraine "On protection of the population from infectious diseases". The list of anti-epidemic measures is non-exhaustive and, in particular, includes urgent hospitalization, examination and treatment of patients, medical supervision (isolation and examination) of persons who have communicated with patients, etc.

These amendments will be valid for the period of quarantine and within 30 days from the date of its cancellation or during other restrictive measures (if they do not coincide with the quarantine period).

At the same time, within 30 days after the end of quarantine, personal data that have been processed without the consent of individuals will be subject to depersonalization, and in case of impossibility of depersonalization - destruction.

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Are companies permitted to process personal data in connection with the COVID-19 pandemic (e.g., by requiring employees/visitors to fill out a questionnaire including questions on travel to high-risk areas and on whether they have been in close contact with someone who has positively tested for COVID-19, or by conducting temperature checks of employees and visitors in its premises)?

Yes, but if this information is considered Sensitive Personal Data, it can only be processed after:

- obtaining valid explicit consent from data subjects
- filing a respective notification to the Ukrainian Parliamentary Commissioner for Human Rights ("Commissioner")
- appointing a personal data officer or establishing a specific division responsible for personal data protection

In particular, the temperature screening of employees or visitors is subject to their explicit consent.

The Data Protection Law provides a limited number of grounds for the processing of personal data without consent, including when:

- the personal data processing is necessary to protect the vital interests of the data subject
- the processing is performed for employment purposes

In practice, companies often use the above grounds for the processing of an employee's personal data during the COVID-19 period. However, the Commissioner has not provided any practical guidance in relation to whether it is appropriate to use these grounds in connection with the COVID-19 pandemic.

Mandatory temperature screening may be introduced by the decision of the state authorities, e.g., such mandatory screening is applicable at the Ukrainian border points with respect to people entering Ukraine.

What personal data may be processed by companies?

Companies may process personal data related to:

- the fact that the employee has an illness or is feeling unhealthy, without specifying symptoms
- information on the last "close contact" with infected/potentially infected persons, without specifying the names of such persons and their relationships
- travel information to COVID-19 affected areas, without specifying any other details of the trip
- geolocation data

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What data is processed by medical professionals?

- Medical professionals may process:
 - any symptoms of COVID-19 (including fever)
 - other necessary data

Is it required to inform the data subjects of the respective processing?

Yes. Under the Data Protection Law, when the personal data is collected, the data subject shall be informed of the data controllers, the composition and content of the personal data collected, the data subject's rights, the purpose of personal data collecting and the personal data recipients, etc.

Are companies permitted to disclose COVID-19 infection information?

Yes. Companies are obliged to immediately notify medical professionals and continue to follow their instructions to inform "close contacts".

If the company only has some reasonable suspicion that an employee could potentially be infected with COVID-19, it should also be reported directly to medical professionals who will conduct any follow-up examinations.

In the case of a COVID-19 infection among employees/contractors/visitors, it is recommended that the company:

- does not disclose the name of the infected person (the right to privacy is a constitutional guarantee in Ukraine; exceptions are only allowed in certain cases)
- obtains instructions from medical professionals to identify "close contacts" of the infected person
- informs persons who have had contact with the infected person about the potential risk (information should be provided in private communication)

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How long can the respective personal data be stored?

The relevant personal data must be deleted as soon as it is no longer required for the purpose of personal data processing. This must be assessed on a case-by-case basis. The latest point in time will be the end of the pandemic. However, certain personal data such as visitor lists should be deleted earlier (generally after 4-6 weeks).

Have data privacy regulators issued any guidance either permitting or restricting the collection of personal data for the purposes of identifying COVID-19 cases?

The Commissioner has not issued any specific guidance on how to comply with data protection requirements and data subject rights during the COVID-19 pandemic.

On 2 April 2020, the Commissioner released a statement about the mass spamming of citizens via online social messaging services with information on the exact addresses of persons infected with COVID-19. The Commissioner emphasized that personal data and confidential information must only be processed in compliance with the law and any violation of this rule may be a ground for administrative or criminal liability.

On 14 April 2020, the Commissioner released a statement on its website regarding the application of international standards for the protection of personal data in the context of the COVID-19 pandemic (European vector):

Furthermore, by its Resolution No. 255 the Cabinet of Ministers of Ukraine (CMU) instructed the Ministry of Digital Transformation of Ukraine (MDT) to create an app to monitor compliance with the self-isolation regime ("App"). Starting on 6 April 2020, all Ukrainian citizens who returned from abroad received a text message with an invitation to install the App. When the App is being installed, the person starts receiving push notifications during the 14 days of self-isolation with a request to take pictures. The App then analyzes the GPS location data and, in the case of any non-compliance, sends a notification to the police.

According to the MDT, the data collected by the App includes the telephone number, the address of the person and the GPS location processed only when taking pictures. The processing of the aforementioned personal data is conducted by the MDT based on the consent the App users give when installing the App.

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Could the parties claim that the COVID-19 pandemic is a force majeure event, which excuses the parties from performing the lease obligations?

On 17 March 2020, the Ukrainian Parliament passed Law No. 530-IX "On amendments to certain legislative acts of Ukraine aimed at the prevention of occurrence and spread of coronavirus (COVID-19)" and officially included the quarantines imposed by the government (such as the COVID-19 quarantine) in a list of force majeure events.

This does not entail the automatic enforcement of force majeure provisions in the relevant leases and does not allow for non-performance under such leases. It only grants any interested party an opportunity to obtain a certificate confirming that the COVID-19 quarantine qualifies as a force majeure event.

The COVID-19 quarantine and pandemic, as a force majeure event, does not release from liability the failure to properly perform the affected obligation, such as late payment interests or other penalties (for tenants) and penalties for the failure to provide premises suitable for the purpose of a lease (for landlords).

If the tenant cannot use its leased premises, does it have to continue paying rent?

The tenant may not have to continue to pay, but this depends on the terms of the lease and negotiations with the landlord. Some leases may contain a rent suspension clause, entitling the tenant to cease the payment of rent if the premises are damaged, destroyed or inaccessible.

Statutory remedies are also available. Under art. 762 (6) of the Civil Code of Ukraine, a tenant is relieved of its obligation to pay rent for the period during which the tenant could not use the leased property, where this is due to circumstances for which the tenant is not responsible.

Further, on 13 April 2020, the Ukrainian Parliament passed Law No. 553-IX "On amendments to the Law of Ukraine On State Budget of Ukraine for 2020," which allows any tenant who is unable to use or access the premises due to the existing prohibitions on carrying out certain business activities, or access certain premises during the COVID-19 quarantine, to request a reduction of the rent. The tenant has to make the connection between the inability to use or access the premises and the COVID-19 quarantine and pandemic sufficiently plausible. For example, in the case of commercial leases, tenants may point out that the operation of their business was prohibited by the decisions of state and local authorities.

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If the tenant cannot use its leased premises, does it have to continue paying for utilities, service charges or operational expenses?

This depends on the terms of the lease and negotiations with the landlord. Statutory remedies (art. 762 (6) of the Civil Code of Ukraine and Law No. 553-IX "On amendments to the Law of Ukraine On State Budget of Ukraine for 2020") do not address the payment of utilities and operational expenses.

If the government imposes additional public health requirements, can the landlord compel the tenant to comply with these?

Leases in Ukraine often contain a tenant's covenant to comply with all legal obligations or statutory requirements that are related to their business within the leased premises. So, if the government imposes additional public health requirements in respect of the business activities that the tenant carries out in the leased premises (e.g., minimum distance and maximum numbers of persons in the leased premises), the landlord can request the tenant to comply with these rules in order to fulfil its contractual obligations.

If compliance with public health requirements falls to the landlord, who pays for items such as an enhanced cleaning regime, additional cleaning of common areas, any deep cleaning and the provision of additional refuse removal, for example?

The landlord may have to pay. The list of services (maintenance services, operational services) provided by the landlord is usually exhaustive and expressly defined in the lease. As such, it may be difficult to recover unexpected costs from the tenant via the service charge.

Is it possible to terminate a lease due to COVID-19?

Under Ukrainian law, the failure of a tenant or landlord to perform their respective obligations due to events beyond their reasonable control does not automatically lead to the termination of a lease agreement. It should be possible, however, to initiate the procedure of lease termination due to material adverse change.

Could the parties argue that the lease contract has been frustrated by the impact of COVID-19?

This is theoretically possible, but a statutory provision covering frustration is very rarely enforced.

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CORPORATE GOVERNANCE



Implications for Limited Liability Companies

Status: 22 June 2020

Have any changes been made to the procedure of holding general participants' meetings of limited liability companies?

No. The only changes that have been made are related to limited liability companies (LLCs) that are issuers of securities. Please see the section below for a description of such changes. Nevertheless, taking into account the general limitations imposed during the quarantine (in particular, holding mass events with more than one participating person per 5 sq. m. of area of the building/territory where the event takes place), holding a meeting of participants of an LLC where all participants are present in one place may be difficult. The meetings of participants in LLCs can still be held remotely via videoconference, by absentee voting or by voting by poll (unless the latter is forbidden under the company's charter) under the general procedure provided for by Ukrainian law. At the moment, this is especially useful given the legislative requirement for LLCs to hold their annual meetings of participants by 30 June 2020, where they have to approve the results of the 2019 financial year, decisions on distribution of profits, etc.

What changes have been introduced in relation to LLCs that are issuers of securities?

If an LLC is an issuer of securities, the requirement to hold the company's annual meeting of participants within six months following the end of the reporting year (by 30 June 2020) does not apply in 2020. This meeting may be held within three months after the end of the quarantine period established by the Cabinet of Ministers of Ukraine.

If the convocation and holding of the general meeting of participants of LLCs that are issuers of securities under the general procedure provided for by the law is not possible due to the current COVID-19 restrictions, such meetings can be held under the temporary procedure, which was adopted by the National Commission on the Securities and Stock Market on 21 May 2020. In accordance with the procedure, annual and extraordinary general meetings of participants can be held remotely via videoconference or by voting by poll.

In addition, the deadlines for disclosing annual financial information for LLCs that are issuers of securities have been extended. If the annual participants' meeting is held after 30 April 2020, such information can be disclosed within five business days after holding the meeting as described above.

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Implications for Joint Stock Companies

Status: 22 June 2020

Are there any amendments to the deadline for holding the 2020 annual meeting of shareholders in joint stock companies?

Yes. Similarly to LLCs that are issuers of securities, joint stock companies (JSCs) and corporate investment funds can postpone their annual meeting of shareholders (which shall be held no later than 30 April 2020). In 2020, such meetings can be held within three months after the end of the quarantine period established by the Cabinet of Ministers of Ukraine.

Have any changes been made to the procedure of holding general shareholders' meetings in JSCs?

Yes. General shareholders' meetings in JSCs, as well as in corporate investment funds and credit unions, may be held remotely under a temporary procedure. This procedure was adopted by the National Securities and Stock Market Commission in relation to JSCs and corporate investment funds on 16 April 2020.

The temporary procedure applies to annual meetings of shareholders, which have to be held to approve the results of the 2019 financial year, as well as to any extraordinary meetings to maintain companies' business. The remote meetings will be available with the help of a new electronic service, which was developed by the National Depository of Ukraine and made available for public use on 13 May 2020. To use the service, companies will be required to conclude a special services agreement with the National Depository of Ukraine and the shareholders — with their respective depository institutions. General shareholders' meetings that were convened before 16 April 2020, but have not yet been held, can be postponed and held remotely by the decision of the companies' supervisory board.

What if the powers of members of the company's supervisory board expire in 2020?

The recent legislative amendments state that if powers of members of supervisory boards of joint stock companies, supervisory boards and audit committees of credit unions expire in 2020, they will be automatically extended in full until the date of the next general shareholders' meeting, which may be held remotely within the term described above.

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Implications for Joint Stock Companies

Status: 22 June 2020

Have the deadlines for submitting financial information been extended?

Yes, such deadlines have been extended. In particular, the annual financial information of JSCs can now be disclosed within five business days after holding the annual general meeting of shareholders. The annual report on the activity of funds can be disclosed within five business days after holding the corporate fund's annual meeting as described above and approval of the equity fund's annual report by the authorized body of its asset management company.

The persons responsible for filing and disclosing financial statements will not be liable for breaches of disclosure deadlines for financial statements of 2019, provided that such statements are disclosed during the quarantine period or within five business days after holding the annual general meeting of shareholders as described above (or, for companies that are not issuers of securities, within 90 calendar days following the day of the end of the quarantine), but in any event no later than 31 December 2020.

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LENDING AND SECURITY ARRANGEMENTS



Lending Arrangements

Status: 30 June 2020

Can a Ukrainian bank-lender increase the interest rate under an existing loan agreement?

No. In March, the Ukrainian parliament prohibited the increase of interest rates (except for floating rates) under consumer loans initially until 31 May 2020 and, subsequently, till the end of the calendar month following the month of expiry of the quarantine period. Later in March, the Verkhovna Rada of Ukraine passed Law No. 540-IX, which established a temporary prohibition for Ukrainian financial institutions to increase interest rates under loan agreements with Ukrainian borrowers. The prohibition will remain in effect for the duration of the restrictive measures introduced by the Government of Ukraine in response to the COVID-19 pandemic.

Are borrowers permitted to suspend discharging payment obligations under loan agreements for the duration of the quarantine period?

Generally, no. That said, Law No. 533-IX explicitly prohibited lenders from applying negative measures, including fines and penalties, for failure to perform payment obligations under consumer loans between 1 March and 30 April. This prohibition was further extended until the end of the month when the quarantine period ends by Law No. 591-IX.

In addition, pursuant to the Law No. 530-IX, the Cabinet of Ministers of Ukraine was obliged by the Verkhovna Rada of Ukraine to prepare legal acts aimed at the deferral of payments under financial agreements secured by a mortgage. As of today, no such specific legal act has been adopted. By its Letter dated 22 March 2020, the National Bank of Ukraine (NBU) obliged banks to notify borrowers that, pursuant to Law No. 530-IX, payments under loans secured by mortgages would be deferred for the duration of the quarantine period. However, neither Law No. 530-IX nor other Ukrainian legislation requires such a deferral as of the date of this Guide.

That said, later in June, the Verkhovna Rada of Ukraine passed amendments to the Civil Code and Commercial Code that allow borrowers not to pay penalties and fines for failure to perform monetary obligations under credit (loan) agreements which occurred within the quarantine period and thirty days thereafter.

Another initiative on payment holidays was launched by the NBU by passing regulation No. 39, dated 26 March 2020 ("**Restructuring Regulation**"). The Restructuring Regulation liberalized certain regulatory requirements related to the credit risk assessment, purporting to stimulate Ukrainian banks to enter into debt restructurings arrangements ("**Restructurings**") with their clients suffering from the consequences of the pandemic.

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Lending Arrangements

Status: 30 June 2020

Do Restructurings launch automatically? Who may enter into a Restructuring?

The Restructuring may be initiated by either a borrower or lender Ukrainian bank. The Restructuring Regulation does not apply to loans with the lenders such as Ukrainian non-bank financial institutions or foreign financial institutions.

When is a borrower eligible for a Restructuring?

The NBU clarified that the credit risk regulatory easement and the Restructurings should be made available with respect to debtors that were not in default as of 1 March 2020. The implementation of the Restructuring is also subject to the following conditions:

- The loan agreement should be restructured by September 2020.
- The restructuring is necessary in view of financial difficulties caused by the quarantine and restrictive measures introduced by Ukrainian government.
- The bank is able to justify the launch of either a short-term or long-term perspective Restructuring based on the evaluation of debtor.

Debtors - legal entities applying for the Restructuring should provide banks with evidence of a significant decrease in their income level or termination of their business activity.

The Restructuring Regulation does not prohibit banks from entering into restructuring arrangements of other loans and debtors that do not fall under the above-listed conditions (including loans defaulted as of 1 March 2020), provided that such arrangements will not cause failure to comply with relevant regulatory limits applicable to banks.

Are Restructurings equally accessible by small, medium and large businesses?

The NBU recommended banks to elaborate special programs on the Restructuring of loans with small businesses and individuals and to automatize the restructuring processes to the extent possible. Certain banks already introduced such programs, establishing a standardized set of conditions for the restructurings.

The Restructurings of debts of medium and large businesses are considered by banks in each case individually. Before taking the decision on Restructuring, the banks should assess, among other things, whether a debtor will be able to restore its sound financial standing in future.

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Lending Arrangements

Status: 30 June 2020

What measures may be implemented pursuant to the Restructuring Regulation?

There is no exhaustive list of Restructuring measures; the set of such measures may be negotiated by bank and its client in each particular case. However, the NBU recommended that banks utilize the measures provided for in the NBU regulations, including the following:

- deferral of principal instalments repayment and extension of maturity dates (payment holidays)
- introduction of PIK interest option (accrued interest is capitalized and added to the principal amount)
- decrease of installments and other payments amounts

Do the payment holidays under Restructurings and consumer loans mean that the payment obligations accruing during the quarantine period will be written off?

No. Payment obligations will be postponed for the period negotiated with the bank.

Can the introduction of the quarantine be treated as a force majeure event that allows a deferral of payments under loan agreements and an exemption of borrowers from liability for the respective non-performance of payment obligations?

Generally, no. Unless otherwise expressly provided in the loan agreement (which would customarily not be the case), force majeure events (except those directly affecting the banking or payment systems) do not entitle the borrower to defer payments under the loan agreement and, accordingly, do not enable exemption from liability for the non-performance of such obligations.

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Lending Arrangements

Status: 30 June 2020

Which provisions of loan documentation should be verified?

Although some of your loan arrangements may not be subject to the Restructurings (including loans provided by non-residents), we recommend undertaking necessary measures in a timely manner. Review your loan and related documentation to determine the extent to which the pandemic and the related measures imposed by the authorities may affect the discharge of the borrower's, guarantor's/surety's and security providers' obligations both in the short term and in the long run. Pay attention to the following issues in the first place:

- payment schedule
- drawdown provisions
- repeated representations
- financial covenants
- project completion covenants
- material adverse effect
- events of default (EOD)

You should also investigate the provisions of related security documents and material (project) contracts. In particular, review what effect disruptions or defaults in the performance of the underlying contracts (e.g., sale of products, delivery of raw materials or spare parts, performance of construction works, etc.) may affect the existence and value of the security, verify provisions on contractual liability and force-majeure events in all project-related contracts to assess whether your counterparties may claim force majeure and how this would affect your project.

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Lending Arrangements

Status: 30 June 2020

Which preventive measures can be used to avoid the occurrence of a default under loan documents?

Based upon the above referenced review, you may decide to take the following risk mitigation or remedial actions:

- **Waiver requests:** If you need a small number of obligations to be waived to avoid negative consequences in a short-term perspective.
- **Amendments:** If you wish your loan documentation to provide for carve-outs to material adverse effect and material adverse change clauses or if you need to extend maturity dates, introduce interest holidays, adjust financial covenants, etc.
- **Restructuring:** If long-term perspective changes are required, such as the restructuring of key financial terms.

Timely and careful drafting and effective negotiation is the key to success.

More information on recommended loan documentation checks and preventive measures may be found [here](#).

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Lending Arrangements

Status: 30 June 2020

What state financial support measures are available for Ukrainian businesses to overcome the consequences of the pandemic?

To support Ukrainian businesses in maintaining their operation during the quarantine period, the Verkhovna Rada introduced a number of measures including exemptions from certain tax liabilities, the postponement of deadlines for certain mandatory filing, partial financing of decrease in salaries etc. However, no comprehensive scheme (such as in certain European states) aimed at financial support of business of various scales and industry sectors suffering from the introduction of restrictive measures has been elaborated by authorities so far.

That said, earlier in April, the Cabinet of Ministers of Ukraine tailored the existing "5-7-9% affordable loans" program (loans to micro and small businesses at decreased rates supported by the state) to address the needs of certain businesses in light of negative impact of the pandemic. Now the "5-7-9% loan" may be obtained by eligible businesses specifically to prevent and/or overcome negative consequences of the pandemic and to refinance existing indebtedness before Ukrainian banks. Such loans are provided through the banks approved by the Entrepreneurship Development Fund. The Entrepreneurship Development Fund may support such loans, by financing a part of interest payments and/or provision of state guarantees. The businesses willing to overcome negative pandemic impact can apply for "5-7-9% loan" within the duration of the quarantine period and 90 days thereafter.

Are "5-7-9% loans" available to all types of businesses? What are the principal terms of such loans?

The "5-7-9% loan" are available to micro and small businesses only. Currently, the maximum limit of such loans is UAH 3 million, while the maximum tenor is five years. The amount of refinancing extended to each applicant under the program is not restricted, provided that the limit of state support in the amount of EUR 200,000 is not surpassed. However, the state support provided in relation to refinancing is temporary and may last up to 31 March 2021.

That said, in June, the Cabinet of Ministers of Ukraine decided to loosen certain requirements to eligible borrowers and loan projects, including the limitation on maximum amount of a loan extended under the program.

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Security Enforcement and Bankruptcy

Status: 30 June 2020

Can a lender enforce a pledge during the quarantine period?

Currently, there exists no express prohibition on enforcement of pledges during the quarantine period. However, in respect of consumer loans, Law No. 530-IX permits deferral of payment obligations and prohibits the imposition of fines, penalties or other monetary sanctions for the failure to perform payment obligations during the quarantine period. Although there is no express indication that such prohibition should also apply to enforcement of pledges/mortgages (to the extent they secure consumer loans), it can be argued that such enforcement should not be permissible if it is triggered by a payment default occurring during the quarantine period.

Is lender allowed to enforce a mortgage during the quarantine period?

Law No. 530-IX strictly prohibits enforcement of the residential property in discharge of debts on utility services. The same law obliged the Cabinet of Ministers of Ukraine to develop legislation imposing a broader prohibition on the enforcement of residential mortgages. However, such specific legislation has not yet been developed.

Can a lender commence bankruptcy proceedings against a borrower that failed to perform its monetary obligations?

In June the Verkhovna Rada of Ukraine passed amendments to the Code of Ukraine on Bankruptcy Procedures that prohibit to open bankruptcy proceedings against borrowers – legal entities in respect of the claims that arose starting from 12 March 2020. Such prohibition will remain in effect for the duration of the quarantine period and for 90 days thereafter. The amendments are now awaiting the President's signature.

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Currency Control Measures

Status: 30 June 2020

Has the NBU introduced any additional currency control restrictions in view of the pandemic and the related quarantine?

No. The NBU does not plan to introduce any such restrictions within the duration of the quarantine period, as long as the situation on financial and currency markets does not deteriorate significantly.

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The background features a complex network of glowing blue and red lines connecting various points, creating a sense of digital connectivity and data flow. The lines are thicker in some areas and thinner in others, with a gradient of colors from deep blue to light cyan and red. The overall effect is a futuristic, high-tech aesthetic.

STATE SUPPORT OF BUSINESSES



Tax Reliefs

Status: 24 June 2020

Which tax reliefs are available in Ukraine?

Corporate income tax. In 2020, funds (value of goods) voluntarily transferred to combat COVID-19 would not fall under the tax adjustment, increasing financial result by an amount that exceeds 4% of the profit for the previous reporting year.

Value added tax. Until the last calendar day of the month in which the quarantine is terminated, import and supply on the territory of Ukraine of goods purposed to combat COVID-19 are subject to VAT exemption.

Land tax. From 1 March 2020 until 31 March 2020, land tax (rent) should not be levied on individuals and legal entities with respect to their land plots used in commercial activities.

PIT. The amounts of PIT paid from the 300% bonus on healthcare practitioners' salaries for the period from May 1, 2020 until June 30, 2020 will be fully refunded from the state budget.

Starting from April 2, 2020, compensations for partial unemployment caused by the COVID-19 pandemic are not subject to PIT and military tax.

Excise Tax. Until the last calendar day of the month in which the quarantine is terminated, the excise tax levied on ethanol utilized for the production of disinfectants is set at the rate of UAH 0 per 1 liter.

Other obligatory payments (fees) subject to legislative reliefs

Import duty. Until 30 June 2020, goods purposed to combat COVID-19 are subject to import duty exemption.

Unified Social Contribution. From 1 March 2020 through to 31 May 2020, individual entrepreneurs are exempt from the obligation to pay the Unified Social Contribution for themselves.

How can I apply for the reliefs?

There is no need to apply for the above tax reliefs — they were enacted automatically

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Tax Reliefs

Status: 24 June 2020

Filing of tax returns

The deadline for filing the annual tax returns for 2019 by individuals was extended until 1 July 2020 (previously 1 May 2020). Respective tax liabilities should be paid until 1 October 2020 (previously 1 August 2020)

Tax audits

Until the last calendar day of the month in which the quarantine is terminated by the government, the following procedural rules for tax audits will be in force:

- temporary moratorium on scheduled tax audits subject to few exceptions (unscheduled tax audits with respect to VAT refund claims and reported VAT credit over UAH 100,000; licensing in alcohol and tobacco products turnover, certain excise tax matters);
- suspension of the tax audits commenced prior to March 18, 2020.

Statutory terms

The following statutory terms are suspended until the last calendar day of the month in which the quarantine is terminated:

- terms established for filing and consideration of administrative appeals (except for certain VAT-related claims);
- terms established for issuance of tax rulings in writing by the tax office;
- terms established for taxpayers to provide responses to the tax office's inquiries (except for certain VAT-related inquiries).

Limitation period

Running of tax limitation periods is suspended for the period from March 18, 2020 until the last calendar day of the month in which the quarantine is terminated.

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Tax Reliefs

Status: 24 June 2020

Liability

Fines for the violation of tax legislation (the USC legislation) will not apply to violations taking place during the period from March 1, 2020 until the last calendar day of the month in which the quarantine is terminated. At the same time, violations in the following areas are not covered by the exemption from liability: VAT, excise tax, royalty tax, alienation of pledged property, long-term life insurance, operations with ethanol, fuel, alcohol and tobacco products.

No late payment interest will be charged from March 1, 2020 until the last calendar day of the month in which the quarantine is terminated.

Late payment interest accrued during this period must be written-off.

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SUPPLY CHAIN



Are there any export restrictions adopted in response to the COVID-19 pandemic?

Yes, in response to the COVID-19 outbreak Ukraine introduced an export ban on personal protective equipment, including respirators, masks and gloves until 1 July 2020.

The export ban applies to products listed in Resolution of the Cabinet of Ministers of Ukraine No. 1109 dated 24 December 2019 "On Approval of the List of Goods Which Export and Import is Subject to Licensing and the Approval of Quotas for 2020" as amended by Resolution of the Cabinet of Ministers of Ukraine No. 214 dated 11 March 2020.

Are there any import relaxation measures adopted in response to the COVID-19 pandemic?

Yes, Ukraine introduced VAT exemption to the extensive list of items, among other things, medicines, disinfectors, medical devices, personal protective equipment, laboratory equipment and ambulance cars.

The VAT exemption was introduced by Law of Ukraine No. 530-IX dated 17 March 2020 "On Amendments to Certain Legislative Acts of Ukraine Aimed at the Prevention of Occurrence and Spread of the Coronavirus (COVID-19)", Law of Ukraine No. 540-IX dated 30 March 2020 "On Amendments to Certain Legislative Acts of Ukraine Aimed at Providing Additional Social and Economic Guarantees due to Spread of the Coronavirus Disease (COVID-19)."

The list of goods subject to the VAT exemption is specified in the Resolution of the Cabinet of Ministers of Ukraine No. 224 dated 20 March 2020 amended as of 8 April 2020.

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Trade Controls

Status: 30 June 2020

Has Ukraine restricted cross-border cargo transportations?

Yes, the Order of the Cabinet of Ministers of Ukraine No. 288-p dated 13 March 2020 specified a list **of border checkpoints temporary closed** for cargo and passenger transportation, which may, in certain cases, slow down the customs clearance of goods. The interactive map of open checkpoints is available [here](#).

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Can the COVID-19 pandemic serve as a ground for release from liability for failure to perform contract obligations?

The COVID-19 pandemic does not, by itself, release the parties from their contractual obligations or from the liability for the failure to properly perform their contractual obligations.

At the same time, in case a party was directly prevented from performing under the contract by the COVID-19 pandemic-related restriction (e.g., export ban, suspension of work of an enterprise etc.), the affected party might be released from liability for non-performance, invoking a force majeure event.

However, force majeure circumstances do not release the parties from liability for their payment obligations.

Can a party claim a force majeure event if the contract does not provide for a force majeure clause?

For Ukrainian law-governed contracts, a force majeure event can be claimed as a matter of Ukrainian law even if not directly provided for in a contract.

Considerations if the contract provides for a force majeure clause

If the contract provides for a force majeure clause, the definition of the force majeure event and the requirements for invoking a force majeure event should be analyzed to assess whether a party can rely on a force majeure clause. In particular, Ukrainian law-governed contracts often provide for a very short time period for giving a force majeure notice (same or next day). Failure to serve such a notice in accordance with the contractual requirements may deprive the affected party from a release from liability under the force majeure clause.

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Can parties claim that the COVID-19 pandemic is a valid reason for contract amendment or termination?

Ukrainian legislation allows amending or terminating a contract as an exceptional measure in case of material changes in circumstances compared to those that were in place when the parties entered into a contract (material adverse effect). In particular, when due to the changes in the circumstances, a party is deprived of the benefits it expected to receive under the contract, and if it was aware of such changes in the circumstances it would not have entered into the contract. Therefore, depending on the actual circumstances of a particular transaction, effects of the COVID-19 pandemic and related government measures may serve as a ground to initiate contract amendment or termination by parties on the basis of a material change in circumstances (material adverse effect) either by mutual agreement of the parties or in court.

Recommended actions

Taken that the COVID-19 pandemic measures vary in different parts of the world and change at a different pace, the risk of disruption of the supply chain may last significantly longer than the actual lockdown in Ukraine. Therefore, to prevent the unexpected negative consequences and losses, we recommend carrying out due diligence of the supply chain sustainability and take the following steps to mitigate COVID-19 related risks:

1. To review the terms of all existing contracts to determine what force majeure provisions they contain and whether the parties may rely on them due to the COVID-19 pandemic, including assessing whether any changes to amendment, termination and liability clauses might be required to take into account potential COVID-19 related implications.
2. To review contracts through the whole supply chains to assess whether they provide for consistent allocation of risks related to COVID-19 and what changes might be required to ensure consistent allocation of risk.
3. When entering into new commercial agreements, to consider potential COVID-19 disruptions and clearly draft the relevant clauses on obligations, risk allocation, liability, force majeure, suspension of performance and termination.

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Government Contracts

Status: 30 June 2020

Are there any exemptions for procuring goods and services to combat the COVID-19 pandemic?

Yes, Ukrainian legislation exempts from public procurement procedures goods, works and services aimed at combating the COVID-19 pandemic including such goods as medicines, disinfectors, medical devices, personal protective equipment, laboratory equipment, ambulance cars etc.

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WORK OF STATE COURTS AND ARBITRATION TRIBUNALS



Work of State Courts and Arbitration Tribunals

Status: 22 June 2020

What does this mean for my health-related patents?

(1) Changes to the Procedural Codes

On 2 April 2020, the changes to the Procedural Codes became effective, which provide for the following rules to be applied by the commercial, civil and administrative courts during the officially declared quarantine:

- The court may decide to restrict the access to the court hearing for a person without a mandate in case there is a threat to the life or health of a person.
- The parties may participate in the court hearing online using their personal video-conference equipment.
- The procedural terms, established by the procedural law, are extended for the duration of the officially declared quarantine, i.e., the lapse of the procedural terms is suspended for the term of the officially declared quarantine.
- The procedural term, established by the court, shall not be shorter than the term of the officially declared quarantine.

(2) Functioning of the Ukrainian courts

On 17 March 2020, the Council of Judges of Ukraine adopted the recommendations, establishing a special regime of the courts' operation during the officially declared quarantine. Considering these recommendations, most of the Ukrainian courts have decided the following:

- To cancel the court hearings, scheduled during the term of the officially declared quarantine.
- To restrict access to the court hearings for persons without a mandate.
- To stop personal appointments of citizens by the court's management.
- To provide an online case materials' review by means of e-correspondence with the court.

To limit acceptance of procedural documents to postal correspondence, e-correspondence and a post box in the court's premises. Despite the fact that no further recommendations were adopted, most of the Ukrainian courts do conduct oral hearings since May 2020. Anyway, it is being decided on a case-by-case basis.

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Work of State Courts and Arbitration Tribunals

Status: 22 June 2020

To what extent are arbitration proceedings affected by the COVID-19 pandemic?

The arbitration proceedings are also affected by the COVID-19 pandemic. At the same time, the International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry (ICAC) has announced that it continues to administer arbitration cases during the officially declared quarantine. Furthermore, the ICAC has published the following recommendations for the Arbitral Tribunals with regard to the arbitral proceedings:

- To submit the documents in electronic form.
- To hold the organizational meetings via video conference or telephone conference.

In cases where oral hearings are scheduled during the officially declared quarantine: (1) to hold oral hearings via video conference; (2) to conduct arbitration proceedings on the basis of written materials; (3) to hold the hearing in the absence of a party; or (4) to postpone or suspend the arbitral proceedings.

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The background features a complex, abstract network of glowing lines and nodes. The lines are primarily blue and cyan, with some red and purple accents. The nodes are small, bright points of light. The overall effect is a sense of depth and connectivity, resembling a digital or biological network.

FURTHER AREAS



Antitrust & Competition

Status: 26 June 2020

How has COVID-19 impacted the activities of the Antimonopoly Committee of Ukraine?

Notwithstanding the implementation of the quarantine in Ukraine aimed at prevention of spreading of COVID-19, the Antimonopoly Committee of Ukraine (the "AMC") remains fully functional and continues to perform its functions in a regular way, save for adaption of certain health security measures, including:

- suspension of all events (e.g., round tables, workshops) involving more than 10 persons, except for those essentially important for the AMC's work;
- limitation of the number of persons, which may be present in the AMC's premises;
- participation of the parties in the hearings of the Permanent Administrative Board for Review of Complaints Regarding Violations of Public Procurement Law (the "Board") either via videoconference tools or through submission of written arguments by the parties via electronic means;
- attendance of third parties at hearings is limited only to video broadcasts, which are now hosted on the Board's YouTube channels (instead of Facebook).

The above measures came into force since 18 March 2020 and will remain effective throughout the entire quarantine period.

The AMC continues to conduct investigations and to consider cases, as well as to accept merger control and concerted actions filings for review in the usual way. At the same time, although there was no official announcement about adjustments to the timelines of the filings review, some slight delays may happen (especially in relation to the filings submitted under the fast-track procedure) due to the remote work of some of the authority's staff.

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Antitrust & Competition

Status: 26 June 2020

What should be taken into account when promoting and advertising medicinal products during the COVID-19 pandemic?

According to official information from the *World Health Organization* ("WHO"), there are currently no confirmed and effective medicinal products aimed at Coronavirus treatment. Therefore, the information distributed by pharmaceutical companies or other medicinal products market participants that refers to the ability of a medicine to prevent or cure the coronaviruses, in the absence of relevant and reliable scientific confirmations thereof, contains indications of unfair competition.

Under these circumstances, on 31 March 2020 the AMC issued the recommendations that are mandatory for consideration by medicinal products manufacturers, advertisement holdings and Ukrainian TV channels to refrain from creation and distribution of advertisements that may mislead a viewer as to the ability of a medicinal product to prevent or cure COVID-19 in the absence of a proper confirmation thereof, in particular, the official recommendations of the *Ministry of Health of Ukraine*.

According to the Ukrainian competition legislation, dissemination of misleading information is considered as unfair competition and potentially may lead to imposition of a fine in the amount of up to 5% of the global annual turnover of the respective company (on a group level) for the financial year preceding the year in which the fine is imposed. It should be noted that the AMC does not usually impose the maximum allowed fines but defines the amount of a fine individually on a case-by-case basis.

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Antitrust & Competition

Status: 26 June 2020

What should be taken into account when promoting and advertising products with antiseptic and disinfectant effects?

On 2 April 2020 the AMC published an alert for manufacturers to refrain from distribution of false, incomplete or inaccurate information regarding antiseptic or disinfectant properties of sprays, solutions, gels, napkins and other products, as well as their ability to kill viruses, including COVID-19 (i.e., Coronavirus), in order to attract consumers.

In particular, the information regarding a product entails a greater risk of being treated as misleading by the authority if, among other things:

- the information contains the wording derived from Coronavirus/COVID and/or visual representation of the virus in the absence of sufficient justification thereof;
- the information contains unconfirmed data on the ability of the product to affect viruses, including COVID-19, or to increase immunity;
- the information on the properties of the product does not correspond to the information from the technological documentation thereof;
- the mentioned product referred to does not contain or contain insufficient amount of the active ingredient;
- the information contains misleading data regarding the effective time, minimum required amount of the product, etc.;
- the information refers to the ability of the product to kill a specific percentage of bacteria (e.g., 95%, 99%, 99.9%, etc.) in the absence of relevant tests/trials;
- the mentioned product referred to has not received required approvals, permits or other authorization documents from the competent authorities yet.

The AMC stated that it will take all the measures prescribed by the Ukrainian competition law against companies distributing misleading information, including, in particular, imposition of fines.

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Antitrust & Competition

Status: 26 June 2020

What else is under the AMC's radar due to COVID-19?

PHARMA MARKET

In order to prevent economically unreasonable price increases for medicinal products or artificial creation of a products deficit by the pharmaceutical markets participants the AMC, at the end of March, issued recommendations urging to refrain from any actions resulting in the price increase for domestic or imported medicinal products at a rate higher than increase of the foreign exchange rate.

The AMC also officially declared that the facts of unreasonable price increase for medicinal and hygiene products would be thoroughly and promptly investigated. The same goes for other potential abuses, such as creation of an artificial deficit.

TELECOM

At the end of the March, the AMC issued mandatory for consideration recommendations to three major mobile phone service providers in Ukraine urging them to refrain from committing concerted/similar actions (in order to receive excessive profits) that may lead to prevention, elimination or restriction of competition.

The authority emphasized that introduction of restrictive measures related to the spread of Coronavirus in Ukraine, isolation of citizens and need for remote work would lead to increased consumption of mobile services, which, consequently, may induce the mobile phone service providers to raise their prices.

Under these circumstances, in order to facilitate the ability of subscribers to promptly receive information (in particular, by means of communication tools) necessary for performance of their professional duties, as well as, to prevent extra financial expenses for mobile services, the AMC has recommended the mobile phone service providers to refrain from:

- raising their tariffs;
- terminating social, cheap or minimum tariffs;
- automatic (forced) transferring of subscribers to more expensive tariff;
- deteriorating the quality of their services.

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In view of the foregoing, such simultaneous / similar actions of mobile phone service providers may be qualified by the authority as anti-competitive concerted actions

CIVIL COMMERCIAL AVIATION

At the end of May 2020, the AMC issued mandatory for consideration recommendations to the major domestic and international airlines urging them to refrain from disseminating misleading and inaccurate information regarding scheduled flights between Ukraine and other countries, as well as possibility of passenger to receive a refund for a cancelled flight.

In particular, the AMC recommended airlines to:

- refrain from dissemination of incomplete information relating to the possibility of consumers to purchase tickets for international flights scheduled after the expected quarantine cancellation date, while the official information on the resumption of flights between countries is not confirmed by the competent authorities of respective countries;
- provide consumers with complete and up-to-date information on the impossibility of a scheduled flight, in case it is not resumed;
- provide consumers with complete and accessible information on all service options provided by the Aviation Rules in case of flight cancellations, in particular by posting information on the possibility of a refund for the unused tickets on their own web-sites.

RETAIL

The AMC made several public statements expressing its concerns regarding situation with a permanent growth of prices for food, medicinal and hygiene products during the period of nationwide restrictive measures caused by the spread of Coronavirus.

The price monitoring of the AMC has showed that various retail networks engaged in selling of food products in Kyiv and Kyiv region has rapidly increased the prices for certain long-lasting food products during the quarantine. According to the AMC, the synchronized nature of such behavior may serve as a signal of anticompetitive concerted practices of the market participants, i.e., food products suppliers or retailers, or even both of them.

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Antitrust & Competition

Status: 26 June 2020

The same situation is observed in the market for medical products where the prices for disposable medical masks have grown as well.

Since the authority has not identified any objective factors that may potentially have caused such a rapid rise of the prices for the said products, it decided to launch an investigation against suppliers and retailers of food products and disposable medical mask assuming a violation of the Ukrainian competition law in their actions.

The other business industries, including socially sensitive, will be definitely closely monitored by the AMC.

Another issue that has come to the attention of the authority is the observance by business entities of the national restrictive measures imposed due to the quarantine. The regulator emphasized that non-compliance of the market participants with the restrictive measures aimed at preventing the spread of COVID-19 in Ukraine can put them in a better position than their competitors, which adhere to the quarantine restrictions. Therefore, such practices entail a risk of being qualified as unfair competition in terms of Ukrainian competition legislation.

In view of the foregoing, in early May 2020, the authority initiated an investigation against two non-food retailers, which remained opened and continued to accept customers, while the vast majority of other non-food retailers and individual stores complied with the quarantine restrictions and suspended their activities to reduce the risk of the Coronavirus spread.

In case the investigation confirms the fact of competition laws violation, the infringers may be fined in the amount of up to 5% of the annual turnover of the respective company (on a group level) for the financial year preceding the year in which the fine is imposed.

Given the above, to mitigate the risk of scrutiny on the AMC's part, businesses should pay more attention to the observance of quarantine restrictions and to monitor the changes in the quarantine regime more carefully.

EXPORT ACTIVITY

The AMC issued mandatory for consideration recommendations to the largest chicken meat producer in Ukraine to refrain from actions that may lead to violation of the Ukrainian competition legislation.

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According to the authority, the pandemic of COVID-19 may lead to food supply problems, especially for the countries dependent on import. The said circumstances may motivate some national producers, which are active in the export-oriented sectors, to increase sale of products to foreign markets for the purposes of raising additional profits. In its turn, this may result in a deficit of certain products on the domestic markets, price increases and, consequently, impose a threat to the food security of Ukraine (especially during the current situation of the pandemic).

In view of this, the AMC recommended the said producer to refrain from the actions that may result in limitation of the production and/or sale of chicken meat on the internal market of Ukraine in the absence of alternative sources of sale or purchase of these products.

The above developments should be taken into account by other domestic manufacturers/exporters, especially those that produce/export socially important goods (food products, medicines, etc.).

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Intellectual Property

Status: 22 June 2020

What does this mean for my health-related patents?

The government can, in the public's interest or in the interest of protecting the state, request a compulsory license on inventions relevant to overcome a national epidemic. On 7 April 2020, the head of the Ukrainian parliament committee on national health, medical care and health insurance announced that a draft law on compulsory licensing of medical products for fighting the coronavirus infection should soon be submitted to the parliament for consideration.

Are there any trademark applications filed containing "COVID" or "CORONAVIRUS"?

As of 22 June 2020, there is an application for a coviDEZ trademark with respect to the goods of class 5 of the International Classification of Goods and Services (ICGS), filed by a private person in April, an application for a "Коронавірус інфо" (Coronavirus info) trademark with respect to the services of class 38 of the ICGS, filed by a private person in March, and an application for a "АТ-Коронавірус-тест-МБА" (AT-Coronavirus-test-MBA) trademark with respect to the goods of class 5 of the ICGS, filed by Medbioalliance LLC.

Are there any implications on pending patent, trademark and design registry proceedings in front of the Ukrainian Patent and Trademark Office (UPTO)?

No. The UPTO has not announced any ex officio extensions of currently pending time limits. The reinstatement of missed deadlines will be carried out in accordance with national and international legislation.

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Intellectual Property

Status: 22 June 2020

Is there any specific impact in the area of counterfeiting?

Some companies in the healthcare industry have noticed an increase in counterfeiting and fraudulent activities as a result of the COVID-19 pandemic. Due to the lack of urgently needed products such as respiratory masks and disinfectants, there is an increasing risk that fraudsters and counterfeiters will use brands of renowned manufacturers to fraudulently offer such products. Moreover, in the press there are already the first reports of seizures of counterfeit COVID-19 test kits (see the following [article](#)).

Trademark owners from potentially affected industries should monitor the market more closely and, for example, set up domain monitoring since fraudsters often register domains using the trademarks or corporate logos of the original manufacturers to make their offer appear legitimate.

Is there any state support available for creative industries?

Ukrainian Parliament has passed at the final stage draft law No 3377 amending certain Ukrainian laws in relation to state support in the sphere of culture, creative industries, tourism, SMEs in connection with the restrictive measures imposed due to COVID-19 disease spread.

The draft law, inter alia, establishes the procedure for state support of culture, creative industries and tourism, provides support for the Ukrainian Cultural Foundation, cancels temporary royalty rates of CMOs, and etc. In addition, the draft law proposes temporary extension of state support in the form of government subsidies for the development of film projects in the amount of up to 100% of the total estimated cost.

The proposed amendments are now waiting for the President signature and will enter into force after their official publication.

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The background features a complex, abstract network of glowing blue and red lines and nodes, creating a sense of digital connectivity and data flow. The lines are thin and intersect to form a mesh-like structure that recedes into the distance, giving a three-dimensional effect.

INDUSTRY FOCUS: PHARMA & MEDICAL PRODUCTS



Industry Focus: Pharma & Medical Products

Status: 23 June 2020

Have the pricing and reimbursement procedures for medicinal products and medical devices been affected?

Yes, the pricing and reimbursement procedures for medicinal products and medical devices have been affected as follows:

- Under Law No. 3539-IX "On Amending Certain Laws of Ukraine Aimed at Ensuring Treatment of Coronavirus Disease (COVID-19)" dated 30 March 2020, in addition to already existing powers to regulate prices, the government was additionally empowered to (i) set maximum wholesale and retail prices for anti-epidemic goods and socially significant products and (ii) prohibit mass buying and selling the same products at prices exceeding those set by the government during the quarantine. The list of anti-epidemic and socially significant products must be established by the government. The government approved such list on 22 April 2020. This list includes (i) certain food products, (ii) seven INN of pharmaceuticals, including Paracetamol and Azithromycin, (iii) 11 antiseptics and disinfectants and (iv) 10 items of personal protective equipment, including medical masks, gloves etc. Change of retail prices for such products is subject to declaration.
- In addition, liability for violating pricing regulations was increased.

Are there any export bans applicable to medical or healthcare products?

Yes, the government prohibited the exportation of certain personal protective equipment, including respirators and medical masks, effective as of 22 March 2020. The list of goods that cannot be exported is set forth in Resolution of the Government No. 223 "On Preventing Export (Sending) of Certain Anti-Epidemic Goods outside the Customs Territory of Ukraine by Citizens" dated 16 March 2020.

Are there any tax incentives for suppliers of pharmaceuticals, medical devices or personal protective equipment?

Yes. Based on Law of Ukraine No. 530-IX "On Amending Certain Legislative Acts of Ukraine Aimed at Preventing Emergence and Spread of Coronavirus Disease (COVID-19)" dated 17 March 2020 and Law of Ukraine No. 540-IX "On Amending Certain Legislative Acts of Ukraine Aimed at Ensuring Additional Social and Economic Guarantees due to Spread of Coronavirus Disease (COVID-19)" dated 30 March 2020, the Parliament of Ukraine exempted the importation and supply of certain goods, including pharmaceuticals, disinfectants, medical devices and personal protective equipment to combat COVID-19, from VAT and import duty. The list of exempted goods is set forth in Resolution of the Cabinet of Ministers of Ukraine (CMU) No. 224 dated 20 March 2020. Customs clearance of these goods should be performed on a priority basis.

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Industry Focus: Pharma & Medical Products

Status: 23 June 2020

Has the government adopted exceptional public procurement measures?

Have procedural requirements been relaxed for COVID-19-related medicines and devices?

Yes, Law of Ukraine No. 530-IX and Resolution of the Government No. 226 "On Amending Certain Resolutions of the Government" dated 20 March 2020 envisaged an expedited and simplified procedure for the procurement of goods, works and services required to combat COVID-19. Under this procedure, public procurement entities may procure goods, works and services to combat COVID-19 outside the online Prozorro platform that is used under the standard procurement procedure. Under the simplified procedure, the procurement entity is authorized to establish its own criteria for selecting successful bidders. The procurement entity must only upload the procurement report, procurement agreement and performance report to the Prozorro platform.

Have legal/administrative deadlines related to MA approvals and public procurement been suspended?

- No. At the same time, the Ministry of Health of Ukraine (MOH) is considering a draft order, whereby the legal timelines for approving MA/clinical trial applications may be extended due to quarantine. In addition, originals of MA certificates will not be issued until the end of the quarantine (the MA will be confirmed by entering relevant data into the state register of pharmaceuticals).
- Based on Law No. 3539-IX dated 30 March 2020, the government must ensure expedited legal timelines for approving MA (variation) and clinical trial (significant amendment) applications of pharmaceuticals for treating COVID-19. The government must ensure that MA (variation) applications are approved within seven calendar days, while clinical trial (significant amendment) applications are approved within 10 calendar days.

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Has the government relaxed regulatory rules for medical devices and personal protective equipment?

Yes. Based on Resolution of the Government No. 226 dated 20 March 2020, personal protective equipment, medical devices, in vitro diagnostics and active implantable devices for combatting COVID-19 may be placed on the market without conducting the conformity assessment set forth in the applicable technical regulations. To place products on the market in derogation of technical regulations, the applicant must submit to the State Labor Service of Ukraine (for personal protective equipment) or to the MOH (for medical devices, in vitro diagnostics and active implantable medical devices) the application containing information on, e.g., the purpose of importation, the product and its manufacturer. The State Labor Service of Ukraine or the MOH should issue a notification on introducing personal protective equipment and medical devices into circulation in derogation of the relevant technical regulations.

Has the government relaxed regulatory rules for pharmaceuticals?

Based on Law No. 3539-IX dated 30 March 2020, the Parliament of Ukraine permitted the off-label use of certain pharmaceuticals. The off-label use is permitted if a pharmaceutical has proven efficiency in treating COVID-19 and/or if a pharmaceutical is recommended by the authorities of the USA, EU member countries, the UK, Switzerland, Japan, Australia, Canada, China or Israel for the treatment of COVID-19. The Parliament of Ukraine also permitted the use of unapproved pharmaceuticals if they are recommended by authorities of the states set forth above for the treatment of COVID-19. At the same time, Law No. 3539-IX does not provide guidance as to the form in which the authorities should recommend pharmaceuticals for treating COVID-19 or guidance on how the proven efficiency of a product in treating COVID-19 should be confirmed. Apparently, these criteria are yet to be clarified by the MOH. The use of unapproved pharmaceuticals and the off-label use of approved pharmaceuticals are only permitted subject to obtaining the patient's consent. Such pharmaceuticals must be used in compliance with the clinical protocol approved by the MOH on 2 April 2020.

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Have special measures concerning clinical trials been adopted?

- Yes, the regulator for clinical trials (the State Expert Center of the Ministry of Health of Ukraine (State Expert Center)) has issued recommendations regarding conducting clinical trials in view of the spread of COVID-19. Among other things, the safety measures that may need to be taken include the following:
 - replacement of personal meetings by phone calls, video calls, the use of electronic communication devices, etc.
 - remote monitoring, provided it does not create an extra burden on trial sites, and the subjects' consent to the sharing of their personal information outside the trial site
 - critical assessment before launching new trials or inclusion of new subjects, assessment of additional risks for trial subjects and documenting all measures for preventing infection of trial subjects and participants
 - withdrawal of subject from trials
 - temporary halt of a trial/recruitment of new subjects
 - transfer of participants to other sites
 - closure of sites
 - direct-to-patient shipment of trial products
 - laboratory testing outside of the trial site or at the patient's home
 - visits to patients at their residential address by investigators for clinical and diagnostic tests
 - use of telemedicine technologies
 - possibility to obtain oral consent as evidenced by a witness, if written consent cannot be obtained and the consent procedure is properly documented
 - when there is a need to re-consent, investigators may obtain oral informed consent supplemented with email confirmation
- Adverse events may be reported online
- An increase in study protocol deviations in relation to COVID-19 will not be considered as a serious violation, so there is no need to notify this to the State Expert Centre immediately (unless patients are being put at risk).

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