

How to make your business sustainable in the face of new challenges

Legal checklist



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Dear Ladies and Gentlemen!

The current crisis has challenged the strength of all companies. It has forced businesses to quickly address new issues that often were outside their agenda earlier. During this period, most of businesses have managed to temporarily adapt, or radically change their processes and strategies; establish a flawless remote operation; transform the pattern of cooperation with counterparties and partners; reallocate resources and learn to communicate with their employees under crisis. Having come through this difficult phase, managers agree on one thing: unpredictable problems, crises, or epidemics may arise suddenly in any organization, irrespective of its size, scope of activity, or location, at any time. It makes you think of both the possible responses to serious crises, and plans for prompt reorganization to continue working in unexpected circumstances.

For these purposes, the experts of ALRUD Law Firm have prepared a legal checklist of necessary actions to assist heads of legal departments, and business representatives, to take into account legal issues raised after cancellation of all restrictions and returning of businesses to stable operations, in order to ensure the resistance of business to possible new challenges.

We hope that the material will be useful for you and enable you to consider any, and all, possible legal risks and legal opportunities.

Commercial issues and contractual work

1



Crisis contractual work

1.1

Conduct audit of current contracts and identify those that involve long-term cooperation with counterparties, including future performance (e.g., deliveries, or works execution) or ongoing performance (e.g., trademark licenses).

1.2

Assess the risks of breaching long-term contracts on your part, or on the part of your counterparty, in the event of a crisis in the future. Based on risk assessment, make a reasonable decision as to whether to terminate, or amend such contracts.

1.3

Following the results of the analysis of identified risks, prepare proposals for amendments to long-term contracts; for risk mitigation: make greater use of such mechanisms as warranties and representations (Article 432.4 of the Civil Code of the Russian Federation), compensation of property losses (Article 406.1 of the Civil Code of the Russian Federation), and include, in the contracts, a mandatory procedure for pre-trial settlement of conflicts.

1.4

Provide proposals to counterparties about amendments to long-term contracts, or a written notice of amendments (if the contract, or the law, grants you a right to make amendments unilaterally), sent to the counterparty's address, specified in the Unified State Register of Legal Entities, or in the contract.

1.5

In the event of making new contracts, document minutes of meetings and discussions on coordinating the terms of the contracts in writing, or make an agreement on procedure for negotiations. This will protect the parties from bad faith behavior of counterparties.

1.6

Prepare, in advance, templates of contracts/formulations that are important to your business to strengthen your position during negotiations.

1.7

Approve a form of standard provision for Force Majeure circumstances, which includes a mandatory reference to the pandemic/epidemic, and provide a mechanism for further implementation of the contract, in the situation of Force Majeure.

2



Remote interaction with counterparties

2.1

Identify counterparties with whom you can interact, in the remote mode.

2.2

Conduct an internal audit to identify available electronic means for processing/ drawing up of legal documents and communications in digital form (e.g., electronic signatures that you use when interacting with government agencies, or counterparties, electronic platforms for document exchange, etc.).

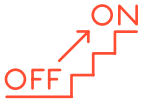
2.3

Prepare legal wording about the signing of contracts and related documentation in electronic form, for inclusion in commercial contracts with counterparties (in particular, by exchanging the scan copies of signed documents by e-mail). Include an additional obligation about further exchanging the paper versions of documents (if it is required for your company's paperwork).



Human resources management

1 Strategic planning for operation resumption



- 1.1 Specify periods (stages) of the gradual return of the company and employees to work at the employer's premises.
- 1.2 Assign units, as well as employees of the units, whose priority return, to the office, is necessary to resume the company's activities, as soon as possible.
- 1.3 Identify categories of employees, who, in accordance with federal and regional regulation, are subject to suspension from at the office, and may not be admitted to the workplace (e.g. persons above the age of 65, pregnant women, etc.) until the restrictions are lifted completely.
- 1.4 Determine the possibility of separating the workflows, e.g. placing employees on different floors and in separate offices, possibility of working in several «shifts.»
- 1.5 Determine the need to provide a social distance (1.5 m or more, depending on regional regulation) in the workplace, i.e. the reorganization of jobs, installation of partition walls.
- 1.6 Determine the order and frequency of contactless measurement of employees' body temperature, disinfection of workplaces, health surveys, medical examinations, visits to dining rooms and other places of eating.
- 1.7 Identify the need for using the self-defense equipment by employees (masks, respirators) and/or individual protection of hands (gloves); if necessary, provide the working space with a sufficient number of respiratory and other self-defense equipment (masks, gloves, disinfecting agents, etc.).
- 1.8 Appoint responsible persons for: (a) measuring the body temperature of employees; b) disinfecting workplaces; c) moving items between units (shops/offices); d) control over the use of self-defense equipment, and other new functions; establish the areas of functionality for which additional recruitment is required.
- 1.9 Determine the procedure for informing employees (newsletters, postings on bulletin boards, briefings, etc.) about clinical signs of COVID-19, necessary actions when the signs are identified at home, or in the workplace, sanitary-epidemiological requirements.
- 1.10 Identify the need for intra-corporate activities and business trips, the possibility of their cancellation, or rescheduling.
- 1.11 When sending an employee on a business trip, check the regional legislation where the employee is going; for sanitary and epidemiological restrictions on those arriving from other regions.

- 1.12 Organize the preferential use of electronic interaction, telephone communication and video conferencing to transmit information.
- 1.13 Envision the possibility of transporting employees to their workplace/to their place of residence, by corporate transport/taxi.
- 1.14 Determine the availability of material and technical resources for implementation of sanitary and epidemiological requirements (e.g. thermometers, marking, partitions, etc.) and the need for their additional acquisition.
- 1.15 Analyze the need and timing of registration/extension of employees' migration documents, taking into account the possible cancellation/expiration of temporary migration rules.
- 1.16 Review the legislation at the level of the region, in which the company is located for additional sanitary and epidemiological requirements (for example, Moscow has established the requirements for mandatory testing for COVID-19 infection of at least 10% of employees, every 15 calendar days, etc.)

2



Formalization of HR decisions

- 2.1 Adopt a general internal policy (local regulation, order) regulating the staged resumption of activities, as well as the introduction of sanitary and epidemiological measures; or amend the existing internal policies, instructions and procedures of the company.
- 2.2 Introduce employees, evidenced by their signature, to the adopted procedures, policies or amendments thereto.
- 2.3 Exercise control over employees' compliance with special requirements for discipline, including sanitary and epidemiological measures.
- 2.4 Promptly respond to violation of discipline by employees, in strict accordance with the requirements of the procedure.
- 2.5 Issue supplemental agreements on the transfer of employees, from remote mode to work in the office / elsewhere in the company.
- 2.6 Assign responsible executives in charge of compliance with new requirements and workflow management.
- 2.7 Approve a new schedule of «shifts» (if applicable) and communicate it to the staff.



Analyzing and structuring activities in the event of return to high-alert regime

- 3.1 Monitor federal and regional regulation of sanitary and epidemiological requirements and other measures to combat COVID-19.
- 3.2 Designate employees who may be transferred to remote work and those who may be suspended on other grounds (leave, sick leave, downtime).
- 3.3 Ensure proper processing of documents on the transfer of employees to remote work (order, supplemental agreements), as well as technical capabilities and communication, when implementing the remote interaction.
- 3.4 Provide a logistical basis for rapid return to remote work.
- 3.5 Issue an order regulating the performance of sanitary and epidemiological requirements, and communicate it to employees whose presence in the office/in the company is necessary.
- 3.6 Appoint those responsible for compliance with sanitary and epidemiological requirements and company's activities' management in the new environment.
- 3.7 Suspend from work the employees with signs of certain diseases (according to federal and regional lists); systematically disinfect workplaces.
- 3.8 Analyze the need and timing for registration/extension of employees' migration documents, considering the temporary migration rules.



Data protection and information security issues



1

Ensure appropriate legal grounds for personal data processing, i.e. body temperature, the presence, or absence of a number of chronic diseases, information about contacts with coronavirus-infected patients, test results for COVID-19 and antibodies thereto, and pregnancy. Under the labour law, data on health conditions of employees can be processed, to the extent necessary, to assess their ability to perform employment duties.

2

Reflect new categories of data, legal grounds and the purposes of data processing in the policy on personal data processing. Properly notify the data subjects of the changes.

3

Ensure the security and confidentiality of new types of personal data, provide for their non-disclosure to third parties, and destroy such data, once the processing purpose is achieved.

4

Given the potential opportunity for a second wave of coronavirus, adapt your policies and procedures to enable prompt transition to remote operation and tracking the activity of employees on the Internet, monitoring the equipment and devices used for performance of job duties, and ensuring effective information security processes.



Interaction with the tax authorities and tax issues

1



Remote interaction with the tax authorities

1.1

Provide for technical capabilities for remote communication with the tax authorities (continuous access to the Internet and company's resources, installation of required software, timely software updates).

1.2

Connect to the electronic document workflow system with the tax authorities, using the authorized operators of the electronic document workflow (https://www.nalog.ru/rn77/taxation/submission_statements/).

1.3

Secure access to the personal taxpayer's online room, including passing the diagnostic procedure for technical compliance (<http://lkul.nalog.ru/>).

1.4

Obtain the encrypted digital signatures for the authorized staff to interact with the tax authorities and courts.

1.5

Obtain a qualified certificate of the key for verification of the digital signatures (<http://lkul.nalog.ru/rules.php>).

1.6

Use the recommended forms of electronic documents and interactive services of the Russian Federal Tax Service (<https://www.nalog.ru/rn77/>).

1.7

Where practical, transfer all paper documents to electronic format and/or provide for the technical possibility for collecting documents to submit them to the tax authorities at their requests.



Analyzing and structuring activities during the restriction regime

2.1

Monitor the federal and regional measures supporting business and verify, if your company is eligible for them (<https://www.nalog.ru/rn77/business-support-2020/>).

2.2

If possible, eliminate the grounds for non-eligibility with the terms of receipt of business support measures:

- make adjustments to the SME registry;
- make changes in the Russian National Classifier of Types of Economic Activity;
- submit necessary tax and accounting reports, or file updates;
- pay off debts on taxes, duties, insurance contributions.

2.3

Where applicable, revise your accounting policy (revisions may relate to accounting methods, procedure for calculating the advance payments, accounting for the cost of special protective equipment).

2.4

Control the terms for submitting tax reports and other documents to the tax authorities (develop a register of existing tax liabilities and monitor their status).

2.5

Prepare for the on-site tax audits after the restrictions are lifted (conduct an audit to identify potential risk zones, check the availability and correct processing of supporting documents, prepare a defense file).

2.6

Consider the fact that all business actions taken should logically flow from the terms of contracts, standard business processes and applicable law enforcement practices, and be economically justified.



Real estate



1

When entering into new lease agreements and extending the existing ones, ensure that they contain provisions regulating periods when the use of premises is impossible or restricted, provisions regarding Force Majeure circumstances of sanitary and epidemiological nature and action plan if such Force Majeure occurs, other relevant provisions, taking into account the restrictions that were recently in place.

2

In the event of a prospective/anticipated/proposed transaction with real estate, arrange for electronic registration of title transfer (including the availability of digital signature, making a record in the Uniform State Register of Taxpayers of the possibility of filing applications electronically, execution of notarized powers of attorney with the use of digital signature, etc.).

3

When preparing documents on real estate transactions, it is recommended to consider possible adjustments on the timing of actions and formalities, use the mechanisms of conditional performance of obligations (Article 327.1 of the Civil Code of the Russian Federation), include grounds for extrajudicial refusal of the contract (Article 450.1 of the Civil Code of the Russian Federation), and detailed provisions on Force Majeure circumstances (Article 401 of the Civil Code of the Russian Federation).

4

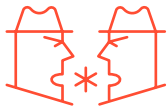
Based on the results of conference calls and virtual meetings, exchange the minutes of meetings in order to fix the negotiated arrangements and minimize risks of unfair behavior of the counterparty.

5

Perform legal analysis of real estate documentation, to identify problems requiring interaction with public authorities, including the Federal Service for State Registration, Cadastre and Cartography (Rosreestr). Arrange the filing of relevant registration data to ensure maximal compliance of the documentation with the requirements of the law.



Dispute resolution



1

In current and new contracts, agree in advance a clause on disputes resolution at the location of the company, in order to avoid the need to travel to other regions with possible COVID-19 restrictions.

2

Clarify the manner of work of courts in which the company has ongoing disputes, as well as existing rules for visiting the courts (restriction of the number of representatives, requirements for the use of personal protective equipment (masks, gloves), etc.).

3

Send several representatives to attend the court hearings (in the absence of special restrictions on the number of representatives in court), as bailiffs may prevent any of the representatives from the attendance, for example, because of high body temperature.

4

Ensure the use of new opportunities for participation in online court hearings (in cases considered by the arbitrazh (state commercial) court - through the "My Arbitr" service, with the choice of relevant type of document («Online Hearing Petition»), in order to reduce the litigation costs.

5

Conduct daily monitoring of the website of arbitrazh (state commercial) courts (<https://kad.arbitr.ru/>) to control the emergence of new disputes against the company, or set up the alert on the portal www.kad.arbitr.ru about new disputes involving the company, by tax identification number (INN), taking into account the expected increase in the number of disputes.

6

In case of need to participate in court proceedings in other cities, perform a legal review of the laws of the region, in which the court is located, and the regional court requirements, to determine the possibility of attending the hearing (for example, if there is a rule to observe a fortnight's quarantine in the region, it seems advisable to participate only online). Detailed information is usually published on the website of the court itself, the head of the constituent entity/ region (governor, mayor, etc.).

7

In case of failure to fulfill obligations to counterparties for reasons related to the spread of coronavirus infection, it is advisable to collect evidence of Force Majeure in advance, including to apply to the Chamber of Commerce and Industry of the Russian Federation, or regional Chamber of Commerce and Industry to obtain a certificate of, or conclusion on, Force Majeure circumstances.

8

Stick to initially-established procedural deadlines as, according to the explanations of the Supreme Court of the Russian Federation, restrictive measures do not serve as grounds for suspending, nor rescheduling, the procedural periods and/or limitation periods. Send documents beforehand, if possible.

9

Determine the strategy for dealing with companies that have a moratorium on bankruptcy.



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