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If you have any questions regarding the matters discussed in this memorandum, please contact the following attorneys or call your regular Skadden contact.

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**Alexey V. Kiyashko**

Partner / Moscow  
7.499.270.2102  
alexey.kiyashko@skadden.com

**Dmitri V. Kovalenko**

Partner / Moscow  
7.499.270.2100  
dmitri.kovalenko@skadden.com

**Robin F. Marchant**

European Counsel / Moscow  
7.499.270.2116  
robin.marchant@skadden.com

**Alexander Kovriga**

Associate / Moscow  
7.499.270.2107  
alexander.kovriga@skadden.com

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One Manhattan West  
New York, NY 10001  
212.735.3000

Ducat Place III  
Gashka Street 6  
Moscow 125047  
Russian Federation  
7.495.797.4600

In our first update on the implications of COVID 19 in relation to the Russian market, we consider:

- contract implications, including:
  - the need for a detailed review of essential contracts; and
  - virtual signings under Russian law;
- changes to Russian corporate and securities laws, including:
  - the ability to hold shareholder meetings *in absentia*;
  - deadline extensions for holding annual meetings in 2020; and
  - amendments to reporting and disclosure obligations;
- recent response measures adopted by the Russian government; and
- general implications and possible trends, including:
  - the continued operation of the Russian anti-monopoly authority;
  - potential M&A opportunities; and
  - increased reliance on domestic capital markets.

## Implications for Russian Law Contracts

### Contract Review To Assess Rights and Risks

Companies should review the potential impact of COVID-19 under their existing corporate and commercial contracts, including joint venture agreements and other essential distribution, supply and customer contracts.

This includes:

- assessing provisions that can be triggered by any party (including *force majeure* clauses, events of default, termination rights and material adverse change provisions);
- making contingency plans as to how to respond and limit damage if a counterparty triggers or invokes such provisions; and
- analyzing the legal consequences if it becomes difficult or impossible to fully perform a contract.

Clients also should proactively reassess the terms of contracts that are currently being negotiated to determine what additional rights and protections can be included.

# COVID-19: Russia Update

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Any potential impact of COVID-19 will depend on a careful review of the facts and contract terms, including the relevant governing law. In the context of Russian law governed contracts:

- The Russian Civil Code contemplates *force majeure*, frustration and other related concepts, including:
  - no liability for non-performance, where such failure is due to an unforeseen event;
  - termination of a contract, where performance becomes impossible; and
  - compulsory amendments to, or repudiation of, a contract due to a material change in circumstances.

However, parties enjoy a significant degree of discretion in regulating these concepts contractually and deviating from the statutory provisions.

- The Russian Chamber of Commerce and Industry stated its readiness to issue free-of-charge formal confirmations and contractual certifications that the pandemic constitutes a *force majeure* event. Such statements do not mean that, from a Russian legal perspective, the pandemic automatically constitutes a *force majeure* event, however, and each contract will be assessed by a Russian court on its facts and terms.
- Russian law does not expressly provide for the concept that exists in certain other jurisdictions, where a party may be deemed to have waived its rights or be estopped from doing so, if it delays in exercising those rights and continues to perform a contract. However, where a counterparty is late in triggering its rights, depending on the facts, there may be potential for companies to rely upon this behavior in any counterclaim. It remains vital for companies to consider the timing of any notice invoking any right, and the implications of failing or delaying do so, under Russian law, as well as under the contract.

## Virtual Signing and Exchange of Contracts

Since stay-at-home orders have taken effect in most regions of Russia, and many companies and professionals have adopted working from home policies, physical signing meetings will be difficult, even where there may be an exemption for leaving home where it is essential for work.

Parties may therefore wish to rely on “virtual signing” procedures, where parties exchange PDF counterparts of a signed contract by e-mail, in order to deem a contract as having been executed.

Under the Russian Civil Code, the exchange of signed contracts remotely by e-mail is valid, provided that this “allows for unambiguous identification of the person entering into the contract.” Russian court practice is not definitive or consistent as to the precise nature of what constitutes “unambiguous identification”:

- In one recent case, the exchange of signed contracts was deemed valid because it was sent from an official corporate e-mail address (not a business e-mail address assigned to any of its employees personally), the counterparty did not claim that the signature was forged and the counterparty had no reason to doubt the authority of the sender of the signed contract.
- In other cases, importance has been placed on the personal involvement of the relevant party’s CEO or another authorized representative in the e-mail correspondence.

As practical guidance to reduce any risk, we recommend that clients take the following steps:

- Hard-copy versions of the signed counterpart contracts should be retained in a safe place by signatories, such that when it does become possible, the counterparts can be combined, and a full version of the signed contract in hard-copy can be prepared.
- As is the practice in other jurisdictions where virtual signings are more common, parties should establish detailed and clear procedures for how any virtual signing should operate, with one party or its legal advisers responsible for coordinating, and ensure that all parties provide e-mail confirmation that those procedures have been agreed upon in order to reduce the possibility of dispute.

By contrast, digital signatures, which may involve typing a name into an electronic version of a contract, pasting a scanned signature into a contract or signing a contract with an electronic pen, are not currently provided for by Russian law.

However, since remote working is expected to continue for some time, we can expect to see proposals from the government or legislators to develop more modern methods for entering into transactions.

## Continued Operation of Notaries

The existing requirements for the notarization of certain types of contracts and documents under Russian law remain in place.

Despite the stay-at-home orders, notaries continue to operate, albeit with limited staffing. Therefore, it will be critical to make arrangements with notaries well in advance to ensure their availability.

## Changes to Corporate and Securities Laws

### Permission for All Shareholder Meetings To Be Held *In Absentia* and Extension of Deadlines

Until recently, any annual shareholder meeting convened to consider the election of directors or an audit committee, the appointment of auditors or the approval of an annual report could

# COVID-19: Russia Update

only be held physically. However, as a result of the pandemic, a law was adopted permitting all shareholder meetings that are convened in 2020, regardless of the agenda, to be held in absentia, (*i.e.*, voting through submission of ballots) without requiring a physical meeting.

Furthermore, the deadlines for holding annual shareholder and participant meetings of Russian joint-stock companies and limited liability companies will both be extended to September 30, 2020.

## Reporting and Disclosure Obligations

The deadlines for delivering annual consolidated financial statements under International Financial Reporting Standards for 2020, and interim consolidated financial statements for the first six months of 2020, to shareholders, participants and the Central Bank (as the Russian securities market regulator) will be extended to 180 and 150 days, respectively, from the end of the reporting period, and the deadlines for their disclosure will be extended to 30 days after expiry of those time periods.

The Central Bank is likely to prolong other disclosure and reporting deadlines, including those relating to financial reports of listed companies and financial institutions.

## Russian Government Measures in Response to COVID-19

On April 2, 2020, President Vladimir Putin announced the extension of the “non-working period” to April 30, 2020.

So far, financial and other measures announced by the Russian government to support companies facing financial difficulty have been fairly limited, but all major trade and industry bodies have been lobbying the government to request support.

The recent measures proposed or announced by the Russian government include, among others, the following, and we can expect to see more expansive steps being implemented in the coming weeks:

- proposing changes to tax and insolvency laws, including a deferral of certain tax payments and a moratorium on the filing of creditors’ petitions for bankruptcy of Russian companies;
- increasing the number of companies considered to be “systemically important” for the Russian economy, which may entitle them to special government support; and
- terminating most types of state audits during the period from March 18, 2020, to May 1, 2020 (including tax and customs audits).

## General Implications and Possible Trends

### Merger Control Procedures

The Russian anti-monopoly authority (FAS) remains open and active, with its staff working remotely. Although FAS announced the halting of non-essential investigations, the agency does not intend to put on hold its review of any antitrust clearance requests, whether in respect of new or existing filings.

### M&A and Foreign Investment Opportunities

The availability of debt financing from Russian banks during the pandemic will remain very limited, with banks seeking to protect their balance sheets and address existing borrowers’ difficulties.

Nevertheless, investors with significant cash assets may still find opportunities in relation to Russian companies in sectors that have been and will continue to be adversely affected by the virus, and which are suffering from liquidity issues and where state support may be unlikely.

A number of Russian subsidiaries of foreign companies recently have been added to the government’s list of companies that are “systemically important” to the Russian economy. This may entitle them to state support from the Russian government in due course. The addition of foreign names to the list is a helpful illustration that Russia remains open for foreign investment.

### Capital Markets

Due to the reduced availability of foreign investment in the short- to mid-term, Russian companies might have no choice but to rely on domestic, rather than international, financing, in order to increase liquidity and raise funds. The pool of investors also may be widened to encompass retail investors, rather than purely institutional, bearing in mind that, as part of the COVID-19 response measures, the Russian government has proposed the imposition, beginning in 2021, of a 13% personal income tax on interest received by individuals from government and corporate debt instruments, and bank deposits (subject to certain deductions and exemptions).

Public companies that have suffered a significant decrease in their share price may use the simplified share buyback rules that are currently being adopted as part of the package of measures aimed at easing the financial markets turmoil caused by the crisis. Under these new rules, when conducting a buyback prior to the end of 2020, listed companies will no longer be required to engage third-party appraisers to determine the value of the shares or disclose the buyback in advance to shareholders. Such

# COVID-19: Russia Update

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buybacks may be conducted through a broker at prevailing market prices. In order for a company to make use of these simplified rules, both the major Moscow Exchange index and the issuer's weighted average share price for any three-month period after March 1, 2020, would need to have declined by at least 20% compared to the weighted average price for Q4 2019. The total volume of any buyback is still limited to 10% of the total share issued capital and any shares bought back under these rules still need to be disposed of at market price or cancelled within one year.

The existing buyback rules that have been relaxed in response to the ongoing crisis are universally interpreted to be applicable only to buybacks conducted by issuers themselves and not by their subsidiaries or affiliates. In practice, subsidiaries of Russian-listed companies often have conducted share buybacks outside these limitations.