



SVKK Club Online: Legal Update Covid-19

10.9.2020



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Speaker: Mr. Oleg Haritonov, Head of Dispute Resolution, CLIFF Legal, MJur (Oxford), Russian advocate, solicitor (E & W, non-practising)



- (i) The key changes of the legal regulation of corporate relations due to the Coronavirus pandemic: the postponement of annual general meetings, consequences of a decline in the net asset value at the end of 2020.
- (ii) The remote management of a company during the pandemic: tools allowed in accordance with the Russian legislation.
- (iii) Legal regulation of leasing property in the new reality and measures to support landlords and tenants.
- (iv) Legal regulation of labour relations: remote work, electronic employment record books, new rules for making a severance pay in case of dismissals, a new form of report to the Pension Fund.

Legal regulation of leasing property in the new reality and measures to support landlords and tenants



1) The rent may be reduced and (or) put off in case of leasing commercial non-state real property:

- tenants acting in the fields of economy most affected by the pandemic are entitled to put off payments of the rent for April-October 2020 on 2021-2023;
- tenants can ask for a reduction of the rent if they were not able to use the property due to the pandemic.

2) The rent may be waived and deferred in case of leasing commercial state real property:

- tenants that are small or mid-level businesses may ask to put off the rent for April-October 2020 on 2021-2023;
- tenants acting in the fields of economy most affected by the pandemic are entitled not to pay the rent for April-July 2020 when leasing state real property.

Legal regulation of labour relations: remote work, electronic employment record books, new rules for making a severance pay in case of dismissals, a new form of report to the Pension Fund

- ✓ Employees will be able to work remotely full-time or to work some time in the office and some time remotely. The employer will have to formalize the remote work by amending employment contracts or by adopting a resolution (in extraordinary circumstances).
- ✓ By the end of 2020, all employers will start using electronic employment record books. Employees will have an option to keep their employment record books in the paper format if they want so.
- ✓ From February 2020, all employers must submit a new form to the Pension Fund due to the introduction of electronic record keeping.
- ✓ The employment law has been changed with respect to severance payments to employees dismissed due to their employer's liquidation or staff reduction: the employer can choose between a single lump sum payment or several consecutive payments.



- (i) The draft law on blocking mobile applications containing copyright-infringing content.
- (ii) The new tax benefits for IT- companies.
- (iii) *Rambler vs Nginx*. The practice of the Russian IP Court on the ownership of intellectual property objects (software) created by employees.
- (iv) The new liability for breaching the data localization requirement. The *Twitter* and *Facebook* cases.
- (v) The draft law on the liability for breaching the requirements in the field of the privacy of personal data.

The draft law on blocking mobile applications containing copyright-infringing content

The amendments are introduced by Federal Law of 8 June 2020 No. 177-FZ «On amending the Federal Law on information, information technologies and information protection» and will become effective starting from 1 October 2020.

NOW: If infringing content is distributed via using e-platforms and mobile applications, Roskomnadzor will block the access to e-platforms and apps within one week at the request of the copyright holder.



The new tax rules for IT- companies

The amendments are introduced by Federal Law of 31 July 2020 No. 256-FZ «On amending Part 2 of the Tax Code of the Russian Federation» and will become effective starting from 1 January 2021.

- ✓ the reduction of corporation tax from 20% at present to 3%;
- ✓ the reduction of obligatory contributions to 7.6%;
- ✓ dealing with computer programs (the alienation of exclusive rights and the grant of license) will be subject to VAT at the rate of 20%;

The exception: software included in the Unified register of Russian programs for computers and databases (the register of national software) of the Ministry of Digital Development, Communications and Mass Media of the Russian Federation.

The practice of the Russian IP Court on the ownership of intellectual property objects (software) created by employees

The decision of the Russian IP Court dated 01 August 2019 - Amedico v. TelePat

A labor contract is not sufficient to establish that the exclusive rights subsisting in a work belong to the employer.

Necessary documents:

- 1) Labor contract
- 2) Job description
- 3) Employment task
- 4) Protocol on the performance of the employment task and the transfer of the exclusive rights
- 5) Rules of intellectual activity (optionally)

Rambler vs Nginx. *Rambler did not issue the documents properly and lost the exclusive rights in a multi-million-dollar software.*

The new liability for breaching the data localization requirement

Art.18(5) of the Personal Data Law

The localization requirement states that «the data operators must ensure recording, systemization, accumulation, storage, clarification (update, change) and extraction of personal data of the Russian Federation citizens with the use of databases located in the territory of the Russian Federation when collecting this personal data in any manner, including via the Internet».

Para 8 and 9 of Art.13.13 of the Code for Administrative Offences (effective since 2 December 2019) provide the following fines for non-compliance with the data localization requirement:

Offender	First-time offence	Repeated offence
Legal entity	RUB 1 000 000 – 6 000 000 (approx. EUR 11 250– 67 500)	RUB 6 000 000 – 18 000 000 (approx. EUR 67 500 – 203 000)
Company officer	RUB 100 000 – 200 000 (approx. EUR 1 125 – 2 250)	RUB 500 000 – 800 000 (approx. EUR 5 620– 9 000)

Examples of fines for breaching the data localization requirement:



RUB 4 000 000
approx. EUR 45 000



RUB 4 000 000
approx. EUR 45 000



If personal data of Russians is not transferred to Russia, the fines will be increased to RUB 18 000 000

The draft law on the liability for breaching the requirements in the field of the privacy of personal data

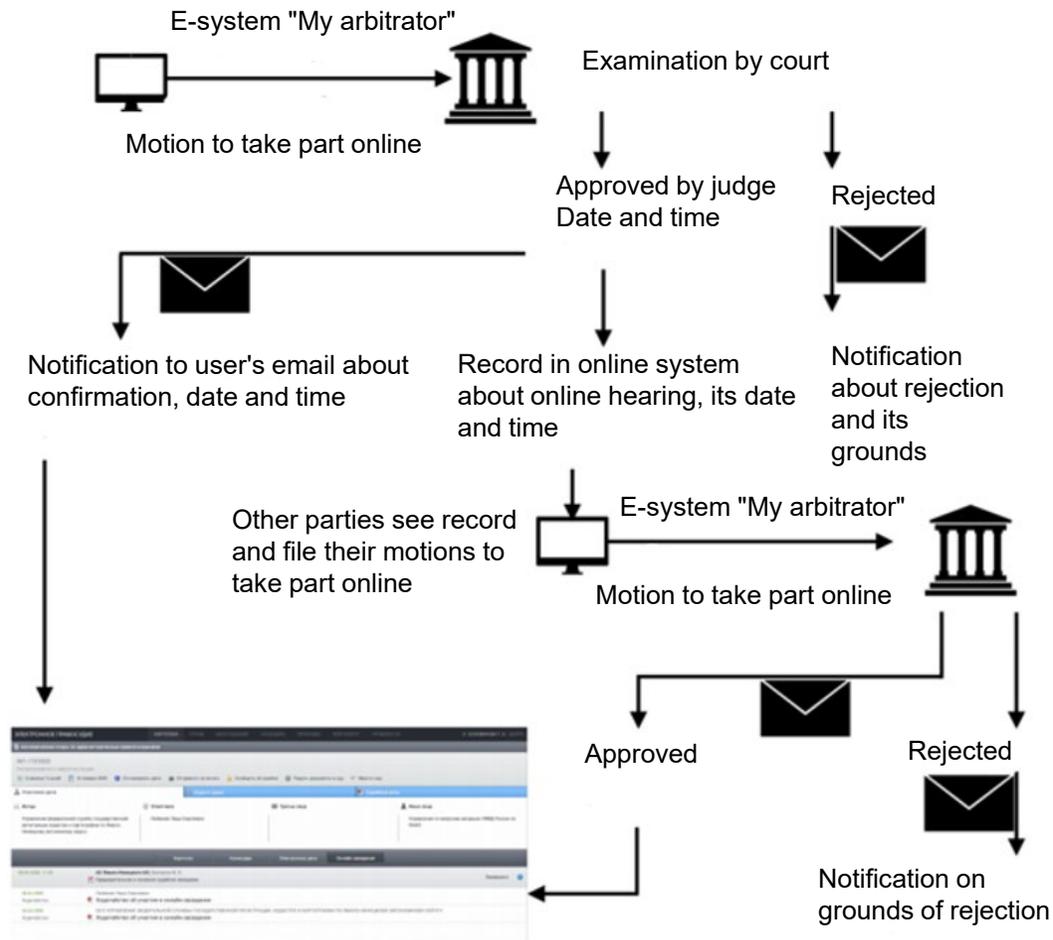
The administrative offense for failing to comply with the obligation to respect the confidentiality of personal data:

Offender	Fines
Legal entity	RUB 300 000 – 500 000 (approx. EUR 3 370– 5 620)
Sole entrepreneur	RUB 100 000 – 300 000 (approx. EUR 1 125 – 3 370)
Company officer	RUB 40 000 – 100 000 (approx. EUR 450 – 1 125)



- (i) The regulations on the use of telecommunication technologies in holding court hearings (video-conferences with remote courts all over Russia).
- (ii) The new court practice on the application of the Force Majeure contract provisions.
- (iii) The new rule on the transfer of legal disputes involving sanctioned parties to Russian courts.
- (iv) Sanctions and issues around them.

The regulations on the use of telecommunication technologies in holding court hearings (video-conferences with remote courts all over Russia)



- 1) It is possible both to participate in hearings online and to examine the case files online.
- 2) A party must have their identity proven via a specific procedure to use the judicial e-services.
- 3) The system is available for commercial courts and courts of general jurisdiction.
- 4) The applied software tends to be specially developed for courts. Occasionally, Skype, WhatsApp, TrueConf etc. are used.
- 5) The courts are not willing to use telephone communication.
- 6) Since 2019, the new service "Justice online" has been developed by the government.
- 7) Online justice is unlikely to become a predominant way to hold hearings.

The new court practice on the application of the Force Majeure contract provisions

Force Majeure (Art. 401 of the Civil Code of the Russian Federation):

If not stipulated otherwise by law or in a contract, a party that has failed to perform properly its obligations is held liable unless the failure is due to **extraordinary and unavoidable** circumstances.



Review of certain questions of the judiciary practice related to the measures taken to combat the COVID-19 pandemic in the Russian Federation (No. 1, dated 21.04.2020):

As a general rule, previously, lack of funds was not an event that could be considered as Force Majeure and a ground to release from liability.

The exception to the above rule offered due to the pandemic by the Supreme Court:

- 1) The lack of money is a consequence of the measures introduced by the government to cope with the pandemic (ex., a ban for certain business activities, lockdown etc.).
- 2) When a reasonable party engaged in the similar activities as the debtor would not have been able to avoid negative financial consequences because of the compulsory restrictive measures taken (for instance, when there is a substantial decrease in profit due to an obligatory ban for a restaurant to allow visitors).

The new rule on the transfer of legal disputes involving sanctioned parties to Russian courts. The sanctions and issues around them

- ✓ Since June 2020, the Federal law has been in force allowing to transfer sanction-related disputes to Russian commercial courts.
- ✓ The draft law was negatively met by the Bank of Russia believing it would sour the investment climate in Russia.
- ✓ The problems of sanctioned parties are quite real in foreign litigation and arbitration (ex., difficulties to pay fees, to retain a counsel etc.).

The main features of the new rule: _____

A. (Art. 248.1 of the RF CPC): transferring disputes related to sanctions to Russian commercial courts from foreign state courts and international arbitration tribunals when:

- involved parties are subject to restrictive measures of a foreign state (or unions and groups of states); or
- involved Russian and foreign parties have a dispute stemming from such restrictive measures.

B. (Art. 248.2 of the RF CPC): applying for an anti-suit injunction:

A Russian resident may apply to a Russian court to forbid the opponent to initiate a dispute outside Russia or to continue it if already initiated.

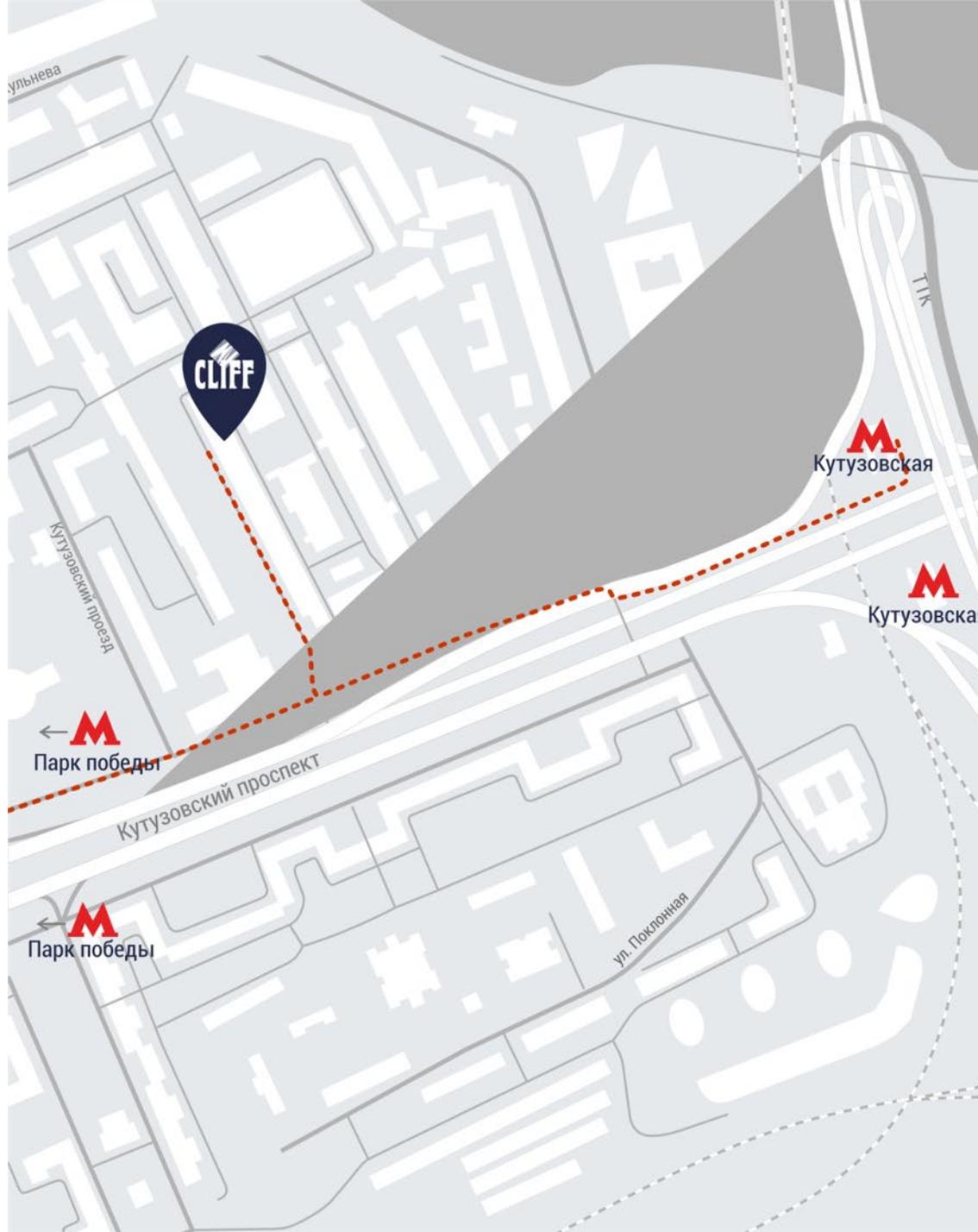
Thank you!



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SVKK Club

- **28.9.** Бизнес в новых реалиях. Digital-революция и новый мир гипер-конкуренции (Online)
- **7.10.** Logistiikkaklubi - ”Asiaa logistiikasta Venäjälle, Venäjältä ja Venäjällä”
- **8.10.** Ambassadors’ Table (Online)
- **20.10.** Legal Update Covid-19 (Online)



SVKK Training Online

- **17.9.** Pakotteet pysyvät, maailma muuttuu
- **29.9.** Työlainsäädännön joustot poikkeustilanteissa Venäjällä
- **1.10.** Poikkeusajan veroedut ja verouudistukset Venäjällä
- **6.10.** Sertifioinnin ajankohtaiset kysymykset
- **27.10.** Vastuu venyy rajan taakse – tytäryhtiön pääjohtaja etänä Suomessa

Kiitos palautteesta! Спасибо за отзывы!

- Palautelinkki
онлайн ссылка)



SUOMALAIS / VENÄLÄINEN
KAUPPAKAMARI