



Consequences of the state of emergency in Kazakhstan

On 15 March 2020, President Tokayev signed a decree establishing a state of emergency in Kazakhstan from 08:00 on 16 March 2020 until 07:00 on 15 April 2020 to combat the spread of coronavirus. With this in mind, we would like to highlight some issues that may be of interest to you.

Quarantine

In accordance with Decree No. 8 from 18 March 2020 of the Acting Chief State Sanitary Doctor for Almaty, quarantine was introduced in Nur-Sultan and Almaty from 19 March 2020, which, for example, establishes a quarantine zone perimeter, determines points of entry/exit from it; restricts the movement of people, and the entry/exit of vehicles; and reorganises Public Service Centre working hours, etc.

In addition, from 28 March, additional measures and restrictions were introduced in Almaty and Nur-Sultan

to reinforce the quarantine, including the movement of citizens and vehicles, company operations, except for those necessary to support the functioning of the city.

At the same time, similar restrictive quarantine measures were introduced in a number of regions of Kazakhstan, such as Akmola, Aktobe, West Kazakhstan, Dzhambul, Kostanai, Mangistau, Pavlodar and North Kazakhstan and in the cities of Aktau, Aktyubinsk, Atyrau, Dzhambul, Karaganda (together with its satellite cities of Abay, Saran, Temirtau and Shakhtinsk), Petropavlovsk, Semey, Ust-Kamenogorsk and Shymkent.

Entry and exit restrictions to/from Kazakhstan

Presidential Decree No. 285 dated 15 March 2020 establishes restrictions on the entry and exit into and from Kazakhstan by all means of transport, with the exception of certain cases and entities, such as

Kazakhstan nationals returning to Kazakhstan and travelling overseas for treatment; and foreign nationals leaving Kazakhstan.

Government bodies:

On 16 March 2020, the President adopted Decree No. 286 introducing measures to ensure social and economic stability, whereby the government, and state authorities reporting directly to the President, as well as central and local executive bodies, are authorised to adopt acts including those stipulating different procedures.

The acts in question cover:

Tax authorities

Based on State Revenue Committee Letter No. KGD-14-1 / 6589-I from 17 March 2020 and Government Resolution No. 141 from 27 March 2020, the tax authorities will:

- postpone deadlines for tax reporting; issuing notice / notifications of desktop audits; initiating audits according to a special procedure; considering materials on administrative liability in connection with a failure to notify of a desktop audit;
- transition to a remote form of operating, i.e. the personal delivery of notifications, commission meetings and personal meetings with the public will be suspended;
- tax breaks will be applied to certain entities.

Judicial system

In accordance with its Letter No. 6001-20-3-1-7/75 from 16 March 2020, the Supreme Court will:

- postpone the consideration of court cases (this applies to court cases whose procedural deadlines have not passed);
- recommend that litigation be considered remotely using IT technology;
- direct Nur-Sultan city courts to accept claims only in electronic format;
- suspend the receipt of individuals in all courts.

Quasi-public sector

The Samruk-Kazyna Board adopted a decision on 16 March 2020 to significantly simplify access to state procurement for Kazakhstan businesses, namely:

- ST-KZ and industrial certificates are no longer required);

- Kazakhstan manufacturers of goods will be exempt from having to provide bid and contract enforcement security;
- Customer, designer and contractor requirements for the use of products of Kazakhstan producers have been established.

Public Service Centres

According to the Government for Citizens' press office:

- Public Service Centres will not be open during quarantine; and all public services will be provided electronically;
- A call centre and collection window for documents submitted to Public Service Centres before 21 March will be opened.

State authority operating hours

Official sources have published information that the state authorities are operating part-time and remotely, suspending the physical reception of members of the public.

For example, applications including contact details (phone, e-mail, etc.) need to be made to meet with the state revenue authorities. In addition, document status can now be viewed online. It is worth noting that no legislative acts have been adopted in this regard.

Liability for violating the state of emergency and quarantine:

Punishment for violating the rules of the state of emergency and quarantine is as follows:

- Administrative sanctions: from a warning and a fine of 10 times the monthly calculation index ("MCI") to administrative arrest for 15 days and suspension of activities and confiscation of products in accordance with articles 425, 462, 476 or 667 of the Administrative Offences Code;
- Criminal liability: from a fine of up to 2,000 times the MCI to imprisonment for up to 10 years in accordance with articles 304 and 379 of the Criminal Code.

Employment issues

In connection with the introduction of the state of emergency and quarantine, the government recommends that employers adopt remote or other types of work practices, or place employees on a part-time schedule, send them on vacation, or consider

other options. In this regard, we draw your attention to the following employment law provisions:

- Remote work requirements are established in article 138 of the Labour Code. Employers are obliged to provide employees with means of communication for the remote work period, and are also responsible for reimbursing installation and maintenance costs. By agreement of the parties, employers may be required to reimburse other expenses (electricity, water and other cost);
- Employees may be transferred to a different job according to article 38 of the Labour Code. Any such process is accompanied by the corresponding changes to employment contracts and the drafting of an employer act;
- Part-time transfer requirements are provided in article 70 of the Labour Code. Any such transfer does not bring about any restrictions on annual leave, the calculation of length of service and other employment rights;
- According to article 42 of the Labour Code, employers may temporarily transfer employees, without their consent, to another job in the event of downtime, as long as health contraindications are not an issue. Employees should be paid for the work performed when a temporarily transferred to another job in the event of downtime;
- If none of the above options are possible, employers should pay employees for downtime due to circumstances not depending on the will of the parties, in an amount not lower than the minimum salary.

Application of force majeure provisions

We remind you that under article 359 of the Civil Code, a party that has not fulfilled an obligation or has done so inappropriately will be liable with property unless it can be proven that proper performance was impossible due to an insurmountable force, that is, an emergency or an unavertable event under given conditions, such as natural disasters, military operations, etc.

Several factors must be taken into account for this rule to be applied successfully, including a causal relationship between the circumstances and the non-fulfilment/improper fulfilment of contractual obligations, and proper notification of a counterparty of the circumstances.

Today, according to information from the National Chamber of Entrepreneurs, Kazakhstan businesses unable to meet their contractual obligations due to the

pandemic can contact the Atameken subsidiary to testify to the force majeure situation.

How Deloitte can help:

The Deloitte Legal team will be happy to provide more detailed advice on any issues that arise after you have read this newsletter.

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