Korpus Prava

#2 / Summer, 2020

Analytics

Tax & Law Journal for Top Executives

Labyrinths 2020

Co-publisher

Searching for force majeure…

Amendments to double taxation conventions. Old games, new rules

Special reasons for exemption from liability for non-repatriation of foreign currency earnings

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Dear readers!

We are glad to welcome you to our summer edition of “Korpus Prava.Analytics”.

The new issue is packed with articles, as in the current situation, governments of numerous countries, including the Russian Federation, adopt a number of legislative acts that partially or completely change existing policies.

Thus, the article by lawyer Roman Moskovskikh covers principal changes proposed by the Government of the Russian Federation in terms of corporate procedures carried out by JSC and LLC. Namely, the deferral of next general meetings of LLC members and meetings of shareholders, and the decrease in the value of net assets of JSC and LLC.

In her article, Tatyana Frolova, senior lawyer at Private Wealth, tells you when to expect the introduction of the tax on interest received on bank deposits, its features, and provides examples of tax base calculations.

Another innovation was the increase in the withholding tax for dividends and interest paid to tax non-residents of the Russian Federation, as well as the revision of double taxation conventions. However, there is no need to hurry, because the new rules will become effective from January 2021. In her article, Anna Senchenko tells you how to act and what measures to take during this time.

The corporate practice also underwent certain changes. For example, the Enhanced Due Diligence (EDD) and personal identification (onboarding) procedures are now remotely available via means of video communication. See the articles of experts of the compliance department, Irina Otrokhova and Vlada Shafirova, to find out more about this issue.

I hope that this feature material will be beneficial for you and will help you find answers to numerous questions that are of concern to many now. Our specialists are always in touch and ready to respond to any comments and suggestions.

Have an enjoyable and beneficial reading!

Artem Paleev
Managing Partner
Korpus Prava

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Irina Otrokhova
Chief Compliance Officer
Corporate Services
Korpus Prava (Cyprus)

No relaxation during “Bed rest”

It is notorious that in any unstable economic conditions, fraudsters always become more active, and therefore, both clients and companies have to stay alert. Financial institutions and corporate administrators have to be particularly careful when accepting new clients and always remember about an option of applying Enhanced Due Diligence (EDD) procedures.

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Vlada Shafirova
Onboarding Specialist
Corporate Services
Korpus Prava (Cyprus)

Online onboarding — thanks for being there for us

Due to the current global situation, it is quite difficult to schedule a meeting at the moment. What actions may be taken to ensure that the working process with new clients is not suspended, while all legal requirements are still met? Let us turn to the law itself.

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Irina Otrokhova
Chief Compliance Officer
Corporate Services
Korpus Prava (Cyprus)

Varvara Peltikhina
Corporate Administartor
Corporate Services
Korpus Prava (Cyprus)

Anti-crisis measures for the corporate sector in Cyprus

Legislators in various countries have widely adopted rules that allow companies to hold remote meetings, delay deadlines for filing annual reports, and cancel fines for violations of certain terms. Cyprus is no exception, and state authorities of Cyprus have taken various measures to support companies and providers of corporate services in order for companies to fulfill their obligations on filing certain reports, paying state fees, and meeting certain deadlines. Let us consider such measures in more detail.

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Elena Spetsiou
Corporate Administrator
Corporate Services
Korpus Prava (Cyprus)

Anna Senchenko, LL.M.
Leading Lawyer
Tax and Legal Practice
Korpus Prava (Russia)

Fresh take on remote meetings held by companies in Cyprus: theory and practice

Due to the introduction of travel restrictions, quarantines, border closures and announcements of the state of emergency in numerous countries, it has become virtually impossible to hold face-to-face meetings, as well as to ensure the presence of company shareholders and directors. Now more than ever, it is vital to consider the possibility of remote corporate procedures.

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Roman Moskovskikh
Lawyer
Tax and Legal Practice
Korpus Prava (Russia)

COVID-19: Impact on corporate procedures

In view of the COVID-19 pandemic and as part of a general set of measures aimed at stabilizing the economic situation, the Government decided to introduce a number of changes into corporate procedures carried out by joint-stock companies and limited liability companies.

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Tatiana Frolova
Leading Lawyer
Korpus Prava Private Wealth

Interest on interest — new tax for individuals

In 2020, the phrase “The world will never be the same again” became really popular. And this statement has already become reality for people who keep their savings with Russian banks. From 2021, the tax on interest received on bank deposits will be introduced.

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Anna Senchenko, LL.M.
Leading Lawyer
Tax and Legal Practice
Korpus Prava (Russia)

Amendments to double taxation conventions. Old games, new rules

Each time faced with a new bit of news one should ask oneself simple questions: What has happened/what has changed? How will this affect me/my business? When will changes take place? What has to be done before changes take effect? Thus, what happened at the end of March in the field of international taxation?

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Irina Kocherginskaya, LL.M.
Managing Director
Tax and Legal Practice
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... and again I’m back to start, I am back to Leningrad!

Under the current conditions, the main restriction faced by all individuals and corporations is travel restrictions for individuals, cancellation of air service, and closure of borders. Taxpayers are used to the fact that the world is global, and they are mobile.

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Alexey Oskin
Deputy Director
Tax and Legal Practice
Korpus Prava (Russia)

Searching for force majeure...

The possibility of recognizing certain circumstances as force majeure depends on the specific terms of concluded agreements, as well as on a cause-and-effect link between the circumstances that occurred (the cause) and the inability to perform contractual obligations (the effect). Let us try to explore this issue in more detail.

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Artem Paleev
Managing Partner
Korpus Prava

Possible reasons for out-of-court repudiation of the agreement

The table provides a consolidated list of the reasons for repudiation of the agreement set by the current law. This list is not exhaustive, and the possibility of applying a particular reason should be further checked in each case.

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Ekaterina Sechkareva
Junior Lawyer
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Special reasons for exemption from liability for non-repatriation of foreign currency earnings

Under the current circumstances, proper execution of transactions between foreign counterparties has become significantly harder. This is due to the fact that participants of foreign economic activities are forced to adapt not only to newly emerging domestic restrictions and prohibitions, but also consider measures taken by other jurisdictions in one way or another related to the performance of the contract.

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Alexey Oskin
Deputy Director
Tax and Legal Practice
Korpus Prava

Lessee vs Lessor: which side is COVID-19 on?

In order to reduce costs, it is reasonable to either negotiate with a lessor on a deferral, reduction of rent, rent free periods, or on termination of the agreement by mutual consent on mutually beneficial terms. We decided to review some questions that lessees tend to have in this situation.

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Michael Oberemkov
Lawyer's Assistant
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Korpus Prava (Russia)

Prevention and treatment of the government contract breach

New COVID-19 is a current factor that seriously hinders economic growth and threatens the well-being of both individuals and businesses. Regardless of the measures taken by the government to give assistance to affected businesses, the current situation is fraught with losses that are unavoidable.

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Svetlana Sviridenkova
Director
Audit Practice
Korpus Prava (Russia)

Supporting measures for accountants in lockdown

At the beginning of April, a lot was changed to support businesses during difficult times. This article covers the most significant changes related to those economic areas that are not recognized as particularly affected, as well as some measures to support small and medium-sized businesses operating in the affected economic areas.

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Yana Dimitrova
Deputy Director
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Korpus Prava (Hong Kong)

Brief overview of the key measures taken in Hong Kong to support business

The fight against the epidemic and the introduction of lockdown have had a strong impact on the economy of Hong Kong the Government of which, along with other countries, has developed a set of measures to support its citizens and companies. The most effective measures were the prolongation of repayment terms for facility lines and the deferral for interest payments, as well as the reduction of interest rates on current loans for small and micro-organizations.

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Milena Saakyan
Business Development Manager
Korpus Prava (Cyprus)

Brief overview of the key measures taken in Cyprus to support business

During the period from March 2020 to the present day, state authorities of Cyprus have taken and continue to take various measures to support the business and economy of the island during the spread of the virus. We suggest that you learn the main ones.

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NO RELAXATION DURING “BED REST”

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Under the current global circumstances, pretty much all business areas face difficulties, including financial institutions and corporate administrators. All current and potential clients are important for any company, but especially in any unstable economic conditions. Currently, most companies around the world are trying to work remotely as if they were in the office and attract new clients, but not all procedures for the reception of clients provided for by the laws and regulations on anti-money laundering and counter-terrorism financing may be physically observed. For example, it is impossible to hold personal meetings with clients when locked-down, and therefore it is impossible to review identification or any other documents submitted by the client in the original in their presence.

It is notorious that in any unstable economic conditions, fraudsters always become more active, and therefore, both clients and companies have to stay alert. Financial institutions and corporate administrators have to be particularly careful when accepting new clients and always remember about an option of applying Enhanced Due Diligence (EDD) procedures, such as:

- For clients with whom holding a personal meeting is impossible (non face-to-face): video calls with an option of recording a conversation, as well as saving a video image of the client and documents that will further be sent by the client as copies or originals (subject to the laws on personal data protection);
- For politically exposed persons: request for additional confirmation of the source and amount of income (form 2-НДФЛ (personal income tax), bank account statement, gift agreement, inheritance documents, etc.), additional verification in specialized information databases, request for certificates of absence of criminal records and other documents and information that will be necessary.
- For clients associated with activities that pose an increased risk of money laundering and terrorist financing (oil and gas industry, art sale, etc.): request for all agreements that indicate the company's activities (sale and purchase agreements, supply agreements, loan agreements, assignment agreements, etc.), request for financial statements of counterparties, subsidiaries and parent companies, additional verification of counterparties in specialized information databases, and other

documents and information that will be necessary.

- For clients that fall under any risk categories: enhanced verification of transactions, verification of the reason for conducting transactions prior to their execution, potential refusal to conduct a transaction before all the required supporting documents (agreements, statutory documents of counterparties, identification documents of directors, etc.) are provided, complete refusal to conduct a transaction with notification of the relevant state authorities when an attempt to commit an illegal operation is suspected.

It should be noted that the listed measures are not exhaustive and, despite the fact that the regulation on anti-money laundering and counter-terrorism financing is similar all over the world, each jurisdiction is entitled to introduce its own additional measures. The scope of such measures is always determined by the anti-money laundering and counter-terrorism financing officer on site, depending on the situation and their professional experience. It should also be noted that financial institutions, such as banks, investment and insurance companies, may currently impose the strictest policies with their clients, but one should take into account that these organizations are most often exposed to the risk of money laundering and terrorist financing and have to act both in their own interests and in the interests of their clients.

ONLINE ONBOARDING — THANKS FOR BEING THERE FOR US

Vlada Shafirova
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Did you know that...? The first commercial videophone was developed by engineers at the Bell Telephone Laboratories research center (now Nokia Bell Labs) and presented in 1964 at the World Expo in New York, USA.

Part of the process of accepting new clients for service support by the compliance department is personal identification, as well as verifying the compliance of the submitted documents. The procedure may be performed during a face-to-face meeting. If it is impossible to hold a meeting, personal identification is carried out by persons authorized to perform notarial actions, or by other persons entitled to certify the authenticity of documents. However, such individuals shall be classified as non face-to-face clients and may be assigned a high level of risk.

Due to the current global situation, it is quite difficult to schedule a meeting at the moment. What actions may be taken to ensure that the working process with new clients is not suspended, while all legal requirements are still met? Let us turn to the law itself.

Laws keep up with the times and provide an opportunity to use all available means of communication to confirm one's identity. For example, in accordance with the Directive of the Cyprus Securities and Exchange Commission a more comprehensive verification may be carried out regarding persons with no previous personal acquaintance in order to prevent and stop money laundering and terrorist financing.

"THE DAY WILL COME WHEN THE MAN AT THE TELEPHONE WILL BE ABLE TO SEE THE DISTANT PERSON TO WHOM HE IS SPEAKING"
ALEXANDER BELL, 1906

Such verification includes, inter alia, interaction via means of video communication with an option to take screen shots as confirmation of such communication, provided that all security measures are met. The proper level of security may be achieved by holding a video conference on platforms that allow you to restrict access to it. During the conference, previously submitted identification data is confirmed.

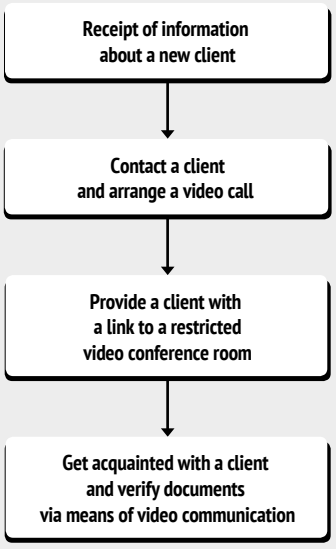
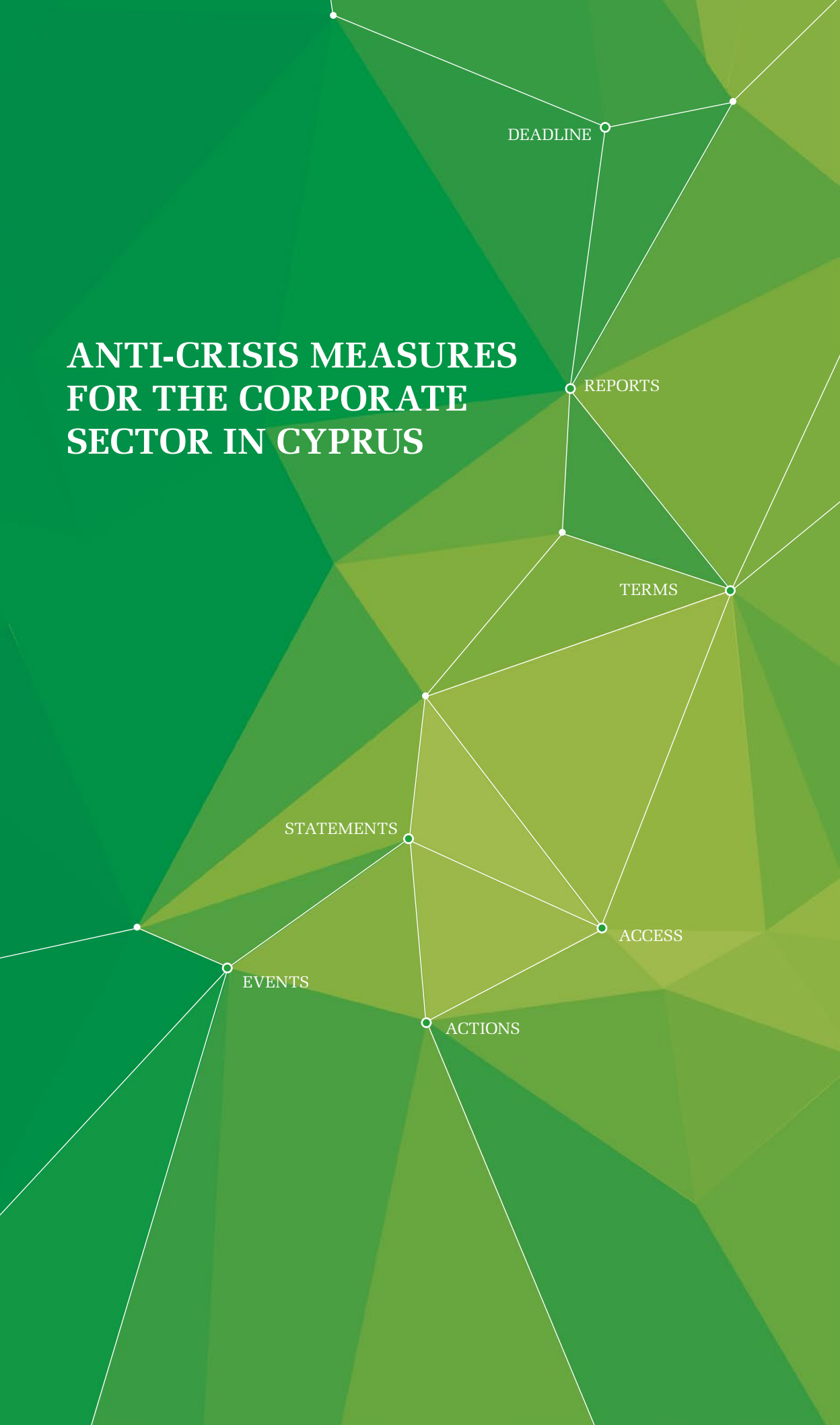


Fig. 1.

The diagram shows the procedure of personal identification via means of video communication.

It is clear that the regulation takes into account the potential of modern technologies and gives an opportunity to keep the working process with new clients uninterrupted, which under the current circumstances is a chance to maintain the customer base.

ANTI-CRISIS MEASURES FOR THE CORPORATE SECTOR IN CYPRUS



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Currently, all areas of life and economic activities experience difficulties with operating, including areas of corporate management and corporate reporting. Since office work and movements of shareholders, key management figures, employees, registrars, depositories, and providers of administrative and corporate services are hindered, the inability to perform various duties on time has become a pressing concern. Legislators in various countries have widely adopted rules that allow companies to hold remote meetings, delay deadlines for filing annual reports, and cancel fines for violations of certain terms. Cyprus is no exception, and state authorities of Cyprus have taken various measures to support companies and providers of corporate services in order for companies to fulfill their obligations on filing certain reports, paying state fees, and meeting certain deadlines. Let us consider such measures in more detail.

Department of Registrar of Companies

What are important permanent obligations that companies registered in Cyprus have to the Registrar of Companies, i.e. the state authority that registers companies and all subsequent corporate actions and events? The company shall:

- pay the annual state fee;
- timely hold annual meetings of shareholders;
- timely file an annual return accompanied by financial statements.

The Registrar of Companies adopted significant and timely resolutions on two of these three items:

- The payment deadline for the Annual Fee in the amount of 350 EUR is deferred from 30.06.2020 to 31.12.2020 with no fine of 10% and 30% charged.
- The deadline for filing the Annual Return for the period from 01.01.2020 to 31.01.2020 is extended to 28.01.2021 with no fine of 20 EUR charged for late filing.

At the same time, the Department of Registrar of Companies decided not to extend time limits for holding the Annual General Meeting of Shareholders due to the fact that the laws allow it to be held remotely via electronic means of communication.

Moreover, supporting measures introduced by the Registrar affected two other important aspects of the corporate life. Recently, the Registrar of Companies

in Cyprus has focused on "cleaning up" and "filling up", i. e. timely filing of all the required information to the Registrar, both for past and current periods. First of all, this leads to the introduction of fines for late filing of documents for registration of certain corporate events, as well as to the initiative exclusion from the Registrar of companies that violate legal requirements, primarily on the provision of financial statements to the Registrar. The Registrar of Cyprus made concessions regarding both these items:

- The deadline for imposing fines for late filing of forms to the Registrar of Companies is deferred from April 2020 to 18.12.2020.
- The process of publishing a three-month notice in the Official Gazette of the Republic of Cyprus on striking-off companies from the Registrar due to non-compliance with legal requirements is suspended until January 2021.

Cyprus Securities and Exchange Commission

The Securities and Exchange Commission also developed a number of additional measures for those companies that by reason of the specific nature of their activities report to the Commission, and for which the latter acts as a Regulator. The first half of the year is the period for filing various types of reports for the previous year, including statistical reports and reports of the anti-money laundering and counter-terrorism financing law compliance department. Due to the fact that most employees of various companies are forced to work remotely and have limited access to the required information, the Commission extended the deadline for filing various types of reports, such as:

Statistical reports:

- The deadline for filing the annual statistical report for 2019 Risk Based Supervision Framework (Form RBSF) for both providers of administrative services and investment companies is extended from 31.03.2020 to 30.06.2020.
- The deadline for filing the Quarterly Statistics for the 1st quarter of 2020 for all types of entities is extended from 30.04.2020 to 31.07.2020.

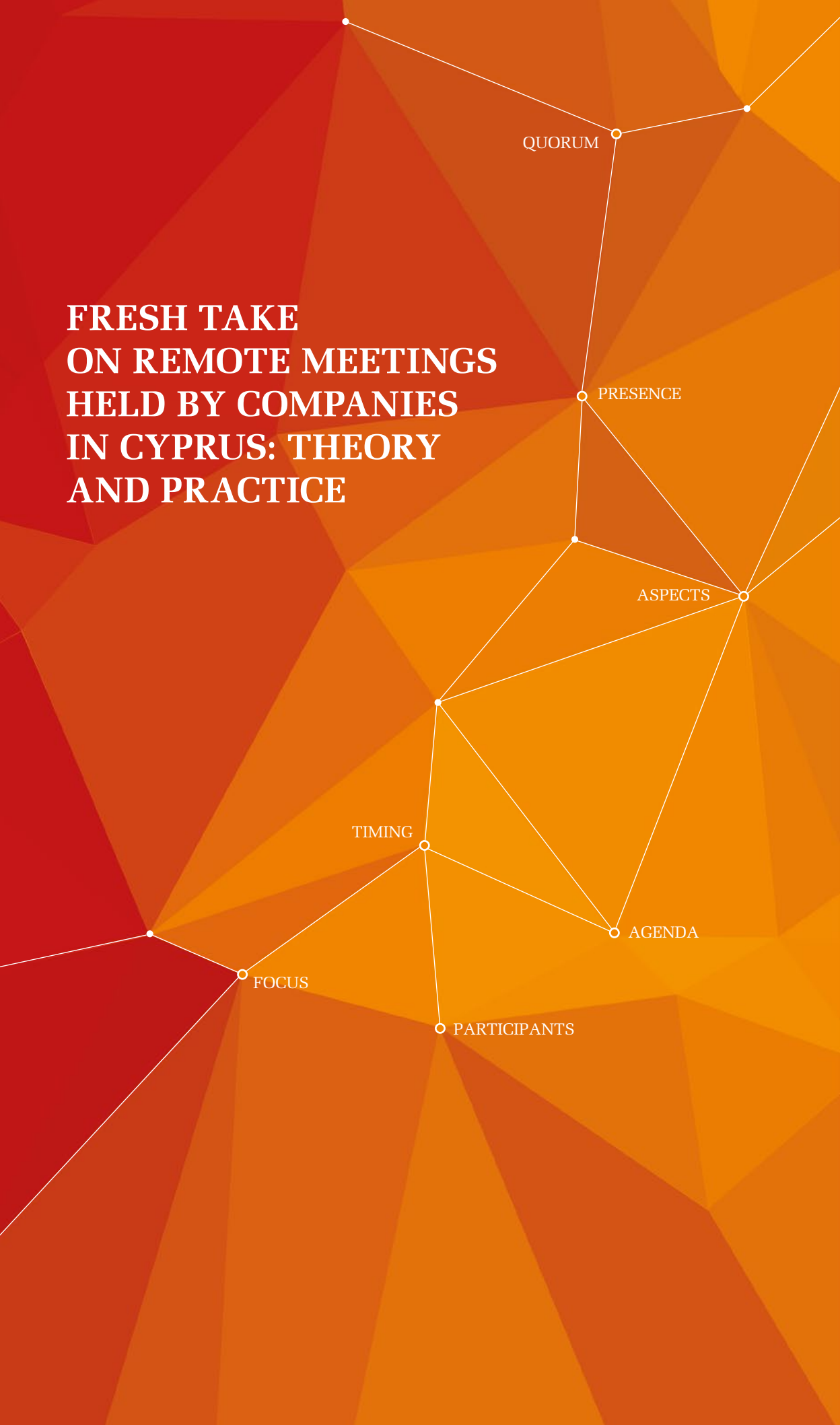
Reports of investment companies:

- For investment companies, the deadlines for filing the following types of reports are extended from 30.04.2020 to 31.07.2020:
  - Annual Compliance Function Report;
  - Annual Risk Management Report;
  - Annual Audit Report;
  - Annual Audited Financial Statements;
  - Annual Auditors' Suitability Report.
- The deadline for filing COPER Forms for investment companies is deferred from 31.05.2020 to 31.07.2020.
- The deadline for filing Prudential Supervision Information forms is deferred from 30.06.2020 to 31.08.2020.

Furthermore, the Cyprus Securities and Exchange Commission issued the Guideline for filing financial statements of various financial organizations in 2020 that covers extension of various deadlines for filing financial statements and related information for various financial organizations.

Therefore, Cyprus has followed the example of other countries and has introduced comprehensive measures to assist various types of companies in order for them to comply with the laws and exclude imposition of fines for violations of deadlines, which companies are unable to meet under current conditions.

FRESH TAKE ON REMOTE MEETINGS HELD BY COMPANIES IN CYPRUS: THEORY AND PRACTICE



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Without any doubt, the spread of COVID-19 affects all business processes.

Due to the introduction of travel restrictions, quarantines, border closures and announcements of the state of emergency in numerous countries, it has become virtually impossible to hold face-to-face meetings, as well as to ensure the presence of company shareholders and directors.

Now more than ever, it is vital to consider the possibility of remote corporate procedures.

Back in 2015, the Cyprus Companies Law was amended to allow general meetings of shareholders and meetings of directors to be held using electronic means of communication.

Thus, if the company's articles of association impose no restrictions, the general meeting, including the one of the company included in listing of the regulated market, may be held by a conference call or via other electronic means of communication with the help of which persons present are able to simultaneously hear all other persons present, and persons participating thus shall be counted for the purposes of determining a quorum and for all other purposes shall be deemed to be present at the general meeting.

In this case, the general meeting shall be considered held at the location of the person that keeps the minutes of the relevant general meeting.

The meeting of directors, as is the case with the meeting of shareholders, may be held, if the company's articles of association impose no restrictions, by a conference call or via other means with the help of which persons present are able to simultaneously hear all other persons present, and persons participating thus shall be counted for the purposes of determining a quorum and for all other purposes shall be deemed to be present at the meeting of directors.

The meeting of directors shall be considered held at the location of the person that keeps the minutes of the relevant meeting of directors.

As is evident, the law includes only two articles dedicated to the peculiarities of remote meetings, while for the remaining issues one is supposed to rely on general provisions. However, anyone who has ever tried to arrange or at least participate in any meeting using electronic means of communication understands that it is possible to take a chance and hope that everything will follow the pattern of personal presence, but such method is fraught with unpleasant

surprises up to lawsuits and recognition of such a meeting as void.

Then what measures should be taken? First of all, an organizer of the meeting himself/herself should clearly picture the whole process, and then shall expressly, clearly and, if possible, briefly describe the procedure to the participants by sending them instructions. Experience shows that it is very useful to send a reminder about the meeting and duplicate the details for connection an hour before the meeting.

When planning a meeting, time zones and time differences of participants shall be taken into account. It is crucial to provide all participants with the details required to get an access to the meeting: links, passwords, number of the phone/conference room, technical requirements for communication service, and to give clear instructions on how to behave during the meeting, namely: whether the meeting will be video or audio only, the order of giving the floor to speakers, turning on/off the microphone, notification that the meeting is recorded, storage time for the recording of the meeting.

All of the above mainly covers technical aspects of the meeting, but the purpose of the meeting is not to achieve technical perfection of the meeting, but rather to discuss and agree upon items on the agenda of the meeting, so it is extremely important to determine the agenda itself.

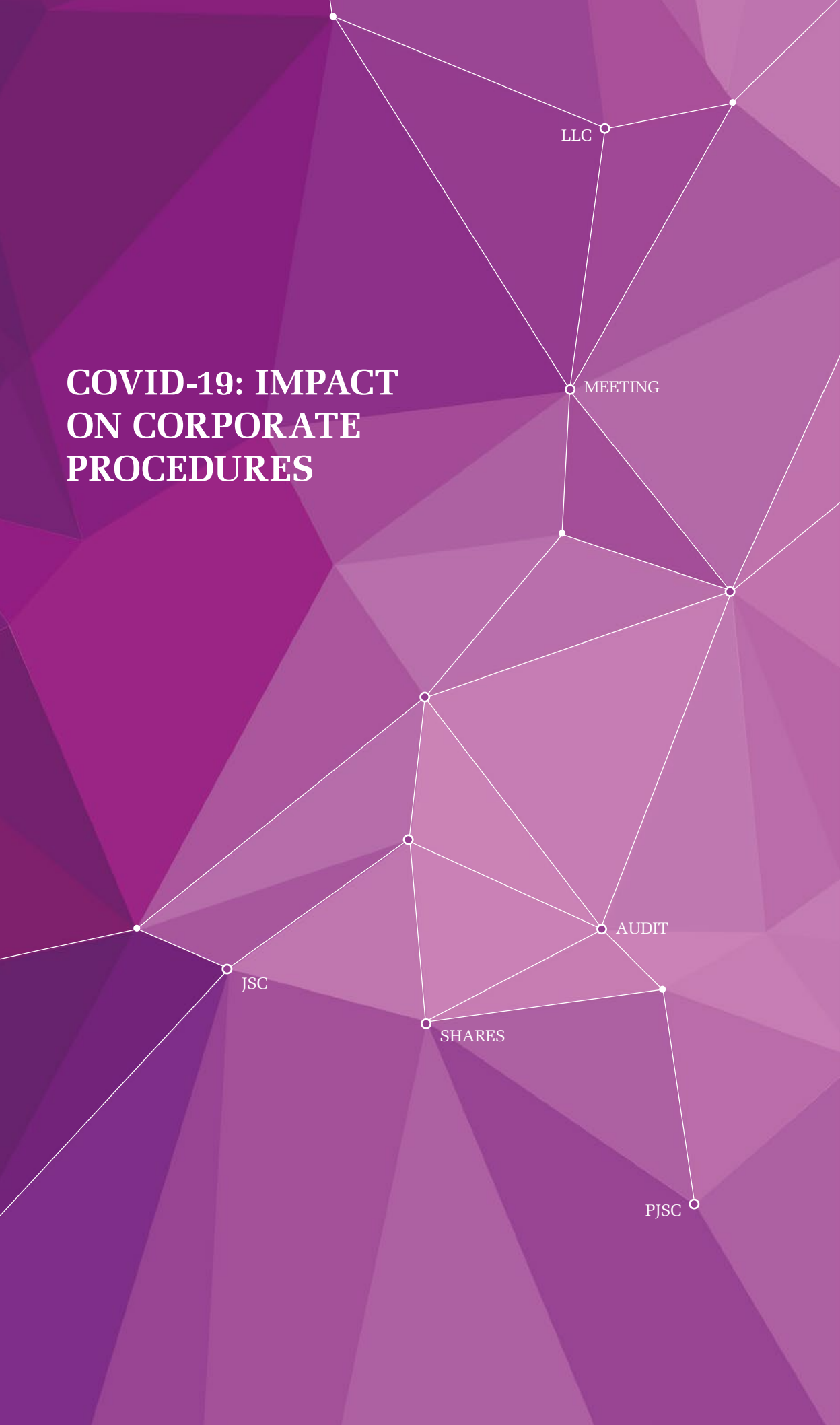
Thus, if the agenda includes many items that require long discussions, then it is better to divide such a meeting into parts and separate them with breaks, as admittedly, it is rather difficult to hold and focus one's attention for a long period of time. It is also advisable to inform participants about the timing, which will allow them to plan their time and avoid distractions by extraneous calls, etc. during the meeting.

Principal persons at the meeting are the Chairperson of the meeting and the secretary. Obviously, it is necessary to create a communication channel between them, e. g. by phone, Viber, Skype or Zoom which will allow to address organizational issues without directly involving other participants, which will save everybody's time and trouble. IT specialists are participants whose importance nowadays is difficult to overestimate, but easy not to notice, because they mainly work keeping a low profile and we only think of them when something goes wrong with our technologies. All three of them: the chairperson, the secretary, and the IT specialist should be able to easily communicate with each other and solve problems at once.

During any meeting, it is very important to check the presence of a quorum and clarify the reasons for the absence of those who have not joined. The role of the Chairperson of the meeting is more important than ever, since it is he/she who presides over the meeting, gives the floor, guides the discussion and summarizes what has been said, because this format of the meeting requires ensuring that everyone has the same opinion.

Since it is impossible to foresee everything, why is it so important to thoroughly prepare for meetings? Precisely because during the meeting one may face unforeseen situations, and in this case good preparation will give an opportunity to focus on one issue, and not get distracted by such trivial stuff as answering phone calls/e-mails with requests to duplicate the details for connection or allocation of responsibilities.

COVID-19: IMPACT ON CORPORATE PROCEDURES



Roman Moskovskikh
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In view of the COVID-19 pandemic and as part of a general set of measures aimed at stabilizing the economic situation, the Government decided to introduce a number of changes into corporate procedures carried out by joint-stock companies and limited liability companies.

Ordinary general meeting of LLC members

In 2020, the ordinary general meeting of LLC members shall be held no earlier than two months and no later than nine months after the end of the financial year.

Currently, this obligation shall be fulfilled no earlier than two months and no later than four months after the end of the financial year.

Annual general meeting of shareholders

Thus, in 2020, the annual general meeting of shareholders shall be held within the terms determined by the board of directors (supervisory board), but not earlier than two months and not later than nine months after the end of the reporting year.

It should be recalled that under the Law on JSC such meeting shall be held within the time limits set forth in the company's articles of association, but not earlier than two months and not later than six months after the end of the reporting year.

Decrease in the value of net assets of JSC and LLC

A decrease in the value of the company's net assets below its authorized capital by the end of 2020 shall not serve as the reason:

- For the board of directors (supervisory board) of JSC to include a section on the status of its net assets in the company's annual report;
- For a JSC no later than six months after the end of the relevant reporting year, to adopt a resolution on the reduction of the authorized capital to an amount not exceeding the value of its net assets or on the liquidation of the company. Such reservation shall also be introduced in relation to a similar obligation of LLC.

Acquisition of its shares by PJSC

By December 31, 2020 (inclusive), a PJSC shall be entitled to acquire outstanding shares (except for their purchase in order to reduce their total number) subject to simultaneous compliance with several conditions, namely the following:

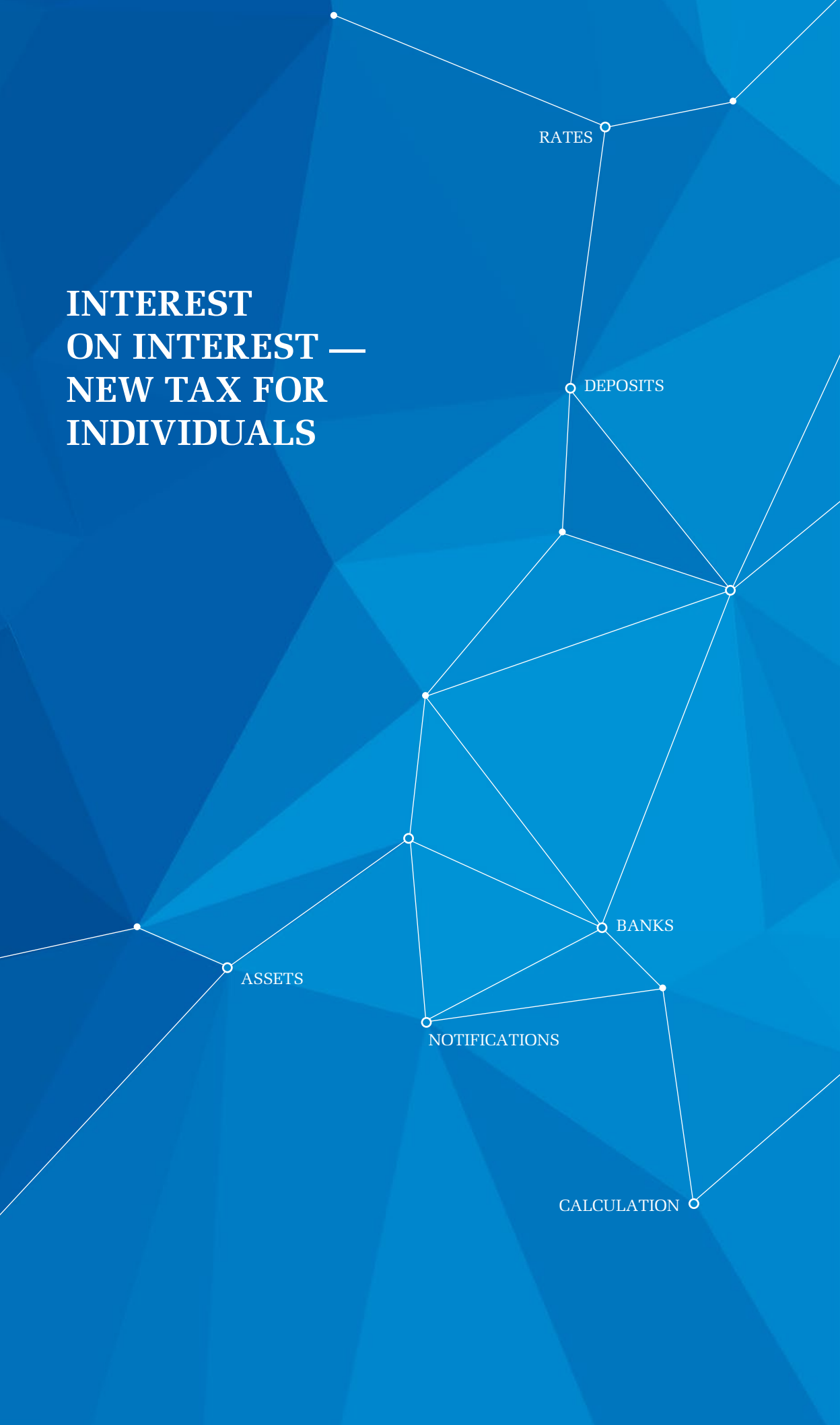
- Shares for acquisition are listed for trading;
- The weighted average price of such shares determined for any three months starting from March 1, 2020 has decreased by 20% or more compared to the weighted average price of such shares determined for the three months starting from October 1, 2019;
- Shares are acquired by a broker on behalf of a PJSC.

The Central Bank of the Russian Federation shall be notified about such acquisition of shares with the documents confirming compliance with the required conditions attached. This shall be done via a personal account on the website of the Central Bank of the Russian Federation.

Internal audit in PJSC

Internal audit shall be carried out not from July of the current year, but from January 2021 (article 10 of the draft). The same delay shall be granted to the board of directors (supervisory board) of PJSC regarding their obligation to form an audit committee for preliminary consideration of issues on the control over the company's financial and economic activities.It should be noted that such measures shall be applied solely during the current year.

INTEREST ON INTEREST — NEW TAX FOR INDIVIDUALS



Tatiana Frolova
Leading Lawyer
Korpus Prava Private Wealth

In 2020, the phrase "The world will never be the same again" became really popular. And this statement has already become reality for people who keep their savings with Russian banks.

From 2021, the tax on interest received on bank deposits will be introduced.

To be fair, it is worth mentioning that interest on deposits is qualified as the same income as for example rental from leasing out a grandmother's apartment. There is property that is not used for personal purposes, and it is possible to gain something from it. The same is with money, which is also classified as property if it generates income, and you need to pay taxes on such income.

When the rule on a special taxation procedure for interest on deposits was introduced, the logic of the legislator was clear. After all, the previous edition of the Tax Code does not address income in the form of interest on deposits in the list of income that is not subject to taxation. The tax law set rules for determining the tax base for this type of income. Thus, if the interest rate on the deposit was higher than the key rate by 5 points, such excess amount was subject to taxation at an increased tax rate of 35%. Obviously, banks were not ready to pay such high rates and, accordingly, citizens considered interest on deposits as income on which there was no need to pay taxes at all.

Undoubtedly, such approach was primarily in the best interests of banks. The trust our citizens, especially the elder generation, have regarding the banking system leaves much to be desired, and a lot of people still prefer to keep their savings in kitchen jars. Therefore, a lack of taxes on interest on deposits was a kind of "bait" for citizens.

Many of our compatriots interpreted a special taxation procedure for interest on deposits in a broad sense and paid no taxes, including on interest received on foreign deposits. But one high-profile scandal involving a famous lady was enough to put an end to this frivolous approach.

Citizens have just come to terms with the fact that taxes must be paid on interest in banks of Germany, France, Spain and other countries, and then were hit once again.

Thus, what and how will be subject to taxation?

The Ministry of Finance provided the following explanations:

- Total interest income on deposits (account balances) with Russian banks paid to an individual during the tax period (calendar year) less non-taxable interest income, will be taxed.
- Non-taxable interest income is calculated as the product of 1 million rubles and the key rate of the Bank of Russia set as of January 1 of the corresponding year (in view of the conditions of 2020, non-taxable interest income would amount to 60 thousand rubles).
- Interest paid to an individual on foreign currency accounts will be converted into rubles for tax purposes at the official exchange rate of the Bank of Russia set as of the day of an actual receipt of such income. At the same time, changes in the amount of the currency deposit caused by exchange rate fluctuations are not subject to taxation.
- When calculating the total interest income of an individual, income on ruble accounts with an interest rate not exceeding 1% per annum during the year will not be taken into account. Namely, the calculation of interest income completely excludes salary accounts of citizens for which the rate does not exceed 1%. Interest paid on such low-interest accounts will not be taxed.
- Interest income on escrow accounts will not be taxed either.
- The bank deposit amount (both in rubles and in foreign currency) is the property of an individual, and not his/her income, so it basically shall not be subject to personal income tax.

Example of the tax base calculation

An individual has three deposits:

- 500 thousand rubles, the deposit rate is 4.5% per annum, interest is paid at the end of the deposit term, the deposit is valid until December 1, 2021;
- 1 million rubles, the deposit rate is 5% per annum, interest is paid at the end of the deposit term, the deposit is valid until December 31, 2021;
- 500 thousand rubles, the deposit rate is 4% per annum, interest is paid at the end of the deposit term, the deposit is valid until December 1, 2022.

For deposit 1, the interest income as of December 1, 2021 will amount to 2.5 thousand rubles.

For deposit 2, the interest income as of December 31, 2021 will amount to 50 thousand rubles.

For deposit 3, no interest income is accrued in 2021, since the deposit is valid until 2022 and interest thereon will be paid at the end of the deposit term.

Therefore, the total interest income on deposits with Russian banks paid to an individual in 2021 will amount to 72.5 thousand rubles.

Assuming that the key rate of the Bank of Russia as of January 1, 2021 amounts to 6%, then the non-taxable interest income of an individual in 2021 will amount to 60 thousand rubles.

As a result, the amount of tax payable by such an individual will amount to:

$$(72{,}500 - 60{,}000) \times 13\% = 1\,625 \text{ rubles.}$$

What year will the tax be charged from?

The tax on personal income in the form of interest on deposits with Russian banks will be effective from 2021. Therefore, the tax will not apply to the interest received on deposits in the current year of 2020.

This means that citizens have at least another six months to review the policy of their assets, search for an alternative tax-free income and refuse from deposits, or accept new rules of the game and start sharing the interest earned by the bank with the government.

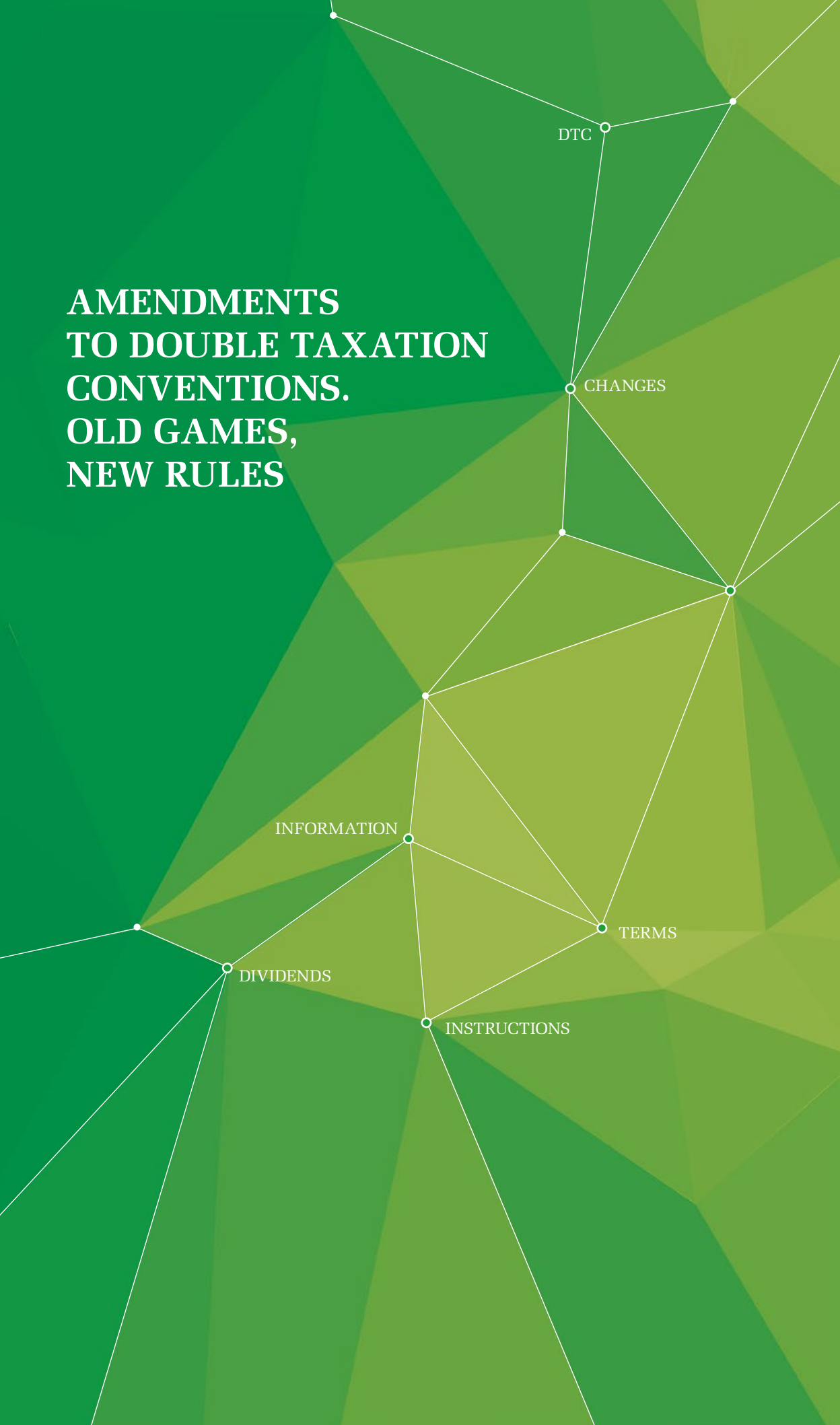
It is worth noting that it will not be necessary to declare interest on deposits with Russian banks, since this is done regarding interest on deposits with foreign banks.

Tax calculation will be performed by the tax authority automatically based on the information about the amounts of interest paid to the citizen provided by banks.

The tax will be paid on the basis of a notification from the tax authority. The tax authorities will file notifications after the end of the calendar year in which interest income is received.

For the first time, depositors will have to pay the new tax by December 1, 2022 based on tax notifications sent by the tax authorities. A

AMENDMENTS TO DOUBLE TAXATION CONVENTIONS. OLD GAMES, NEW RULES



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Nowadays we all live in a state of constant uncertainty, which is why it is more important than ever to separate rumors from facts, panic attacks from strategic planning, and treat everything we hear and see with a critical eye. Each time faced with a new bit of news one should ask oneself simple questions:

- What has happened/what has changed?
- How will this affect me/my business?
- When will changes take place?
- What has to be done before changes take effect?

Thus, what happened at the end of March in the field of international taxation?

On March 25, 2020, the President of the Russian Federation gave instructions to the Government of the Russian Federation to make a list of countries and consequently of double taxation conventions (DTC), and to ensure making amendments providing for the withholding tax at the rate of 15% on dividends and interest paid to tax non-residents of the Russian Federation. If no convention is reached with the contracting jurisdiction, the current convention shall be terminated.

On March 26, 2020, the Government gave instructions to the Ministry of Finance to review conventions within one month. On the same day, the Ministry of Finance issued an information notice specifying that amendments shall only affect transit jurisdictions, particularly Cyprus.

Currently, letters on amendments to conventions have been sent to the following jurisdictions: Cyprus, Luxembourg, Malta.

It is also highly likely that the said instruction will affect the following jurisdictions: The Netherlands, Switzerland, Ireland.

As is seen from the diagrams above, in jurisdictions where dividends are exempt from taxation the difference in the tax burden for dividends is not significant. However, in terms of interest income the difference is much more significant, especially in case of the DTC termination.

Despite the fact that no amendments are planned to be made to the DTC terms regarding royalties, there is still a possibility of the DTC termination, and in this case instead of the reduced rate at the source of payment and the set-off option, the taxpayer will have to pay the with-

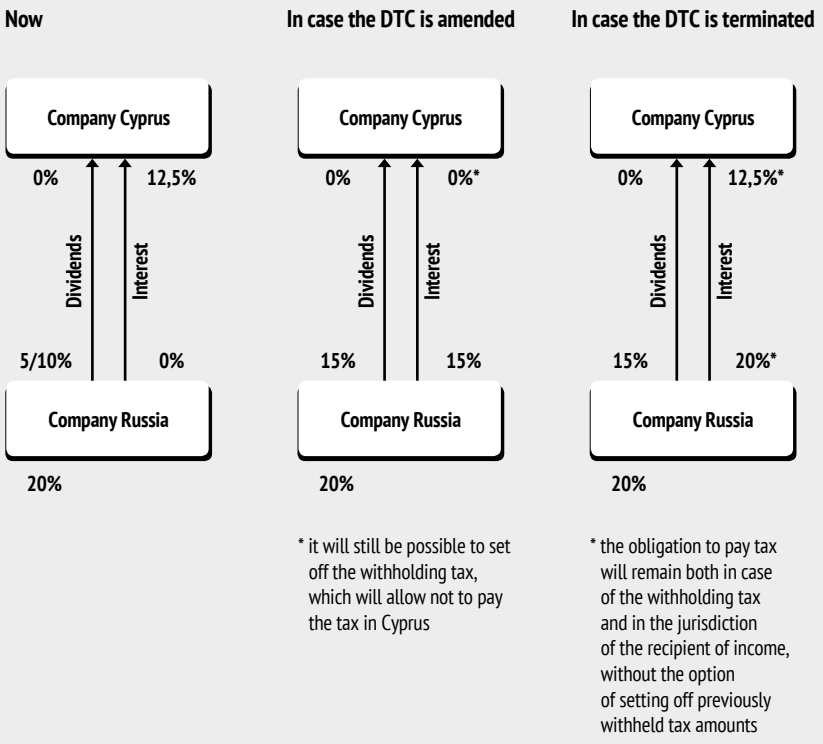

Fig. 1.

holding tax at the rate of 20% with no set-off option.

Moreover, one of the consequences of the DTC termination will be the absence of necessity to confirm an actual recipient of income.

The next logical question is when the agreement may be terminated.

Therefore, if a written notice of the DTC termination with the Russian Federation is filed, changes will affect taxpayers on or after January 1, 2021. And in case of most jurisdictions, the Russian Federation should send such notifications by July 1, 2020, otherwise the conventions will be considered terminated only from January 1, 2022.

In view of the above, businesses have time until the end of the year to maneuver. However, while maneuvering in this transition period one should stay reasonable and consistent, because for example a sharp increase in interest on loans, especially retrospectively, is sure to attract the attention of the tax authorities that will require an economic justification for changing the terms of the loan agreement. In case of dividends, it should be noted that dividends may only be paid from the company's profit, i. e. losses make the payment of dividends unreasonable.

At the same time, each case of restructuring is individual and there is no one multi-purpose solution, since both the structure of the holding and the goals pursued and their priority viewed by the owners are different.

With that in mind, before fleeing to other jurisdictions that have not yet come to the attention of the Ministry of Finance, it is necessary to pay more attention to the current situation, to assess not only risks and costs, but also the potential and growth points that may still have remained unnoticed in already familiar jurisdictions.

Jurisdiction	Termination term	Period of notice on termination	Example
Cyprus	On or after January 1 of the calendar year following the year in which the notice on denunciation was sent	Written notice on termination at any time	If the notice is filed in 2020, the DTC will be deemed terminated on or after January 1, 2021
Luxembourg	For withholding taxes, to amounts paid or accrued on or after the first of January of the year following the year of denunciation For other taxes, to tax periods ending no later than December 31 of the year of denunciation	Not later than 6 months prior to the end of any calendar year	If the notice is filed before July 1, 2020, the DTC will be deemed terminated from January 1, 2021
Malta	Beginning on or after January 1 of the calendar year following the year in which the notice on termination was sent	On or before June 30 of any calendar year	If the notice is filed before July 1, 2020, the DTC will be deemed terminated from January 1, 2021
The Netherlands	For tax years and periods beginning after the end of the calendar year in which the notice on denunciation was sent	At least 6 months prior to the end of any calendar year	If the notice is filed before July 1, 2020, the DTC will be deemed terminated from January 1, 2021
Switzerland	In each tax year beginning on or after January 1 of the calendar year following the year in which such notification was sent	Not later than 6 months until the expiration of any calendar year	If the notice is filed before July 1, 2020, the DTC will be deemed terminated from January 1, 2021
Ireland	On income paid or accrued on or after January 1 of the year following the expiration of the six-month period	At least 6 months prior	If the notice is filed before July 1, 2020, the DTC will be deemed terminated from January 1, 2021

... AND AGAIN I'M BACK TO START, I AM BACK TO LENINGRAD!

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Under the current conditions, the main restriction faced by all individuals and corporations is travel restrictions for individuals, cancellation of air service, and closure of borders. Taxpayers are used to the fact that the world is global, and they are mobile. Previously, initial assumptions of tax payers were as follows: we live in this country, but have business and assets in a different one; our employees are also of cross-border nature and are physically able to perform their work duties outside of their country of permanent residence; we have partners, managers and agents that are free to choose their preferable location. What did such freedom of movement mean for taxpayers? Obviously, it allowed regulating the issue of residency. It allowed taxpayers to manage their tax burden, avoid tax administration measures, and enjoy preferences provided for by the currency legislation. This year, due to the widespread closure of borders and the introduction of travel restrictions, it is highly unlikely that taxpayers will be able to execute their plans, and they may be forced to become tax residents of a country that was not part of their plans.

In case of Russia, the issue of loss of control over residency creates not only tax risks for taxpayers, but also risks arising from the currency legislation, since in Russia the concepts of tax and currency residency differ.

Individuals. Tax residency

If at the end of 2020, an ingenious plan of individual taxpayers fails and they will be forced to become tax residents in the Russian Federation, what obligations and risks will they face? Let us explore some examples.

Some taxpayers whose main type of income is dividends or income from sales of securities have deliberately changed their tax residency, for example, to Cyprus, in order to legally avoid paying taxes on dividends or capital gains. If such taxpayers are now isolated in the territory of the Russian Federation, and travel restrictions are extended, it is highly likely that they will have to pay taxes on such income in the territory of Russia.

Taxpayers that, vice versa, have become banned from travelling abroad in another country, other than Russia, but are planning a large sale of real estate in the Russian Federation, are also exposed to a risk. If at the end of 2020 they are not tax residents of the Russian Federation, then they will be unable to make deductions from the tax base in the form of expenses for the purchase of real estate.

Taxpayers whose main type of income includes securities trading are worth separate mentioning. If the ruble exchange rate falls, such taxpayers being tax residents of the Russian Federation will be exposed to a risk of a taxable "exchange rate difference", since Russian tax residents determine their income and expenses in rubles at the date of their occurrence when calculating the tax base. Therefore, a fall in the ruble exchange rate will inevitably lead to an increase in the tax base for such taxpayers, even if there is no income in a foreign currency.

Taxpayers who usually leave Russia for half a year to avoid falling under the law on CFC also require separate mentioning. If such taxpayers are forced to stay in the Russian Federation longer than usual this year, they will have to pay the tax on retained earnings of CFC, which would be generated in 2020. And, most importantly, if a taxpayer is a controlling person at the end of the year, he/she shall submit a notification on CFC.

Individuals. Currency residency

As is known, the currency legislation distinguishes two groups of residents among Russian citizens: full-scale currency residents who live in Russia for more than 183 days a year, and light currency residents who live in the Russian Federation for less than six months. The latter have some benefits: they do not submit notifications on accounts opened abroad and cash flow statements. Besides, they are entitled to make payments in a foreign currency. However, they are still subject to restrictions on the types of income they are able to receive on their accounts with foreign banks.

Therefore, from the point of view of currency risks, it is important to remember that if during 2020, a citizen turns from a light currency resident to a full-scale currency resident, the requirements on notifications and reports shall apply to such a person. On the one hand, filing notifications and reports is not a risk, but an obligation that should be observed. However, an obligation to file notifications and reports may pose a significant risk only for those persons who deliberately conduct illegal currency transactions via their foreign accounts, hoping that while they live abroad they are not subject to the control of the Russian tax authorities.

Significant currency risks may also arise when making payments in a foreign currency. For example, currency residents, that planned to become light residents, made payment settlements in a foreign currency among themselves, but at the end of 2020, either both or one of them becomes a full-scale currency resident. As a result, the transaction will be deemed illegal.

Legal entities. Tax risks

The fact that the global travel restriction for individuals also creates tax risks for companies raises a particular concern.

The first problem is tax residency of a foreign organization. If a taxpayer, being the executive body of a foreign company at the end of 2020 acquires tax residency of the Russian Federation, then such a foreign company will be exposed to a risk of recognition of the company itself as a Russian tax resident, and consequently filing reports in Russia and payment of Russian income tax and VAT. It is important to remember that a company may be recognized as a tax resident of the Russian Federation not only due to the presence of its director in the Russian Federation, but also an account manager, a shareholder who is actively involved in operating activities, and other persons, depending on the company's management structure.

The second problem is permanent representation of a foreign organization in the territory of the Russian Federation, which once again may arise as a result of an unforeseen long stay of a dependent agent of the company in the territory of the Russian Federation, who under certain circumstances, may even be just an employee of a foreign company whose home office is located in Russia. Permanent representation in the territory of the Russian Federation will also entail a necessity for a foreign company to pay the income tax on income derived from

activities of permanent representation in the Russian Federation.

The third problem is correct application of double taxation agreements by Russian companies when making payments of passive income to foreign companies. There is a chance that this year a foreign counterparty will be able neither to confirm its tax residency in the country with which such a taxpayer applies the agreement, nor to confirm that it is an actual recipient of income, due to the fact that directors and employees of a foreign counterparty will not be able to carry out their activities in the place of incorporation.

OECD on the taxpayer's side

Therefore, those objectives that last year were solved with a simple airfare expense may turn into problems that require careful consideration during the current tax period. It is a relief that the OECD has taken the taxpayer's side in these uncertain times. On 3 April 2020, the OECD Secretariat released its Analysis of Tax Treaties and the Impact of the COVID-19 Crisis. In this analysis, the OECD noted that the unprecedented situation that has emerged today raises many tax issues, especially in cases with cross-border elements. As a result, some companies may be affected by the fact that their executive directors or other senior managers, as well as employees, are restricted in movement and were moved to countries other than the country in which they regularly work and/or usually reside, and that working from home during the COVID-19 crisis will lead to new requirements and tax obligations. The OECD believes that an exceptional and temporary change of employment or location of individuals (employees, executive directors, other officials) due to the COVID-19 crisis is an emergency and a temporary situation, and it should not lead to a change in their usual place of residence for the purposes of determining tax consequences, namely, it should not affect tax residency or the place of effective management, and should not lead to permanent representation.

Recommendations and explanations of the OECD offer some hope that the situation will not get out of control. However, the OECD is not a legislative body. In order for these recommendations to be implemented in Russia, it will be necessary to make amendments to the legislation of the Russian Federation, which will set criteria under which taxpayers will be able to ignore their temporary stay in a certain place during the COVID-19 period when determining their tax status.

What is to be done?

In any case, it is impossible to predict whether the relevant amendments will be made or not. Therefore, taxpayers should already plan their actions based on the fact that the approach of the Russian legislator to determining the status of a resident will not change. What may be done now?

If you plan to close a transaction this year and are unable to postpone the deadline, you should remember that for an individual, income occurs when money is credited to the settlement account. It means that you may make a transaction now, but hold the money, for example, with an escrow agent, until the issue of tax residence is resolved.

If you invest in securities denominated in a foreign currency, you should consider changing your investment scheme. You may transfer a block of securities to a controlled foreign company established specifically for this purpose, which would help to avoid taxation of exchange rate differences.

You should also consider that now may be the right time to change the shareholding pattern of a foreign company. You should review your approach to managing a foreign company. You should not forget to reschedule your contracts. It is advised to ask your partners and counterparties where they will have to spend the year of 2020. You should file all notifications and reports on time and pay your taxes.

SEARCHING FOR FORCE MAJEURE…

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The introduction of restrictive measures in a number of regions of the Russian Federation aimed at preventing the spread of COVID-19 caused numerous difficulties related to the inability of the parties to perform their obligations, disruption of events, delivery terms, etc.

The possibility of recognizing certain circumstances as force majeure depends on the specific terms of concluded agreements, as well as on a cause-and-effect link between the circumstances that occurred (the cause) and the inability to perform contractual obligations (the effect).

Let us try to explore this issue in more detail.

What is force majeure?

Force majeure means extraordinary and unavoidable under the current conditions circumstances that made it impossible to perform obligations.

Extraordinariness refers to exclusivity, going beyond "normal" or ordinary, emergency nature for certain living conditions, something that does not classify as a life risk and cannot be taken into account under any circumstances.

Unavoidability means that any participant of the civil commerce carrying out similar activities with the debtor could not have avoided the occurrence of this circumstance or its consequences.

The extraordinary nature of force majeure prevents any fact of life from being qualified as such, but it differs from an event in that it is based on objective, rather than subjective unavoidability.

What does not qualify as force majeure?

Circumstances the occurrence whereof depended on the will or actions of the party to the obligation are not recognized as force majeure, including[1]:

- Debtor's lack of required funds;
- Lack of necessary products in the market;
- Breach of an obligation by a counterparty;
- Illegal actions of the debtor's representative;

1. Clause 8 of Ruling of the Plenum of the Supreme Court of the Russian Federation No. 7 dated 24.03.2016, Clause 3 of Article 401 of the Civil Code of the Russian Federation.
2. Rulings of the Federal Arbitration Court for the Moscow District No. KA-A40/9199-10 dated 01.09.2010, Federal Arbitration Court of the Volga District dated 21.05.2013 in case No. A55-25687/2012 .

- Financial and economic crisis[2];
- Illegal actions of third parties (theft, arson, deliberate damage to other people's property, etc.)[3];
- Loss or damage of cargo as a result of fire during its transportation by a professional carrier, theft of cargo by third parties[4].

For the most part, courts classify the said circumstances as business risks. And even if some of the circumstances above are classified in the contract by the parties as force majeure, there is no ironclad guarantee that it will be recognized as such by the court. In each case, the court will investigate whether the circumstance was extraordinary and unavoidable, whether the debtor could have done something to prevent adverse consequences (e. g. deliberate arson could have been avoided by improving the security; lightning strikes and subsequent fire – by installing a lightning rod, etc.).

What may be classified as force majeure?

The following may be classified as force majeure: natural emergencies (stormy weather[8]; flood that caused the introduction of an emergency regime[9]; abnormal atmospheric precipitation[10]), public events and natural disasters[11] (earthquake, flood, hurricane), fire, mass diseases (epidemics), strikes, military actions, terrorist acts, sabotages, restrictions on transportation, state bans, prohibition of trade operations and other circumstances beyond the control of the parties to the agreement (contract).

What are the consequences of recognition of circumstances as force majeure?

As a rule, a person that failed to perform or improperly performed an obligation due to force majeure shall be released from liability for its non-performance (improper performance).

Here it should be understood that force majeure does not cancel the obligation itself, but only releases from liability for its non-performance. For example, the lessee may be exempt from a penalty charged for the violation of rent payment terms, but is not exempt from the obligation to pay rent. Similarly, the supplier is not exempt from an obligation to deliver goods, and the buyer is not exempt from an obligation to pay for it.

Is it possible for a pandemic to be recognized as force majeure?

As mentioned above, epidemics and mass diseases may be classified as force majeure.

However, it should be noted that in most cases it is not the pandemic itself (COVID-19) that is classified as force majeure, but rather its consequences in the form of restrictive measures.

Thus, the introduction of restrictive measures to stop the spread of COVID-19 has already been recognized as extraordinary, unforeseeable, unavoidable, beyond the control of the parties and having a significant effect on the performance of obligations under economic agreements of different bodies and institutions, including the Chamber of Commerce and Industry of the Russian Federation, Federal Antimonopoly Service, Ministry of Finance[12]. Some local regulatory enactments that impose re-

3. Ruling of the Presidium of the Supreme Arbitration Court of the Russian Federation No. 6168/97 dated 09.06.1998.
4. Clause 1 of the Review approved by the Presidium of the Supreme Court of the Russian Federation on 20.12.2017.
5. Ruling of the Federal Arbitration Court for the Moscow District No. Ф05-2728/2016 dated 28.03.2016.
6. Ruling of the Federal Arbitration Court for the Moscow District No. Ф05-9562/2017 dated in case No. A40-129109/2016.
7. Decision of the Supreme Court of the Russian Federation No. 49-B05-19 dated 06.12.2005.
8. Decision of the Supreme Court of the Russian Federation No. 303-ЭС15-5226 dated 01.09.2015.
9. Ruling of the Federal Arbitration Court for the Far Eastern District No. Ф03-5191/2014 dated 28.11.2014.
10. Ruling of the Federal Arbitration Court for the Moscow District No. Ф05-16473/2015 dated 09.12.2015.
11. Clause 1.3. of the Regulation on the procedure for certification by the Chamber of Commerce and Industry of the Russian Federation of force majeure (Annex to Resolution of the Board of the Chamber of Commerce and Industry of the Russian Federation No. 173-14 dated 23.12.2015).
12. Letter of the Chamber of Commerce and Industry of the Russian Federation ref. ПР-0315 dated 26.03.2020, Letter of the Federal Anti-Monopoly Service of Russia No. ИА/21684/20 dated 18.03.2020, Letter of the Ministry of Finance of Russia No. 24-06-06/21324 dated 19.03.2020.

strictions also classify the circumstances as extraordinary and unavoidable.

At the same time, it should be noted that the fact that such circumstances are recognized as force majeure does not automatically allow applying provisions on force majeure to all contractual obligations.

According to the explanations of the Supreme Court of the Russian Federation, the recognition of the COVID-19 spread as force majeure shall not be equally applicable to all categories of debtors, regardless of the type of their activities, terms of their conduct, including the region in which the organization operates, therefore, force majeure shall be determined taking into account circumstances of a particular case (including the period of performance of the obligation, the nature of a non-performed obligation, common sense and bona fide actions of the debtor, etc.).

Circumstances caused by the threat of the COVID-19 spread, as well as measures taken to prevent its spreading (including introduction of mandatory rules of conduct during the high alert or emergency regime, ban on movement of vehicles, travel restriction for individuals, suspension of activities for enterprises and institutions, cancellation and postponement of events, introduction of the lockdown regime for the citizens, etc.) may be recognized as force majeure in case they comply with the above criteria and there is a confirmed cause-and-effect link between such circumstances and non-performance of obligations[13].

What are the conditions for the release from liability?

In view of the above, in order to be released from liability for non-performance of obligations, a party shall prove the existence of the following conditions:

- The fact of force majeure and its duration;
- A cause-and-effect link between force majeure and a failure or delay in the performance of obligations;
- Non-involvement of the party in the creation of force majeure;
- Bona fide acceptance by the party of reasonably expected measures to prevent (minimize) potential risks.

Absence of at least one condition may deprive a party of the right to refer to force majeure.

How is it possible to confirm the fact of force majeure?

To prove the fact of force majeure, it is necessary to collect relevant evidence and immediately notify the counterparty. As a rule, force majeure is confirmed by a certificate issued by the Chamber of Commerce and Industry of the Russian Federation. Since March 26, 2020, regional Chambers of Commerce and Industry have been authorized to issue opinions on the fact of force majeure, including for all internal agreements. Moreover, such certificates are issued for free[14]. The period for notifying the counterparty (as is the notification procedure) is usually stipulated by the agreement. In case this issue is not settled by the agreement, it is advisable to do so as soon as possible.

Is force majeure a reason for amendment or termination of the agreement?

As noted above, force majeure itself does not release the parties from performing their obligations (the parties are only released from liability for their non-performance). Therefore, if under the current conditions the agreement becomes unreasonably burdensome, the agreement itself provides for no possibility of its amendment/termination, and the counterparty refuses to make conces-

13. Review of certain issues of judicial practice related to the application of legislation and measures to prevent the spread of COVID-19 in the Russian Federation No. 1 (approved by the Presidium of the Supreme Court of the Russian Federation on 21.04.2020). Answer to question 7.
14. Letter of the Chamber of Commerce and Industry of the Russian Federation ref. ПР-0315 dated 26.03.2020.

sions, it is advisable to consider the possibility of its amendment or termination by a court decision.

Thus, as a rule, a significant change in the circumstances whereon the parties based the conclusion of the agreement is the basis for its amendment or termination, unless otherwise provided for by the agreement or arisen from its substance[15].

A change in circumstances is recognized as significant when they have changed so much that, if the parties could have reasonably foreseen it, the agreement would have never been concluded by them or would have been concluded on significantly different terms. If the parties have not reached agreement on bringing the agreement into compliance with significantly changed circumstances or on its termination, the agreement may be terminated or amended (amendment is allowed in exceptional cases when the termination of the agreement contradicts public interests or will cause a damage for the parties which will considerably exceed the costs required for its performance under the terms amended by the court) by the court at the request of an interested party subject to all the following conditions:

- Upon signing of the agreement, the parties assumed that no such change in circumstances would occur;
- The change in circumstances is caused by reasons that the interested party could not overcome after their occurrence with the degree of care and discretion required by the nature of the agreement and the terms of turnover;
- Performance of the agreement without amendment to its terms would violate the balance of property interests of the parties under the agreement in such a way and would cause such a damage to the interested party, that it would largely lose what it was entitled to expect upon the conclusion of the agreement;
- No customs or substance of the agreement stipulate that the interested party shall bear the risk of changed circumstances.

Upon the termination of the agreement due to significantly changed circumstances, the court at the request of either party determines the consequences of the termination of the agreement based on the required fair distribution of the costs incurred by the parties in connection with the performance thereof between them.

A request to amend or terminate the agreement may be filed by the party to court only after receiving the other party's refusal to amend or terminate the agreement or failure to receive a response within the period specified in the offer or established by law or the agreement, and in case of its absence – within thirty days.

It should be noted that in case of amendment or termination of the agreement, obligations shall be considered amended or terminated from the moment the court decision enters into force. In other words, the agreement shall be considered valid for the entire period of the court proceedings. Therefore, prior to resolving to apply to court for termination/amendment of the agreement, it is advisable to check whether there are any other reasons for out-of-court repudiation of the agreement or its termination (for more information see the article by Artem Paleev).

15. Clause 1 of Article 451 of the Civil Code of the Russian Federation.

POSSIBLE REASONS FOR OUT-OF-COURT REPUDIATION OF THE AGREEMENT

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The table provides a consolidated list of the reasons for repudiation of the agreement set by the current law. This list is not exhaustive, and the possibility of applying a particular reason should be further checked in each case.

Type of the agreement	The party with the granted right to repudiation	Reasons for repudiation	Reference to the article of the Russian Civil Code
General reasons	Any party	Refusal from a deal made with an unauthorized person prior to the deal approval by the represented person	Clause 1 of Article 183 of the Russian Civil Code
		Refusal to perform an obligation if the party fails to provide counter performance	Clause 2 of Article 328 of the Russian Civil Code
		Refusal to accept performance under a deal if as a result of the debtor's delay the performance is no longer of interest for the creditor	Clause 2 of Article 405 of the Russian Civil Code
Goods sale and purchase (supply) agreement	Buyer	Repudiation of the agreement if the seller refuses to transfer sold goods	Clause 1 of Article 463 of the Russian Civil Code
		Refusal from the goods if accessories or documents related to the goods are not transferred by the seller within the specified period	Article 464 of the Russian Civil Code

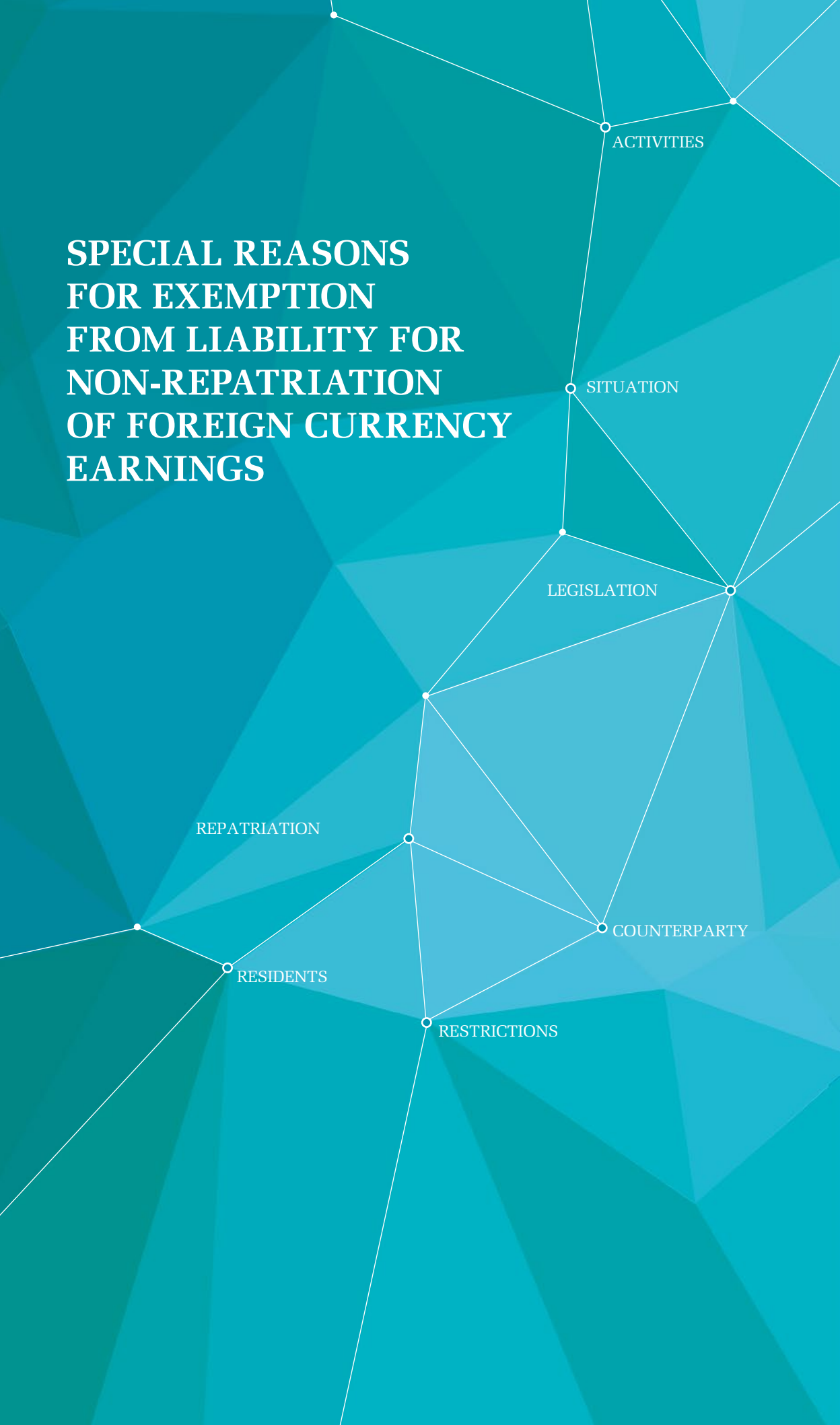
Type of the agreement	The party with the granted right to repudiation	Reasons for repudiation	Reference to the article of the Russian Civil Code
		Refusal to accept all the transferred goods if the seller violates the assortment conditions for all or part of the goods	Clause 2 of Article 468 of the Russian Civil Code
		Repudiation of the agreement in case of a material violation of the requirements for the goods quality	Clause 2 of Article 475 of the Russian Civil Code
	Buyer	Repudiation of the agreement if the seller fails to provide an additional supply of missing goods within a reasonable time	Clause 2 of Article 480 of the Russian Civil Code
		Refusal to perform the obligation in case of non-performance by the seller of the obligation to transfer the goods	Clause 2 of Article 488 of the Russian Civil Code
Goods sale and purchase (supply) agreement		Repudiation of the agreement in case of a material breach of the agreement by the supplier, namely in the following cases: • Supply of goods of poor quality with defects that cannot be eliminated within a reasonable time for the buyer; • Repeated breaches of the goods delivery terms.	Clause 2 of Article 523 of the Russian Civil Code
	Seller	Repudiation of the agreement if the assortment is not specified in the sale and purchase agreement and the agreement provides no procedure for its determining, but from the nature of the obligation it follows that the goods should be transferred to the buyer in assortment	Clause 2 of Article 467 of the Russian Civil Code
		Repudiation of the agreement if the buyer does not accept the goods or refuses to accept them in violation of the law or the agreement	Clause 3 of Article 484 of the Russian Civil Code
		Repudiation of the agreement if the buyer refuses to accept the	Clause 4 of Article 486 of the Russian Civil Code

Type of the agreement	The party with the granted right to repudiation	Reasons for repudiation	Reference to the article of the Russian Civil Code
		goods and pay for them in violation of the agreement	
		Refusal to perform obligations in case the buyer fails to perform the obligation of pre-payment for the goods	Clause 2 of Article 487 of the Russian Civil Code
		Repudiation of the agreement if the buyer fails to make the next payment for the goods sold by installments and delivered to it within the period stipulated by the agreement	Clause 2 of Article 489 of the Russian Civil Code
		Repudiation of the agreement in case of failure by the buyer to provide shipping orders in due time	Clause 3 of Article 509 of the Russian Civil Code
Goods sale and purchase (supply) agreement		Repudiation of the agreement in case of the failure to take the agreed minimal quantity of the goods by the buyer (recipient) within the period stipulated by the agreement (and if there is none – within a reasonable time after receiving the notification of the supplier on readiness of the goods)	Clause 2 of Article 515 |of the Russian Civil Code
		Repudiation of the agreement in case of a material breach of the agreement by the buyer, namely in the following cases: • Repeated violation of payment terms for goods; • Repeated failure to take the agreed minimal quantity of the goods	Clause 3 of Article 523 of the Russian Civil Code
		Repudiation of the agreement in case losses caused to the supplier (provider) in connection with the performance of a government or municipal contract are not indemnified	Clause 3 of Article 533 of the Russian Civil Code
	Seller and Buyer	Repudiation of the agreement if the party obliged to insure	Article 490 of the Russian Civil Code

Type of the agreement	The party with the granted right to repudiation	Reasons for repudiation	Reference to the article of the Russian Civil Code
		the goods fails to provide insurance in accordance with the terms of the agreement	
Lease agreement	Lessee and Lessor	If the lease agreement is concluded for an indefinite period, each of the parties are entitled to repudiate the agreement at any time, notifying the other party of this one month in advance, and in case of real estate lease – three months in advance	Clause 2 of Article 610 of the Russian Civil Code
		Repudiation of the agreement if the Client disagrees with the price increase due to the need for additional works	Clause 5 of Article 709 of the Russian Civil Code
		Repudiation of the agreement if the contractor fails to timely start performing the contractor agreement or performs the work so slowly that it is clearly impossible to complete it by the deadline	Clause 2 of Article 715 of wthe Russian Civil Code
Contractor agreement + Service agreement	Client	The right to repudiation of the agreement at any time before the delivery of the result subject to payment for the work performed	Article 717 of the Russian Civil Code
		Repudiation of the agreement if deviations from the terms of the agreement or other deficiencies in the result of the work have not been eliminated within a reasonable time set by the client or are material and irremediable	Clause 3 of Article 723 of the Russian Civil Code
	Contractor (Provider)	Repudiation of the agreement if the client, despite timely and reasonable warning from the contractor about the circumstances (which threaten the validity or reliability of the results of the work performed or make it impossible to complete it on time), fails to replace unsuitable or substandard	Clause 3 of Article 716 of the Russian Civil Code

Type of the agreement	The party with the granted right to repudiation	Reasons for repudiation	Reference to the article of the Russian Civil Code
		material, equipment, technical documentation or an item submitted for treatment (processing), fails to change the instructions on the method of performing the work or fails to take other necessary measures to eliminate the circumstances threatening its validity within a reasonable time	
Contractor agreement + Service agreement		Repudiation of the agreement, when the client's violation of its obligations under the agreement, namely the failure to provide material, equipment, technical documentation or items submitted for treatment (processing), prevents the contractor from performing the agreement, as well as in case of circumstances that clearly indicate that the said obligations will not be performed in due time	Clause 2 of Article 719 of the Russian Civil Code
Service agreement	Client	The right to repudiation of the agreement provided the actual expenses incurred by the provider are reimbursed	Clause 1 of Article 782 of the Russian Civil Code
	Provider	The right to repudiation of the agreement provided the client is fully reimbursed for losses	Clause 2 of Article 782 of the Russian Civil Code

SPECIAL REASONS FOR EXEMPTION FROM LIABILITY FOR NON-REPATRIATION OF FOREIGN CURRENCY EARNINGS



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Under the current circumstances, proper execution of transactions between foreign counterparties has become significantly harder. This is due to the fact that participants of foreign economic activities are forced to adapt not only to newly emerging domestic restrictions and prohibitions, but also consider measures taken by other jurisdictions in one way or another related to the performance of the contract.

Emerging regulatory difficulties often simply prevent from performing the contract "according to the plan", which inevitably entails the violation of not only contractual obligations, but also requirements of the currency legislation. It should be reminded that currency residents of the Russian Federation (hereinafter, the residents) shall comply with the rules on repatriation of foreign and Russian currency as part of carrying out foreign trade activities, as well as granting of loans to non-residents. Namely:

- Under export contracts residents shall ensure that non-residents pay for goods delivered, works performed, services rendered, information and intellectual property transferred;
- In case of non-performance by the counterparty of an import contract that provides for the transfer of an advance, residents shall ensure a refund of the money paid for outstanding obligations, including goods not imported to Russia, works not performed, services not rendered, etc.;
- When granting a loan to a non-resident, a resident shall also ensure the repayment of the principal amount and accrued interest in accordance with the terms of such agreement.

Residents set the terms within which the above obligations should be performed at their own discretion in accordance with the conditions of the agreement for the relevant foreign economic transaction. In turn, violation of such terms entails administrative liability both for companies and officials in the form of fines and warnings.

However, in the current situation, participants of foreign economic activities are increasingly forced to violate terms of contracts, and consequently requirements of the currency legislation of the Russian Federation. In view of the current conditions, the Ministry of Finance of the Russian Federation issued the explanation of the actions required to avoid bringing residents to administrative liability in case non-residents

as foreign counterparties fail to perform their respective obligations. We refer to the Information Letter published on 20.03.2020 on the official website (hereinafter, the Information Letter). It should be noted that the explanation is purely informational, has no official details or the status of a regulatory legal act. Law enforcement authorities will undoubtedly take into account this interpretation of the Ministry of Finance, but the final decision will depend solely on specific factual circumstances (which is emphasized by the Information Letter itself).

In accordance with this statement of the Ministry of Finance, non-performance by a non-resident of its obligations to deliver (pay for) goods or non-repayment of funds previously granted to it in the form of advance under a concluded foreign trade agreement due to force majeure, including measures taken by foreign governments to prevent the spread of coronavirus disease (COVID—19), may indicate the absence of the resident's fault in committing administrative offenses.

The Information Letter also points out that the issue of bringing a resident to liability shall be considered individually in each specific case taking into account all the circumstances of the case, including reasonableness and bona fide of the actions of participants of foreign trade contracts. In other words, the COVID-19 pandemic shall not be considered a generic force majeure. Accordingly, residents should pay special attention to the preparation of an evidence base that will allow them to exclude administrative liability in a specific case. Any factual data work fine if they serve as basis for the dispute resolution body to establish a) the presence of force majeure in the performance of a specific foreign trade contract, b) the absence of the resident's fault in non-repatriation of foreign currency earnings, and c) other circumstances that are relevant for a proper adjudication.

Upon registration of the inability to perform obligations in due time, residents shall apply to the Chamber of Commerce and Industry of the Russian Federation for the Force Majeure Certificate, as only this body verifies such circumstances under the terms of foreign trade transactions.

It is also necessary to communicate with a foreign counterparty in order to obtain a similar confirmation from the competent authorities. For example, in People's Republic of China such competent authority is the China Council for the Promotion of International Trade (CCPIT) (and its 115 branches and local subdivisions), in Italy – Italian chambers of commerce, in Luxembourg – Chamber of Commerce and Industry of Luxembourg, in Poland – Polish Chamber of Commerce, in India –Department of Commerce of the Ministry of Commerce and Industry of India, in the UK – London Chamber of Commerce and Industry, in Austria – ICC Austria - International Chamber of Commerce, in Czech Republic – Czech Chamber of Commerce, etc.

Residents should pay attention to the plan of actions for the parties in the event of force majeure provided for in the foreign trade contract. Compliance with the mechanism specified in the agreement may affect the decision of the competent authority to issue a supporting document, as well as count in resolving an administrative case of violation of the currency legislation.

Furthermore, it makes sense to prepare evidence "verifying that a resident has taken all possible measures to comply with requirements of the currency legislation". Particularly, such evidence may include all official written and electronic correspondence with a foreign counterparty: filing a claim, attempts to agree upon another way to perform the obligations stipulated in the contract, payment claims, etc. It should be noted that all the evidence in the aggregate is important, since the issue of bringing a resident to liability will be resolved taking into account all the circumstances of the case.

At the moment, explanations on the exemption of residents from liability for non-repatriation of foreign currency earnings on the basis of force majeure are given only in relation to foreign trade contracts (export and import contracts for delivery, performance of works, provision of services, etc.). There is no mention of loan agreements in the Information

Letter. It is almost impossible to prove the objective impossibility of performing a monetary obligation, because banking organizations do not suspend their activities and actually operate in the same mode, which makes it possible for counterparties to make non-cash payments. Moreover, non-payment of loans cannot be explained by the failure to perform a reciprocal obligation (e.g. non-delivery of goods, non-performance of works, etc.) and remains exclusively the risk borne by the lender. Therefore, whether the COVID-19 pandemic will be recognized as force majeure under loan agreements between residents and non-residents will be answered by judicial practice on these types of disputes, or by newly adopted explanations. However, all of the above recommendations on the preparation of evidence on taking all possible measures by a resident are relevant for any types of administrative offenses for non-repatriation of foreign currency earnings.

In conclusion, it is worth pointing out once again that the spread of coronavirus disease (COVID-19) and measures taken in its regard do not "automatically" exempt all participants of foreign economic activities from administrative liability. In each particular case it will be a matter of evidence and persuasion of the dispute resolution authority. Residents need to develop in advance their legal position, all arguments and evidence in favor of the objective impossibility to perform the contract, and consequently, requirements of the currency legislation, as well as the absence of their fault. One should not neglect the possibility of making timely amendments to the terms of performance of obligations with counterparties. It makes sense to reach out to the debtor and review the contractual terms, because the liability for non-repatriation of foreign currency earnings may turn out much more costly than one's concessions to the counterparty.

LESSEE VS LESSOR: WHICH SIDE IS COVID-19 ON?

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Under the current conditions, various lessee organizations face the following problem: they have to pay rent for vacant premises (offices, shops, pavilions). What is more, this problem has affected everyone – someone has all their employees working remotely, someone has suspended their activities due to restrictive measures, someone is unable to use the leased premises due to the closure of the shopping (office) center. There are also those that were not affected by the prohibitions above, but due to the introduction of the lockdown, the flow of buyers decreased, which resulted in a significant revenue decrease, and consequently – inability to pay rent.

In order to reduce costs, it is reasonable to either negotiate with a lessor on a deferral, reduction of rent, rent free periods, or on termination of the agreement by mutual consent on mutually beneficial terms.

We decided to review some questions that lessees tend to have in this situation.

Is it possible to stop paying rent?

It is definitely not worth letting this issue "take its own course" by simply not paying rent. This will lead to debt accumulation and subsequent filing of a claim by the lessor, including penalties. What is more, claims of the lessor will definitely be satisfied by the court.

Certainly, court proceedings may drag on, and the execution of the court decision may become complicated for the lessor, but there is always a possibility of bringing controlling persons of the lessee to subsidiary liability.

Does force majeure exempt the lessee from paying rent?

It should be understood that in most cases epidemics, pandemics, and other similar phenomena in and of themselves do not constitute force majeure, but so do restrictive measures that are subsequently introduced. Thus, the introduction of restrictive measures to prevent the spread of COVID-19 has already been recognized as extraordinary, unforeseen, unavoidable, beyond the control of the parties and having a significant impact on the performance of obligations under economic agreements (see Letter of the Chamber of Commerce and Industry of the Russian Federation ref. ПР-0315 dated 26.03.2020, as well as explanations

of other state authorities: Letter of the Federal Anti-Monopoly Service of Russia No. ИА/21684/20 dated March 18, 2020, Letter of the Ministry of Finance of Russia No. 24-06-06/21324 dated March 19, 2020).

However, pursuant to the general rule (Clause 3 of Article 401 of the Civil Code of the Russian Federation) the lessee may be exempt from liability for the violation of obligations (to pay rent) in case he/she fails to perform them due to force majeure. Here it is important to realize that a person is exempt from liability for non-performance of obligations (forfeits, fines, penalties), but not from the obligation to pay rent itself. The lessee's inability to pay rent is obviously not directly related to COVID-19, since it may be related to a decrease in the lessee's income (revenue), exchange rate growth, decrease in the purchasing power of consumers, etc., i.e. with those events that resulted from the spread of COVID-19, consequent introduction of restrictive measures, as well as signs of a crisis.

The Moscow Chamber of Commerce and Industry has also repeatedly provided explanations stating that force majeure does not and cannot affect an ability of the lessee to perform its rent payment obligations, and therefore, most of requests of lessees for the issuance of force majeure certificates remain unsatisfied[1].

For more information about force majeure and most frequently asked questions thereon, see my article "Searching for force majeure…".

What supporting measures are provided for lessees?

The supporting measures announced for lessees are set out in the following regulatory enactments:

- Order of the Government of the Russian Federation No. 670-p dated 19.03.2020 "On measures to support small and medium-sized enterprises"
- Article 19 of Federal Law No. 98-ФЗ "On amendments to certain legislative acts of the Russian Federation on the prevention and liquidation of emergency situations" dated 01.04.2020
- Decree of the Government of the Russian Federation No. 439 dated 03.04.2020
- "On setting requirements for terms and conditions for deferral of rent payments under real estate lease agreements".

A summary of the supporting measures provided is given in the table below.

The summary of the above information is as follows:

- Supporting measures are mainly provided to small and medium-sized enterprises, as well as economic entities operating in the most affected business areas;
- Supporting measures (including deferrals and rent-free periods) are not applied automatically, but only after entering into relevant additional agreements to lease contracts. Moreover, the lessor may refuse to grant a deferral to the lessee and refuse to sign such an agreement, and there is no liability on the lessor's part. The lessee may force the lessor to enter into an additional agreement (if there are grounds for granting a deferral) in a court of law, but proceedings may lead to time expenditure and financial costs.

Therefore, the said supporting measures are unlikely to be widely used, both due to a limited number of persons to whom they apply, and due to a lack of efficient mechanisms for their implementation.

What are the ways to persuade the lessor to make concessions to the lessee?

As mentioned above, the most efficient way to resolve the problem is to set

1. Letter of the Chamber of Commerce and Industry of the Russian Federation No. ПР/0349 dated 07.04.2020 "On issuance of force majeure certificates regarding rent payment obligations for the use of premises in commercial real estate in connection with the spread of the coronavirus disease (COVID-19)".

	Lease objects (ownership)			
Lessee type	**Federal property constituting the state treasury**	**Other federal property**	**Property of constituencies of the Russian Federation, municipal property**	**Private property**
SME subject	Deferral of rent payments for April–June 2020. The term of the deferral is offered by the lessee, but it may not be later than 31.12.2021[2]	Deferral of rent payments for 2020 (such payments may be made in equal installments during 2021)[3]	Set at the level of constituencies of the Russian Federation and municipalities. The Government of the Russian Federation recommended taking supporting measures that do not worsen the situation of lessees compared to the requirements of the Government of the Russian Federation. Regardless of taking such measures, it is reasonable to contact the lessor with a request for a possible deferral	
SME subject that operates in one of the business areas recognized as affected	Exemption from rent payment for April–June 2020 (provided the property is leased for the conduct of relevant activities and documentary evidence of its intended use)[4]			Deferral under the following conditions: Deferral period: from the introduction of HAER[4] to 01.10.2020; Scope of the deferral: rental amount for the whole period of HAER and 50% of the rental for the period from the end of HAER to 01.10.2020; Rent payment period: on or after 01.01.2021 and on or before 01.01.2023, at most once a month in equal installments in the amount not exceeding ½ of the monthly rental[6]
Economic entity operating in one of the business areas recognized as affected				

proper channels of communication with the lessor. At the same time, one should not expect the lessor to provide a full exemption from paying rent, as the parties should find some middle ground, i. e. a mutually beneficial compromise that will allow the parties to share the burden of costs incurred in connection with the "corona crisis", while maintaining a balance of interests of both parties.

2. Sub-clause "a" of Clause 1 of Order of the Government of the Russian Federation No. 670-p dated 19.03.2020.
3. Clause 2 of Order of the Government of the Russian Federation No. 670-p dated 19.03.2020.
4. Sub-clause "б" of Clause 1 of Order of the Government of the Russian Federation No. 670-p dated 19.03.2020.
5. High alert or emergency regime.
6. Clause 3 of the Requirements for terms and conditions for deferral of rental payments under real estate lease agreements (approved by Decree of the Government of the Russian Federation No. 439 dated 03.04.2020).

The lessee's interest here is clear and obvious. But what might be of interest to the lessor? What are the possible ways to persuade him/her to reach out to the lessee? Below are the reasons that may serve as motivators for the lessor:

- A rough approach to the dialogue with the lessee may lead the lessor to court. Undoubtedly, he/she will collect both rental arrears and the amount of accrued penalties from the lessee. However, court proceedings may drag on, and the court decision still needs to be executed (the lessee may simply have no funds and assets to meet the requirements of the lessor).
- In case of a dispute, the lessee may have a plan B and refer to force majeure (that is if it is possible to prove a connection between force majeure and non-performance of the payment obligation). This will give the lessee a chance for an exemption from liability (from accrued penalties).
- One may refer to Article 19 of Federal Law No. 98-ФЗ dated 01.04.2020, in accordance wherewith all lessors shall provide a deferral and reduce the rental for the period of inability to use the leased object. Undoubtedly, this rule is by and large exclusively declarative and optional for application, but it may be used as an additional argument with the lessor.
- Economic supporting measures taken in each specific region for owners that reduce rates for lessees affected by the pandemic may serve as an additional argument for the lessor. For example, for Moscow, such measures are set by Decree of the Government of Moscow No. 212-ПП dated 24.03.2020.
- A flexible approach to the dialogue with the lessee may be much more profitable by making temporary concessions and gaining a stable partner for the future, than later in the crisis trying to find new lessees and lease out empty premises.

What are the ways to terminate a lease agreement?

First of all, it is necessary to review the agreement for any provisions on the possibility of unilateral termination of the lease agreement and the procedure for such termination.

The Civil Code of the Russian Federation provides for the only possibility for unilateral out-of-court termination of lease agreements at the initiative of the lessee. Such termination is allowed only for agreements concluded for an indefinite period. The lessee is entitled to withdraw from such an agreement by notifying the lessor one month in advance.

For other lease agreements, the lessee has no such right. However, in case of force majeure, the lessee may apply Article 451 of the Civil Code of the Russian Federation and file a claim for termination of the agreement in a court of law.

Thus, in accordance with Clause 1 of Article 451 of the Civil Code of the Russian Federation, if the circumstances on which the parties based the conclusion of the agreement have undergone significant changes, each of the parties is entitled to apply to court for termination of the agreement. Changes in circumstances are recognized as significant, in case they have changed so much that, if the parties could have reasonably foreseen them, the agreement would have never been concluded or would have been concluded on substantially different terms.

It is more likely that the lease agreement will be terminated by the lessee in a court of law. However, such measure is not so much a panacea as a last resort, since court proceedings may drag on (especially given the temporary paralysis of courts and their subsequent predictable overload with work), and the agreement shall be considered terminated only from the moment of entry into force of the court decision. All the while, the rent arrears will keep accumulating for payment by the lessee.

Summing up all the above, it is worth noting that the current circumstances do not play into the hands of either of the parties to the lease agreement – neither the lessee nor the lessor, and both parties bear equal loss. Absence of a temporary compromise on the lessor's part will inevitably have a detrimental effect on him/her later. The same goes for the lessee. Therefore, we strongly believe that the only proper solution is a mutually beneficial compromise to be reached by the parties.

PREVENTION AND TREATMENT OF THE GOVERNMENT CONTRACT BREACH

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New COVID-19 is a current factor that seriously hinders economic growth and threatens the well-being of both individuals and businesses. Regardless of the measures taken by the government to give assistance to affected businesses, the current situation is fraught with losses that are unavoidable.

First of all, it should be noted that conclusion and performance of government contracts raise some questions. It should be kept in mind that although the pandemic is recognized as force majeure, the law provides no possibility to refuse concluding a government contract after winning at the bidding process. This means that a winning bidder who did not sign a contract may be included in the blacklist of suppliers. Despite the fact that due to restrictive measures and other factors that prevent proper performance of obligations, including under government contracts, it may be difficult to perform it in due time, the client will be obliged to inform the Federal Antimonopoly Service (FAS) about the refusal to sign the contract, which in turn may decide to include the winning bidder in the blacklist of suppliers. On the one hand, such a decision may be challenged in court, and the FAS instructed its local authorities via Letter No. ИА/21684/20 dated March 18 that they should take into account that the spread of COVID-19 constitutes force majeure. On the other hand, provisions of the law that make it possible to make a decision on inclusion in the blacklist of suppliers have not been changed, and instructions of the FAS give no guarantees that no one will be included in the blacklist of suppliers during this period. Therefore, it is preferable to prevent, if possible, the occurrence of circumstances on the basis of which a decision on inclusion in the blacklist of suppliers may be made.

If the pandemic happened to a potential contractor under a government contract prior to actual conclusion of the contract, the most appropriate step is to notify in advance of the inability to sign the contract due to force majeure. This will allow to suspend concluding a contract for the duration of such circumstances. Although the law on the contract procurement system stipulates that the procedure may be suspended for no more than 30 days on these grounds, this will buy time and reduce risks of future missed deadlines under the contract.

Moreover, potential suppliers should not rely on extension of terms set by the Federal Law “On the contract system in the procurement of goods, works, services for state and municipal needs” on grounds of non-working days announced

under the presidential Decree dated April 2 (the period of non-working days has been extended until May 11). Government Decree No. 443 dated April 3 determines that the terms set by Federal Law 44-ФЗ calculated in working days, during the declared non-working days will be calculated in calendar days (excluding Saturdays and Sundays). This means that such terms will not be rescheduled and will fall on the same calendar day as if the non-working regime had not been introduced.

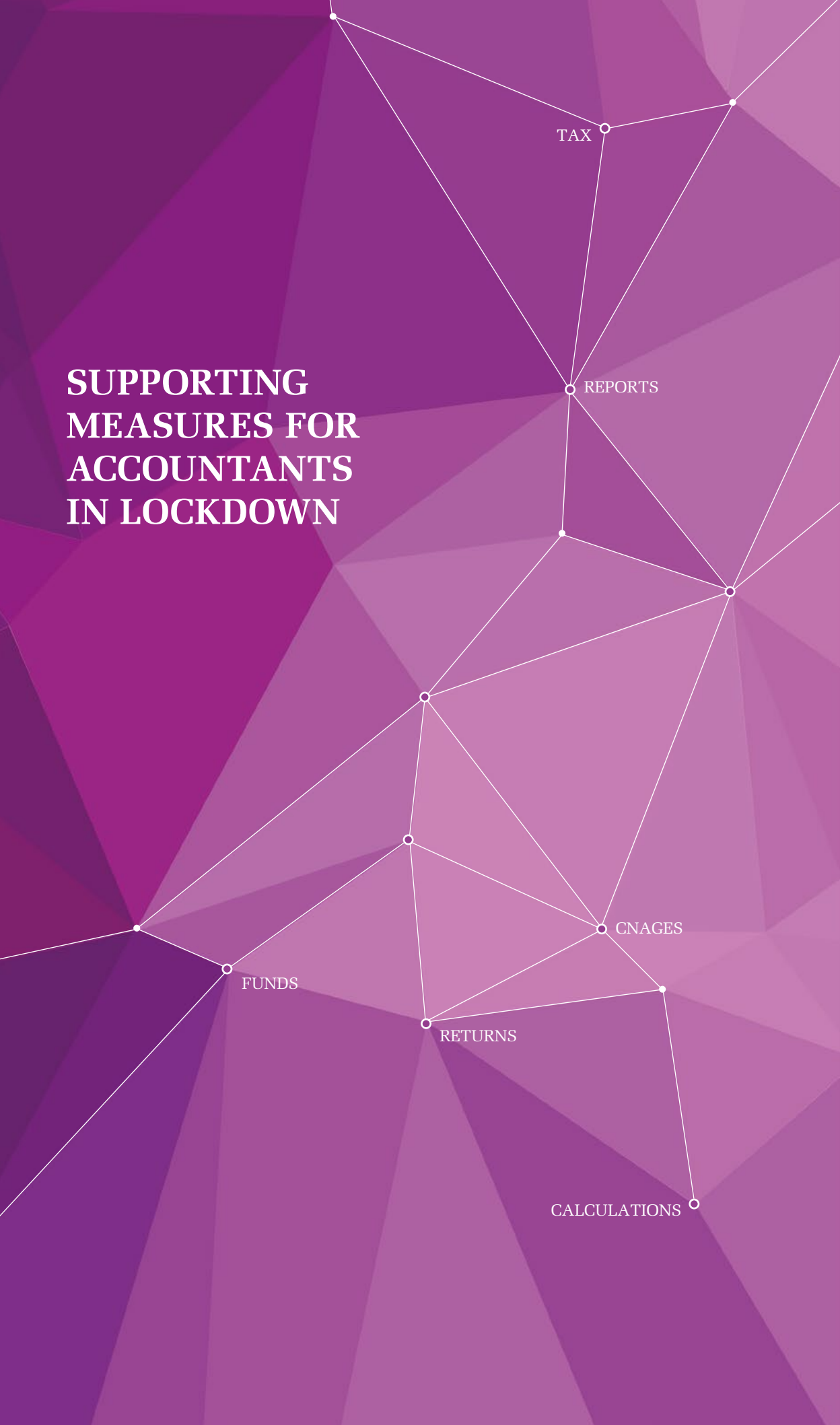
Suppliers who have already concluded a contract and are in the process of performing it under the current circumstances should, if possible, continue to perform it. The terms of the contract may provide for the right of the client to unilaterally cancel the contract in case of repeated violations of delivery terms. If the client exercises this right, the supplier risks being included in the blacklist of suppliers. If it becomes obvious that it is impossible to perform the contract properly and in due time, it is better as in the case with signing of the contract to notify the client in advance and offer to terminate the contract by agreement of the parties. If the client agrees, there will be no grounds for including the supplier in the blacklist of suppliers; if not – the supplier's bona fide behavior will increase the chances that the FAS local authority will not make a decision to include the supplier in the blacklist of suppliers, or in case such a decision is made, that it will be possible to get such a decision canceled in court later.

If the supplier is not ready and has no intention to terminate the contract, another option is to file an offer to the client on making amendments to the contract. Starting from April 24, Clause 65 was added to Article 112 of Federal Law 44-ФЗ, according to which in 2020, terms of contract performance may be changed if the inability to perform the contract is caused by the spread of COVID-19 or other factors determined by the Government. It is necessary to describe the situation in detail to the client, explain exactly how this situation prevents the supplier from performing the contract, and on these grounds with reference to the clause of the law above offer to change terms.

In the worst case scenario, if the client refuses both to terminate and to amend the contract, the only thing left for the supplier is to continue to perform the contract to the extent possible under the current circumstances. Subsequently, if any delay or other violations are justified by the pandemic, according to the general rules of the Civil Code on force majeure this will allow to avoid liability for such violations, primarily payment of penalty.

The main thing to remember for a participant of the contract procurement system under current difficult conditions is that contracts should be performed to the extent possible. Bona fide behavior and thorough collection of evidence proving that violations occurring in the course of contract performance are caused by COVID-19 are vital for minimizing losses, as well as risks of being included in the blacklist of suppliers.

SUPPORTING MEASURES FOR ACCOUNTANTS IN LOCKDOWN



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At the beginning of April, a lot was changed to support businesses during difficult times.

This article covers the most significant changes related to those economic areas that are not recognized as particularly affected, as well as some measures to support small and medium-sized businesses operating in the affected economic areas.

Accountants may take a break

Due to introduction of non-working days in April and early May for all organizations, dates for submission of reports and payment of taxes, fees and insurance premiums were postponed[1].

Reports that in accordance with the Tax Code of the Russian Federation are to be submitted in March–May 2020, now may be submitted 3 months later. This applies to:

- Tax returns (excluding value added tax returns);
- Tax calculations of the amounts of income paid to foreign organizations and withheld taxes;
- Calculations of the personal income tax charged and withheld by tax agents;
- Calculations of advance payments;
- Accounting (financial) statements.

The VAT return and Calculation of insurance premiums for the 1st quarter of 2020 shall be submitted to the tax authority by May 15, 2020.

On 7 April, the Ministry of Finance and the Federal Tax Service issued[2] explanations stating that accounting statements for 2019 (if such accounting statements are not regulated by special provisions, e.g. on state secrets) shall be submitted to the tax authority on the first business day after the date set by the Tax Code of the Russian Federation, i.e. May 6, 2020. However, after the statement of the President of the Russian Federation and the announcement of May 6–8, 2020 as non-working days, dates for submission are automatically postponed to May 12, 2020.

For convenience, a comparative table is made covering principal forms of accounting and tax statements.

1. Clause 3 of Regulation of the Government of the Russian Federation No. 409 dated 02.04.2020.
2. Letter of the Ministry of Finance and the Federal Tax Service No. 07-04-07/27289 dated 07.04.2020.

Table 1

Tax type	Reporting (tax) period	Date for submission of reports set by the Tax Code of the Russian Federation	New date for submission of reports in accordance with the Government Regulation
Value added tax	Q1 2020	April 25, 2020	May 15, 2020
Corporate income tax	2019	March 30, 2020	June 29, 2020
	Q1 2020	April 28, 2020	July 28, 2020
Personal income tax (6-НДФЛ)	Q1 2020	April 30, 2020	July 30, 2020
Insurance premium (РСВ-1)	Q1 2020	April 30, 2020	May 15, 2020
Tax paid under the simplified tax system for organizations	2019	March 31, 2020	June 30, 2020
Tax paid under the simplified tax system for individual entrepreneurs	2019	April 30, 2020	July 30, 2020
Excise tax	February 2020	March 25, 2020	June 25, 2020
	March 2020	April 27, 2020	July 27, 2020
	April 2020	May 25, 2020	August 25, 2020
Corporate property tax	2019	March 30, 2020	June 30, 2020
Accounting statements	2019	March 31, 2020	May 12, 2020

Dates for submission of reports to the Social Insurance Fund have also been changed (see table 2).

The Pension Fund turned out to be the least favorably disposed to payers of insurance premiums and did not postpone the dates for submission after the announcement of April as a non-working month. The Pension Fund requires to submit the СЗВ-М and СЗВ-ТД reports monthly no later than on the 15th day of the month following the reporting one. If the specified period is violated, the payer of insurance premiums and the manager shall be fined.

Postponement of dates for submission of reports entails no extension of tax payment deadlines (advance payments on taxes), including in cases when in accordance with the Tax Code of the Russian Federation the deadline for the tax payment (advance payment on tax) is set no later than the date of submission of the tax return (calculations).

Therefore, the following logical conflict arises: one is allowed to submit reports later, but most organizations still have to pay tax in due time. Fines for late payments will not be charged and accounts will not be blocked, but the accrual of penalties for late payments is not cancelled.

Table 2

Type of reporting form	Reporting (tax) period	Date for submission before changes	New date for submission of reports
Report to the Social Insurance Fund (4-ФСС form)	Q1 2020	April 20, 2020 (hard copy) April 25, 2020 (telecommunications channel)	May 15, 2020
Confirmation of the type of activities	2019	April 20, 2020 (hard copy) April 27, 2020 (telecommunications channel)	May 12, 2020

Contributions to the Pension Fund have become smaller, but not for everyone

From April 1, 2020 to December 31, 2020, payers of insurance premiums recognized as small and medium-sized businesses apply the following rates of insurance premiums for the labour remuneration of their employees (for the part of remuneration that exceeds the minimum wage amount)[3] (see table 3).

Moreover, the Tax Code of the Russian Federation has been amended to extend these rates for 2021 and the following years[4], i. e. such rates shall be effective until their further amendment.

For clarity, here is an example demonstrating the calculation of insurance premiums for April (due in May 2020).

Example.

The employee's wages for April 2020 amounted to 20,000 rubles. The minimum wage amount set by the federal law[5] is 12,130 rubles.

In other words, the profit really amounts to 15%, but reduced rates are applied to the employee's wages that exceed the minimum wage amount, and not to the whole amount. However, the reduction is significant (twofold), especially for those employers who pay high wages to their employees.

Such measures are aimed at achieving two objectives at once:

- Reduction of the tax burden on small and medium-sized businesses;
- Additional incentive to "increase" wages of employees.

Part of wages from the budget funds

The Government of the Russian Federation has approved rules[6] on granting subsidies for partial compensation of expenses, including for the remuneration of their employees in April and May 2020, to organizations that carry out activities

Table 3

Type of insurance premium	Basic rate, %	Reduced rate, %
Insurance premium for compulsory pension insurance	22%	10%
Insurance premium for compulsory medical insurance	5,1%	5%
Insurance premium for compulsory social insurance	2,9%	0%

3. Article 6 of Federal Law No. 102-ФЗ dated 01.04.2020.
4. Sub-Clause 9 of Article 2 of Federal Law No. 102-ФЗ dated 01.04.2020.
5. Federal Law No. 463-ФЗ dated 27.12.2019 "On making amendments to Article 1 of the Federal Law "On the minimum wage amount"
6. Resolution of the Government of the Russian Federation No. 576 dated 24.04.2020.

Table 4

Type of insurance premium	Calculation formula at the reduced rate	Insurance premium payable at the reduced rate, RUB	Insurance premium payable at the basic rate, RUB	Profit, RUB
Compulsory pension insurance	12130 × 22% + + (20000 - 12130) × 10%	3,456	4,400	944
Compulsory medical insurance	12130 × 5,1% + + (20000 - 12130) × 5%	1,012	1,020	8
Compulsory social insurance	12130 × 2,9%	352	580	228

recognized as particularly affected by the spread of COVID-19.

The amount of a subsidy is the minimum wage amount as of January 1, 2020, or 12,130 rubles.

A subsidy is granted to those organizations and entrepreneurs that as of March 1, 2020 carried out their principal activities in the affected economic areas. The tax authority draws up a register of organizations applying for subsidies. The following conditions should be met in order to be included in the registry:

- Organization or entrepreneur should be listed in the registry of SMEs as of March 1, 2020;
- The subsidy recipient should not be in the process of liquidation, no bankruptcy procedure should be initiated against it, no resolution on the future exclusion from the Unified Register of Legal Entities shall be adopted;
- As of March 1, 2020, there is no arrears on taxes and insurance premiums totaling more than 3000 rubles;
- The number of employees of the subsidy recipient in the month for which the subsidy is paid is at least 90% of the number of employees in March 2020.

To receive a subsidy, an organization should file an application to the tax authority via the telecommunications channel, their personal account, or by post.

To receive a subsidy for April 2020, an organization shall file an application to the tax authority during the period from May 1 to June 1, 2020, and to receive a subsidy for May 2020 – from June 1 to July 1, 2020.

If there are no grounds for refusal to grant a subsidy, the tax authority shall calculate the amount of the subsidy within 3 business days from the date of filing an application, but not earlier than the 18th day of the month following the month for which the subsidy is granted, draw up a register and send it to the Federal Treasury.

The Federal Treasury transfers the subsidy within 3 business days from the day following the day when the Federal Treasury receives the register.

There is always a fly in the ointment

After the President's statement, amendments to the Tax Code of the Russian Federation included an amendment[7] on the introduction of a new item taxable with the personal income tax.

From January 1, 2021, interest on all deposits (account balances) with banks in the Russian Federation is subject to personal income tax at the rate of 13%.

Therefore, now even very modest amounts of interest on deposits shall be taxed. However, there is no rush to withdraw funds from one's accounts before the end of 2020, as:

7. Article 2 of Federal Law No. 102-ФЗ dated 01.04.2020

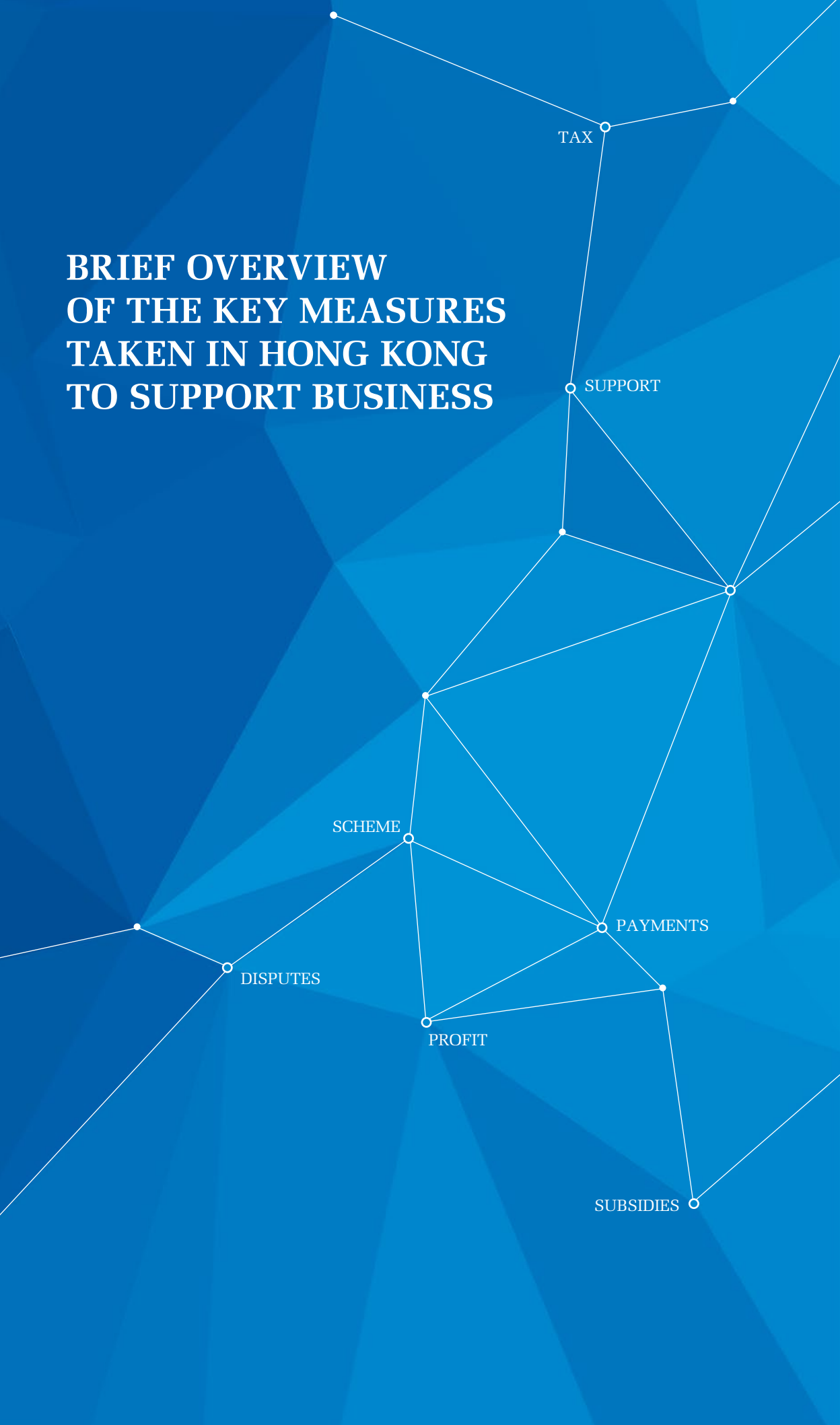
- Interest income for 2020 is not subject to taxation;
- The tax base is defined as the excess of the income amount in the form of interest received by the taxpayer during the tax period on all deposits (account balances) with these banks over the amount of interest calculated as the product of one million rubles and the key rate of the Central Bank of the Russian Federation effective on the first day of the tax period;
- Income in the form of interest received on deposits (account balances) in rubles, the interest rate whereon during the entire tax period does not exceed 1 percent per annum, is not subject to taxation;
- Income on escrow accounts is not subject to taxation.

Therefore, if to take the current key rate (5.5%) as a basis, then under the general rule the amount of interest received by the taxpayer for the year less 55,000 rubles shall be subject to taxation.

If income on deposits is denominated in foreign currency, such income shall be converted into rubles at the official exchange rate of the Central Bank of the Russian Federation set on the date of the actual receipt of income (receipt of funds).

Individuals will not have to submit reports on the interest received. The tax shall be paid no later than December 1 of the year following the expired tax period (calendar year) on the basis of a tax notification sent by the tax authority on tax payment. Banks shall provide information about income of individuals (their clients).

BRIEF OVERVIEW OF THE KEY MEASURES TAKEN IN HONG KONG TO SUPPORT BUSINESS



Yana Dimitrova
Deputy Director
Corporate Services
Korpus Prava (Hong Kong)

It is no secret that the pandemic has brought a huge number of people, companies, and countries to the brink of survival. The fight against the epidemic and the introduction of lockdown have also had a strong impact on the economy of Hong Kong the Government of which, along with other countries, has developed a set of measures to support its citizens and companies. The most effective measures were the prolongation of repayment terms for facility lines and the deferral for interest payments, as well as the reduction of interest rates on current loans for small and micro-organizations.

In early April 2020, Hong Kong announced adoption of an economic support package of HKD 137.5 billion (USD 17.6 billion) to help individuals and industries affected by the COVID-19 outbreak.

We suggest that you familiarize yourself with the three main areas covered by the Support Package:

1. Preservation of jobs.
2. Support for organizations.
3. Provision of means of living.

Preservation of jobs

Employer subsidy scheme

- Provision of subsidies for payment of wages for those employers that agree not to dismiss employees;
- Provision of a one-off subsidy in the amount of HKD 7,500 to self-employed persons.

Creation of jobs

- Creation of about 30,000 temporary jobs;
- Creation of about 10,000 jobs for public employees in 2020-21.

Measures to improve the situation in the labour market

- Incentive measures for employees who acquire new skills.

Support for innovation and educational programs:

- Provision of matching grants to upgrade professional skills of the personnel;
- Provision of subsidies to organizations that provide educational services;
- Provision of subsidies to construction companies for employee training;
- Provision of subsidies for the implementation of remote business programs;
- Provision of subsidies to the public and private business sectors for the implementation of projects on the use of 5G technologies;
- Provision of subsidies for online settlement of disputes related to COVID-19.

Support for organizations

Provision of subsidies to enterprises affected by the epidemic (with the participation of the Anti-epidemic Fund (AEF)).

- The first stage of the AEF operation: provision of subsidies to organizations operating in the field of food production and construction, retail stores, organizations and freelancers working in the field of art.
- The second stage of the AEF operation: provision of subsidies to representatives of the tourism industry, organizations engaged in passenger transportation, catering companies, representatives of the aviation industry, educational institutions, representatives of the construction industry, each registered coach in the National Sports Association and sports organizations.

In addition, special attention is paid to measures to facilitate the flow of funds of enterprises:

- Provision of a 100% special preferential loan at a low interest rate with a 100% guarantee from the Government;
- Reduction in the income tax for 2019-20 by an amount not exceeding HKD 20,000;
- Cancellation of the tariff rate for non-residential real estate in 2020-21;
- Cancellation of the company registration fee in 2020-21;
- Cancellation of the registration fee for the annual report charged by the Registrar of Companies for 2 years;
- Granting 75% of the rent benefit to tenants of public premises and authorized owners;
- Cancellation of 75% of the electricity fee for non-residential premises for 8 months;
- Cancellation of 75% of the fee for water supply and water disposal for non-residential premises for 12 months;
- Increase in the amount of non-reimbursable rent for facilities provided by the Leisure and Cultural Services Department.

Provision of means of living

Payments to citizens:

- Payment of cash in the amount of HKD 10,000 to each permanent resident of Hong Kong aged 18 and older;
- Provision of a MTRCL (Mass Transit Railway Corporation Limited) preferential rate with a 20% discount for 6 months from July 1;
- Provision of an additional payment in the amount of HKD 1,000 for each

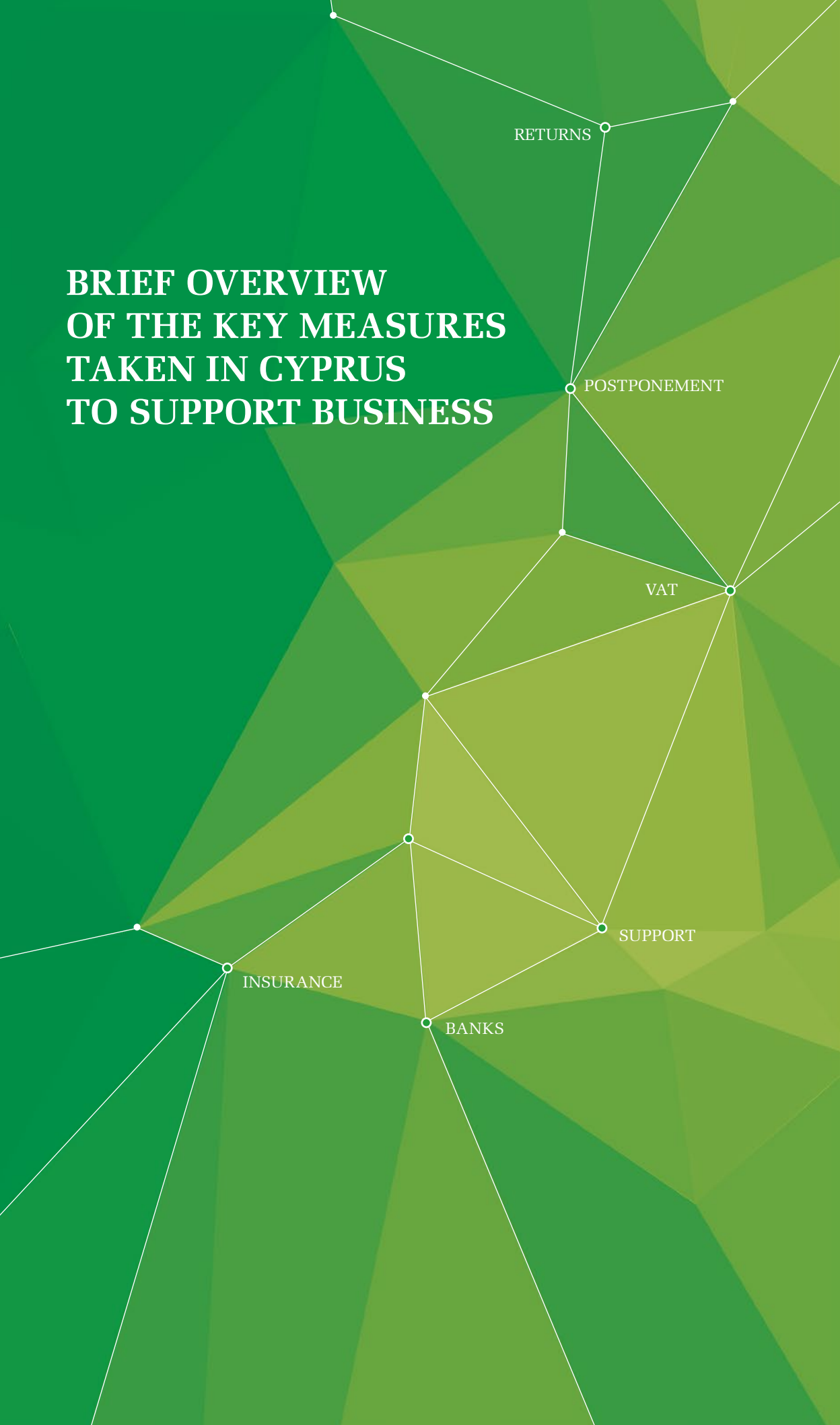
student receiving HKD 2,500 under a student grant.

Easing of the tax burden:

- Reduction of the payroll tax and personal income tax for 2019-20 by an amount not exceeding HKD 20,000;
- The deadline for payment of the payroll tax, personal income tax and profit tax for 2018-19 is postponed (dates have not yet been determined);
- Cancellation of the real estate tax for III-IV quarters of 2020, and I-II quarters of 2021.

As for the future, the Government announced that it would promptly adjust the support policy for small and medium-sized enterprises as the situation developed.

BRIEF OVERVIEW OF THE KEY MEASURES TAKEN IN CYPRUS TO SUPPORT BUSINESS



Milena Saakyan
Business Development Manager
Korpus Prava (Cyprus)

During the period from March 2020 to the present day, state authorities of Cyprus have taken and continue to take various measures to support the business and economy of the island during the spread of the virus.

We suggest that you learn the main ones.

Submission of reports and VAT payment procedure

In accordance with the Value Added Tax Law (as amended) of 2020 (L. 24 (I) / 2020) (VAT Law), the right to suspend the obligation to pay VAT shall be granted to persons registered in the VAT Register whose specified tax periods end on February 29, 2020, March 31, 2020 and April 30, 2020. This rule shall apply subject to timely filing of one's tax return and payment of the tax by November 10, 2020, and shall not apply to companies of certain industries.

Despite amendments to the provisions of the VAT Law, any individual or legal entity that was notified by the tax department of the tax period, shall pay the tax payable on the date of filing of the tax return as follows:

- Full amount, if they fall under one of the areas of activity to which no earlier amendments apply;
- 30% of the amount, and the remaining part shall be payable in accordance with the VAT Law.

Postponement for filing of tax returns

The obligation to file a company income tax return (TD4) and a return for the self-employed with accounts (TD 1 ACC) for 2018 fiscal year is extended until June 1, 2020.

Support for companies, provision of liquidity and stimulation of domestic consumption

- The Support Plan has been developed for companies with partial suspension of activities (Special Unemployment Allowance 1 list). This plan applies to all enterprises that registered a reduction in their turnover of more than 25% in March or April, and in case such a reduction was caused by the measures aimed at fighting the virus.
- The Support Plan has been developed for companies with complete suspension of activities (Special Unemployment Allowance 2 list). This

plan applies to all enterprises that completely suspended their activities in accordance with the regulations of the Ministry of Health and the relevant resolutions of the Council of Ministers.

Support for the banking sector

- Obligations to repay any loan payments, including interest on facility lines that were granted and/or acquired and/or managed by credit institutions are suspended for individuals, state organizations, individual entrepreneurs and enterprises. Operations with syndicated loans provided jointly by credit institutions or third parties are also suspended.
- The above suspension applies only to beneficiaries that had no outstanding contributions within 30 days from February 29, 2020 and are now facing financial difficulties as a result of the pandemic.
- Beneficiaries shall notify credit institutions in writing (by e-mail, fax, post) of their interest in suspending the loan by providing the relevant notification included in the Decree dated March 30, 2020 on emergency measures for loan suspension.
- After the suspension period expires:
  - The total amount of interest that has been suspended will be added to the total amount of the loan;
  - Suspended loan payments (capital and interest) will not be immediately paid to the credit institution, unless otherwise agreed between the credit institution and beneficiaries;
  - The loan repayment period will be automatically extended as required until the final calculation of the loan amount (capital and interest).
- During the suspension period, beneficiaries are entitled by duly notifying the credit institution to settle any payments that should have been due if the suspension was not applied.

Social insurance contributions

- Social insurance contributions for February payable by March 31, 2020 may be paid by April 14, 2020.
- Social insurance contributions for March payable by April 30, 2020 may be paid by May 14, 2020.

Overdue social contributions

The obligation to pay contributions is suspended for March and April for debtors who are obliged to repay overdue social contributions in installments in accordance with the Law on the Control of Overdue Social Contributions.

About the Company

Korpus Prava was established in 2003 in Moscow, Russia. Together with our offices in Russia, Cyprus, Latvia and Hong Kong we offer clients a truly international service. Our highly qualified and friendly staff is available to provide to the clients a flexible, reliable and efficient service.

The mission of the Company is to raise the business value of the client and bring down risks.

Korpus Prava offers services in:

- Legal and tax consulting
- Transformation of financial statements to IFRS
- International tax planning
- Project consulting
- Corporate services
- Capital transactions / M&A
- Tax disputes
- Economic disputes and bankruptcy
- Real estate transactions
- Intellectual property
- Financial Consulting

The company is mentioned in the rankings of the leading international directory "Legal 500" that is completely and comprehensively overtaking the global scope of legal services.

Korpus Prava was nominated as the best legal firm in Russia according to the authoritative magazine "The Lawyer"; it takes one of the leading positions amongst Top 50 legal firms in Cyprus, and it has also been recognised as the best international legal firm for tax planning in Cyprus. Korpus Prava Private Wealth Practice has taken fifth place in Private Banking and Private Wealth sector in Russia, in the category of Succession Planning Advice and Trusts according to the annual rankings of Private Banking Russia Survey 2016 of the prestigious magazine "Euromoney" (as of February, 2016).

Korpus Prava is a member of Cyprus Fiduciary Association (CFA) and Franco-Russian Chamber of Commerce and Industry (CCIFR). It takes part in the development of business community, business presentations and the exchange of professional experience.

Our certified specialists conduct seminars and consultations for accountants and the representatives of company financial services; they act as experts, and they are published in popular financial publications.

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