

COVID-19 AND ITS EFFECTS ON CONTRACTUAL RELATIONS

Following the coronavirus disease COVID-19 and the emergency measures put in place (especially those that ban or limit certain premises, activities and services), it is also necessary to consider the commercial law aspects of the current situation and the possible effects of non-fulfilment or defective performance of obligations in contractual relations and the related implications.

COVID-19 in contractual relations and the options of the contractual parties

Force Majeure

- ◆ Exemption from liability for damage caused by infringement of contractual obligations (article 2913 paragraph 2 of the Civil Code);
- ◆ It is necessary to prove that an emergency unpredictable and unsurmountable obstacle, which emerged independently of the will of the party causing harm, temporarily or permanently prevented fulfilment of the contractual obligation;
- ◆ It will not apply, if the obstacle arose at a time, when the party causing harm was already in default of fulfilment of contractual obligations;
- ◆ Exemption from liability will not apply to the contractual fine for infringement of the contractual obligation, if negotiated (in case of inadequacy of the contractual fine or the exercise of right to payment of the contractual fine being in conflict with good morals, the liberation may have significance in moderation or nullification of the contractual fine);
- ◆ Force majeure clauses may also be part of the contract – the option of exemption from liability then depends on the formulation of the specific clause.

Fundamental change of circumstances

- ◆ The emergence of especially great disproportion putting one of the contractual parties at a disadvantage, either by a disproportionate increase in costs of performance or a disproportionate lowering of the value of the object of performance (article 1765 of the Civil Code);
- ◆ The affected party has a right to demand renewal of negotiations about the contract, if it proves that (i) it could not have reasonably expected or influenced the change and that (ii) the fact occurred or became known to the party after entering in the contract;
- ◆ It does not entitle to postponement of performance;
- ◆ If the parties do not agree on a change in the contract within a reasonable time frame, the court may decide upon an application: it will change the obligation under the contract by renewing equality of rights and obligations of the parties or it will cancel the obligation;
- ◆ If the contract contains a stipulation on taking on the risk of a change of circumstances, i.e. exclusion of the use of the statutory stipulation on fundamental change of circumstances, the right to demand renewed negotiations about the contract does not arise.

Subsequent impossibility of performance

- ◆ If the debt becomes impossible to meet, the obligation under the contract lapses due to impossibility of performance (article 2006 of the Civil Code);
- ◆ Performance is not impossible, if the debt can be met under harder conditions, with greater costs, with the help of another person or only after certain time;

- ◆ The inability to perform must be announced without undue delay, otherwise liability for damage arises.

COVID-19 in international contractual relations

Applicable Law

- ◆ In the case of contracts with an international element, it is necessary to determine, the right of which country is applicable to these contracts and what options the given legal system provides;
- ◆ Practically all legal systems have their own treatment of the above-mentioned concepts and they should therefore be applicable.

Exceptions from the use of applicable law

- ◆ Imperative rules – rules of fundamental significance, the observing of which is crucial for the given country in protecting public interests and which will apply regardless of applicable law (e.g. emergency measures, quarantine and other extraordinary measures);
- ◆ Reservation of public order – applies in case the effects of foreign applicable law would be contrary to public order of the affected country (e.g. protection of fundamental rights);
- ◆ Emergency epidemiological measures may have the nature of these concepts.

CISG

- ◆ The so-called Vienna Convention – governs contracts on international purchase of goods among signatories – 89 contracting states;
- ◆ It contains a stipulation on exemption from liability (article 79) – A party is not liable for a failure to perform any of his obligations if he proves that the failure was due to an impediment beyond his control and that he could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it or its consequences.



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