

KALLAY & PARTNERS

COVID 19 - ACTIVE MEASURES OVERVIEW FOR CROATIA

I. GENERAL MEASURES

1. In accordance to National Civil Protection headquarter decision, these obligatory measures are put in practice:
 - until 14th April all shopping malls must follow ant epidemic measures including limiting the number of people at the mall at the same time, labelling the obligatory distance of 1,5 meter in front of the cash register, increase the number of cash registers and working time limited until 18.00 h
 - smaller size shops with food, as well as the stores at gas stations can also work no longer that 18.00 h
 - all restaurants will be closed, except food delivery and public kitchen
 - services that include close contact – hairdressing salons, pedicure salons etc. are closed until 14th April 2020
 - as of March 22, 2020, all public transportation in Croatia except for individual taxi services has been suspended for 30 days.
 - starting March 23, 2020, intercity travel and vehicular traffic is suspended, except for approved government and health services.
2. Institute for Public Health has announced on Wednesday 18th March 2020 launch of the new call centre where all interested public can get information about COVID-19; the number is 113. Epidemiologists and experts will be available from 7 am to 22 PM each day for all questions.
3. All information in one place are available at webpage www.koronavirus.hr
4. Compulsory work from home - Employers are obliged, if at all possible, to secure work from home, cancel meetings and business trips.
5. Health Inspectors of the Croatian State Inspectorate are monitoring and enforcing orders to self-isolate. They are authorized to fine any individual violating this order with fines ranging from 8000 HRK for the first violation to 30,000 HRK, 60,000 HRK and 120,000 HRK for repeat offenders. Persons violating health inspector orders may also be subject to criminal charges. The Croatian Public Health Institute issued [Guidance on Self-Isolation in English](#).

II. ECONOMIC MEASURES:

The Croatian government has adopted 63 measures to prop up the economy throughout the coronavirus epidemic. The main goal of economic measures will be to preserve jobs and enable payment of wages.

The most important measures determined are the following:

1. a three-month moratorium on liabilities to the Croatian Bank for Reconstruction and Development (HBOR) and commercial banks and a moratorium on enforcement proceedings.
2. measures to safeguard jobs at risk of crisis- the decision of the Croatian Employment Service (CES) authorizing the payment of HRK 3,250 per worker for a maximum of the next 3 months.

3. Employers have options that do not disregard the current Employment Act and are as follows:
 - Working from home office –only in agreement with the employee, all the conditions for work and safeguards for the employees must be assured from the employer.
 - Annual Leave – employer can order to the employee to take the leave, but only by a former written decision and only announcing it at least 15 days in advance.
 - Agreement on unpaid time off – it is possible for the employee to request or to agree with the employer on provision of unpaid time off – there can be an option for the employer to keep paying the health and pension benefits and the option to stop paying.
 - Quarantine – in case an employee is ordered to self-isolate, he is entitled to reimbursement of wages from Croatian Institute of Health Insurance which amounts to approximately 4.257,28 HRK.
4. Croatian National Bank (HNB) on Monday reduced the reserve requirement rate for commercial banks from 12% to 9% to release additional liquidity and help the enterprise sector overcome the present crisis more easily.
5. Increased maternity allowances - from 1 April increase the allowances for the other six months of the child's life (amount raised by HRK 1,663)
6. postponement of Public Benefit Payments - Entrepreneurs and citizens will be honoured with a coronavirus epidemic that will postpone public benefit payments such as income and profit taxes and contributions. Payments will be deferred to three months, with the possibility of extension to three more. Subsequently, it will be possible to make interest-free debt repayment within 24 months.

III. LEGAL IMPLICATIONS – possibility to invoke force majeure or change of circumstances clause

The situation with the virus outbreak caused businesses to consider whether they can rely on force majeure clauses, or material adverse change constructs as legal options to mitigate the impact of the crisis on their business.

Determining whether a party will be successful in claiming force majeure as a result of the COVID-19 outbreak, or that the outbreak could be subsumed under a Civil Obligations Act clause called “Change of circumstances” which can be similar to the MAC clauses determined under a transactional agreement, will require a careful review of the contractual terms, the surrounding circumstances, and the impacts of COVID-19 on the claiming party.

Parties will firstly have to look if their contracts define force majeure or if other similar clauses exist and in case there is no specific regulation, the Civil Obligations Act stipulates the following definitions:

FORCE MAJEURE (Article 373)	CHANGE OF CIRCUMSTANCES (Article 369)
Where performance of an obligation of one party to a bilateral contract becomes impossible due to extraordinary external events that occurred after entering into a contract and before the performance is due and which could not have been foreseen or prevented, avoided or eliminated by a party to a contract and for which neither of the parties is liable, the obligation of the other party shall also cease, and if it has performed its obligation partially, it has the right to restitution according to the regulations relating to restitution in case of unjust enrichment.	Should, after entering into a contract, extraordinary circumstances arise, that it was impossible to foresee at the time of entering into a contract, making it excessively onerous for one party to perform or if under such circumstances a party would suffer an excessive loss as a result of the performance, it may request variation or even termination of the contract.

Looking at the above quoted definitions it is possible to conclude that the force majeure is hardly applicable in most cases given that the obligation of one party needs to become impossible which mostly is not the case since most of the businesses payment obligations are affected by the crisis but still are not impossible.

Also, given the principals of the obligation law that dictate the balance between parties obligations, even in the force majeure event, the party seeking to invoke force majeure for non-performance is under an obligation to take reasonable steps to mitigate the foreseeable risk of its non-performance. A party would not be successful in invoking force majeure if its non-performance could reasonably have been mitigated.

As for the Change of Circumstances provision, it is more likely for the parties to invoke their rights on the basis of changed circumstances and thereby to renegotiate deal terms rather than terminate it. This is mostly since the definition of change of circumstances is not as strict as force majeure when it comes to obligations but focuses on the potential loss and difficulties one party would suffer in case the obligation maintains as agreed initially. Having that in mind, and in case there are no other provisions agreed upon, the parties are most likely to apply the Civil Obligations Act provisions on Change of Circumstances.

However, we emphasize that, before suspending performance in reliance upon a force majeure clause, or before relying completely on the provisions on change of circumstances, parties should carefully review their key agreements and consider:

- the contract's notice requirements and whether they have been or may be triggered
- the governing law provisions and impact that such law will have on interpreting the contract
- whether mitigation steps or alternative means of performance can reasonably be taken in respect of the contract
- the potential consequences of a breach and/or default of the contract
- how the force majeure provisions interact with the contract's indemnity and termination provisions

If you have any further questions, please do not hesitate to contact one of the members of the CV 19 Response Team.

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