

Issues in civil turnover arising from the measures put in place to prevent the spread of COVID-19 – possible solutions for the period until the suggested legislative measures enter into force

For the period until the suggestions tabled as draft bills in the National Assembly enter into force, the current laws of the Republic of Bulgaria remain in place, and those laws envision certain measures to protect the interests of both business and citizens, regardless of the declared emergency state. Those measures include:

Force majeure is an unforeseen or unavoidable extraordinary event which occurs after the contract has been concluded. The Order of the Minister of Health dated 13 March 2020, which introduces anti-epidemic measures on the territory of the Republic of Bulgaria until 29 March 2020, can be qualified as such an event, inasmuch as it introduces bans or restrictions as concerns the commercial activities defined therein.

The debtor in a commercial transaction whose activity is affected by the force majeure is entitled to invoke this circumstance in the relations with his counterparties, in which case **the performance of his obligations is suspended** and he is not responsible for the default caused by the force majeure, unless he was already overdue before it arose. At the same time, while the force majeure continues, **the execution of the reciprocal obligations is also suspended**, which means the following:

- The lessor of a commercial venue, the activity of which has been banned for the period specified in the Order, is in good faith unable to provide his lessee with unobstructed use of the venue for the purposes agreed in the contract, but at the same time the fulfillment of the reciprocal obligation to pay the rental price is also suspended (e.g. rental of a theater hall);
- Failure to deliver goods or services in cases where the failure is due to force majeure would constitute a good faith inability to perform the contractual obligations, but the reciprocal obligation to pay the remuneration is also suspended (e.g. when subscribing to fitness or spa services).

In connection with the lease relationship, it is essential to take into account the purpose for which the use of the venue has been granted, as this determines whether the use of the venue is possible in view of the anti-epidemic measures introduced and, respectively, whether there is force majeure due to the inability for it to be used.

It should also be borne in mind that the activities of restaurants and fast food establishments

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are not completely banned insofar as deliveries to an address are permitted. If the venue in question functions and organizes its activities solely with respect to deliveries, then there would be no force majeure. In case of **reduced consumption**, the affected party (tenant, supplier, contractor) has the legal opportunity to request a judicial amendment or termination of the respective contract on grounds of **frustration**. Of course, it is advisable for the parties to reach an out-of-court agreement on the essential terms of the treaty through negotiations.

Termination of contracts on grounds of force majeure is possible, if the event lasts so long that the party concerned **no longer has an interest** in performance. Usually a contract will provide for an **explicit period** after which each party has the right to terminate it. In the absence of such a time period, it is a matter of specific judgment in each case whether the party seeking termination has lost interest (e.g. whether a training that has been paid for can take place after the eventual withdrawal of anti-epidemic measures).

In the context of civil relations, the debtor is not responsible, if the impossibility of performance is due to a reason which cannot be attributed to his fault, such as the current emergency state and the limitations resulting from it. This so-called objective impossibility does not cover lack of funds. However, if the creditor, counterparty to the same legal relationship, has a reciprocal obligation to the debtor, that creditor may refuse to fulfil his obligation until the counterparty has fulfilled theirs. For this purpose, both receivables must be due.

As concerns civil relations, in case of temporary impossibility of performance due to force majeure, the above applies – the fulfilment of reciprocal obligations is suspended.

If there is permanent inability to execute the contract, it should be considered whether this inability is complete or partial. In the event of complete impossibility, the contract is terminated by law. In the event of partial impossibility, the counterparty may request a corresponding reduction of its obligation or the termination of the contract by a court, if there is insufficient interest in the partial performance.

With respect to employment relationships during the emergency state, the employer is obliged to continue paying the salaries of the employees, even if an enterprise is unable to

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function. In such cases, the Labour Code allows the employer to assess whether there is a downtime – and after 5 working days **may put the employees on paid leave** without their request, or may change their job functions (this option would have less practical application). In addition, **the employer may introduce part-time work** for up to three months – and when working hours are calculated in aggregate, this will allow staff shifts to be reduced in number and possibly to avoid overcrowding of staff. The employer may also introduce distance working, but in such cases the consent of the employees will be required, and the employer will need to provide the necessary means for each employee to work from home.

The employer is required to ensure healthy and safe working conditions – including ensuring that there is no risk of contamination of his employees. On the other hand, there are currently no measures in place to allow the employer to restrict access to the workplace of employees who are suspected of being infected by the disease and who may infect other employees, except in the case of an appropriate act by the health authorities. Regardless of this, the employer may choose not allow employees to work – and will then have to pay them compensation for the period during which they did not work due to dismissal.

The law also provides for other options that may be appropriate to the particular situation – so decisions must always be tailored to the particular circumstances of the case and an agreement should be sought between the parties concerned.