

Covid 19 also threatens contractual obligations.

How to proceed?

Does coronavirus and the measures to prevent its spreading stop you from fulfilling your contractual obligations or other duties? Are you in the delay or do you know that you will not be able to fulfill your obligation at all? Here are some basic recommendations on how to proceed in this case and answers to fundamental questions on how to minimize the negative impact of covid 19 on your contractual relationships.

What should you do if you run into delay in fulfilling the contractual obligation due to anti-coronavirus spreading measures?

Measures needed to slow down or limit the spreading of coronavirus, as well as the emergency situation declared by the government, may put the contractor in delay in meeting their contractual obligations. This delay can be due to labour shortages, material shortages, or the increased costs for the safety and health of workers. In this case, we recommend the following:

Talk to your contractual partner

Here again, as in every life situation, communication is the basis for solving problems. If you are in delay in fulfilling your contractual obligation or already know that you will be in delay, please inform your contractual partner. The situation is currently quite difficult for everyone, so it is understandable if you ask your contractual partner to postpone the fulfillment of the obligation, or agree to change the provisions of the concluded agreement in the form of an amendment that takes into account the pandemic and its consequences.

Force majeure

Coronavirus and related measures may justify the failure to fulfill obligations under the agreements if they constitute so-called “force majeure”. In this context, if you do not agree with your business partner to postpone the fulfillment of your obligations or to make other appropriate arrangements, it is necessary to analyze the agreement you have concluded. Force majeure (otherwise referred to as “vis major”, “force majeure” or “Act of God”) can be defined as a legal fact consisting of an extraordinary, unforeseeable, irreversible and unintended event that may cause or causes harm. The claims and further actions of the parties will vary depending on whether the agreement contains force majeure or not, and at the same time will depend on the precise definition of this provision in the agreement.

When analyzing the force majeure arrangements in the agreement, it is necessary to focus on the specific conditions set out therein, in particular whether it also applies to the declared emergency situation, a state of emergency or epidemic and how to apply this clause. Despite the seriousness of this situation, the force majeure clause in your agreement may not include an epidemic and related measures as one of the cases of force majeure, as these provisions do not receive much attention in the agreement for a long time.

WARNING! Mere fulfillment of the definition of force majeure in the form of an epidemic or spreading of the virus contained in the agreement is not yet sufficient. At the same time, it is necessary that the obstacle in the form of virus spreading or the epidemic and the associated measures was the cause of the failure to fulfill obligations duly and in time (for example, delays in the production of goods because the supply of individual components of the product was limited due to government measures). If the respective contracting party does not breach the agreement as a result of the aforementioned conditions of force majeure, the other contracting party shall not be entitled to withdraw the agreement, except as agreed in the agreement and shall not be entitled to the damage compensation or a contractual penalty.

In case of concluding the new agreements, it is recommended to explicitly include epidemics, pandemics and the spreading of the virus in the force majeure provisions, or to supplement the already concluded agreements in this way with an amendment.

Insurance - insurance payment and loan agreement

Regarding the delays in the fulfillment of obligations and resulting from it breaches of agreements or other situations arising in connection with a pandemic, it is appropriate to focus on whether these cases are covered by the insurance you have taken out. In this respect, it is advisable to find out whether and to which extent your insurance agreement covers these cases.

WARNING! If you have been granted a loan by a bank or a different financial institution, we recommend that you review the terms and conditions of the loan, especially in relation to the financial indicators that you should meet under the loan agreement, and whether these conditions can be met during the coronavirus pandemic.

Can the spreading of coronavirus be a reason for reducing or increasing the agreed price?

The Slovak legislation does not know the legal provision that would allow the affected party to unilaterally change the terms of the agreement in the event of a substantial change in circumstances, including a reduction or increasing in the agreed price, as in the Czech Republic, for example. This means that the affected party cannot, in principle, unilaterally proceed in increasing or decreasing the agreed price without fulfilling other conditions.

WARNING! In accordance with the legislation, the exercise of rights and obligations cannot not be contrary with good morals and the principle of a fair trade. In our opinion, if the consequences of coronavirus and related measures would cause inequalities between the parties, a party may require to change the agreed price in order to protect its position – in this case in support of her request, good morality or fair trade could be considered as an argument.

Can coronavirus be a reason for extinguishing contractual obligations?

Pursuant to the legislation of the Slovak Republic, the contractual obligation may be extinguished due to the impossibility of its fulfillment. If the performance of the agreement becomes impossible, the obligation to perform will lapse. In the case of commercial relations, this is an additional impossibility of performance if the obligation cannot be fulfilled by another person. As a result of government

measures taken to prevent the spreading of coronaviruses that have banned several activities, the contractual obligation may also be extinguished due to the impossibility of fulfilling it.

WARNING! In the event that it is impossible to fulfill one or all obligations arising out of the concluded agreement, you must notify the other party, so the entitled party, without undue delay. Otherwise, you are liable for any damage caused (by the late informing) to your contracting partner. In commercial relationships, the debtor whose obligation has extinguished due to the impossibility of performance, is obliged to pay for the caused damage to the creditor, unless the impossibility of performance was due to the circumstances excluding the liability. Circumstances which exclude liability shall be deemed to be an obstacle that has occurred independently of the will of the liable party and prevents it from fulfilling its obligations, unless it can be reasonably assumed that the liable party would avert or overcome the obstacle or its consequences and has foreseen this obstacle at the time of an occurrence of the obligation. In our opinion, the coronavirus epidemic fulfills this definition of a liability-exclusion circumstance. If any repayment has already been paid under such an agreement, it shall be reimbursed.

What are the other options for the termination of an agreement due to a coronavirus epidemic?

If a party is in the delay in its duty performance due to the coronavirus epidemic and the related measures, and is not in the event of impossibility performance or an exclusion of delay due to the force majeure, the other party has the right to withdraw the agreement accordingly to the contractual terms.

Of course, it is always possible to terminate the concluded agreement, if it is agreed. In such a case, the agreement terminates upon expiry of the notice period.