

Important changes in the regulation of force majeure in Kazakhstan

July 10, 2020

In our alert dated March 27, 2020, we discussed the possible impact of the COVID-19 pandemic and the state of emergency regime imposed by the Decree of the President of the Republic of Kazakhstan dated March 15, 2020, on the performance of contractual obligations. Subsequently, on May 6, 2020, the Supreme Court issued clarifications on issues related to the COVID-19 pandemic, which we also covered in an alert dated May 12, 2020. According to this clarification, the Supreme Court regards the state of emergency, which ended on May 11, 2020, as a force majeure.

On July 3, 2020, the President signed the Law on Amendments to Certain Legislative Acts¹, which, *inter alia*, amends paragraph 2 of Article 359 of the Civil Code, according to which a state of emergency shall be recognized as a force majeure, along with such occurrences as natural disasters, military actions, etc. These amendments will enter into force on July 17, 2020.

We presume that the adoption of this law is related to the speech of the President given on May 11, 2020, in which the head of state emphasized the importance of recognizing the state of emergency as a force majeure at the legislative level.

Thus, in accordance with the adopted law, the state of emergency is recognized as a force majeure.

However, in order to be exempted from liability for failure to perform an obligation, a party must, in addition to the presence of a force majeure circumstance, prove a causal link between that circumstance and the impossibility of performing its obligation. This means that, notwithstanding the changes made to the Civil Code, the state of emergency is not a ground that automatically exempts a party from liability for failure to perform the obligation. The party that invokes the state of emergency as the ground for exemption from liability bears the burden of proving that the state of emergency made it impossible to perform such an obligation.

In addition, following the second wave of the COVID-19 pandemic, while new strengthened quarantine measures (such as the closure of shopping malls, markets, beauty salons, etc.) have been adopted in Kazakhstan since July 5, 2020, the state of emergency was not reintroduced. Since the amendments to the Civil Code refer to a state of emergency (and not to quarantine measures) as a force majeure, this raises an important question: can the quarantine measures, which make it impossible for some business entities (e.g. lessees of beauty salons, etc.) to perform their obligations, be considered as a force majeure?

According to Mr. Rustam Zhursunov, the Commissioner for the Protection of the Entrepreneurs' Rights, the Chamber of Commerce of Kazakhstan, a subsidiary of the Atameken National Chamber of Entrepreneurs, currently issues certificates on declaration of quarantine measures a force majeure. In addition, even though the state of emergency has been recognized a force majeure at the legislative level from July 2020 onwards, the Chamber of Commerce of Kazakhstan has issued more than 4,800 certificates confirming the occurrence of the force majeure since March 16, 2020, to date.

1. Law No. 359-VI dated 3 July 2020 "On Amendments and Additions to Some Legislative Acts of the Republic of

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