

Impact of COVID-19 on Contractual Obligations (Hungary)

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Regulatory measures, actions and restrictions recently imposed by the authorities and economic operators in connection with the COVID-19 pandemic are likely to have an impact on commercial contracts. Multinational and domestic companies alike may face severe consequences resulting from such large-scale disruption of the economy.

The question contractual parties face in the current circumstances is what recourse do they have if their commercial contracts are affected? Is there a way to terminate or “get out” of these contracts? Which clauses may be relevant?

We set out below some key considerations for companies and individuals to assist with navigating this tricky area.

Force Majeure

A force majeure clause is a contractual provision that allows a party to suspend or terminate the performance of its obligations when certain circumstances beyond their control arise, making performance impossible. Typical force majeure events may include general strikes, natural disasters, government action, export or import restrictions, as well as epidemics or pandemics.

The force majeure clause may state that the contract (in whole or in part) is temporarily suspended, or that it is terminated if the force majeure event continues for a certain period of time. However, the applicability and legal effects of such clauses largely depends on the wording of the particular clause, therefore a detailed review of the contract should be made- before any steps are taken. Erroneous reliance on a force majeure clause will likely result in legal liability.

We further note that force majeure clauses typically require a contracting party to be promptly notified by the affected party about the occurrence and the particular effects of the force majeure event. Non-compliance with the notice requirement may result in detrimental legal consequences.

Material adverse change clauses

Commercial contracts and, particularly, share or asset sale and purchase agreements often include “material adverse change” or “material adverse effect” clauses.

In general, such clauses allow a party to terminate the relevant contract if an event, matter or circumstance occurs that results in or is expected to result in a material adverse effect on the financial position, business or assets of the affected party (or the target company, as may be applicable).

It depends on the actual drafting of the affected contract whether such provision may be invoked. Generally, it may be applicable in case of the occurrence of any event or circumstance if its financial consequences or effects reach a certain threshold and it is also common for a specific event or condition to be specified as a material adverse change. Events and circumstances affecting or likely to affect all companies are excluded.

Exemption from liability for breach of contract under Hungarian law

If a contract does not include a force majeure or a material adverse change clause or the incorporated clause(s) prove to be inapplicable, the contracting parties should observe the provisions of the Hungarian Civil Code and the practice of Hungarian courts regarding the consequences of a breach of contract.

In general, non-performance of any contractual obligation constitutes a breach under Hungarian law. However, the party in breach may be exempt from liability if it can prove that the breach was caused by a circumstance which is beyond its control and which was unforeseeable at the time of the conclusion of the contract. The party in breach must also show that it could not be expected to avoid such circumstance or mitigate its effects.

Accordingly, the following aspects should be assessed in case of a breach:

- is the breach in direct causal relationship with the COVID-19 pandemic?
- was the pandemic foreseeable at the time of entering into the contract (primary relevance in case of contracts concluded since January 2020)?
- could the party in breach be reasonably expected to avoid or mitigate the effects of the COVID-19 pandemic?

If these cumulative conditions are fulfilled, the party in breach may be exempt from liability.

Impossibility of performance (also known as frustration)

Under Hungarian law, the impossibility of the performance of a contract is a statutory termination event. Impossibility may occur for legal reasons (e.g. changes in law), physical causes (e.g. the destruction of the asset under sale) or economic reasons (e.g. fundamental change of economic conditions). Courts apply a high threshold when making a determination as to the impossibility of performance; therefore, careful consideration of all relevant circumstances is required.

We also note that the party becoming aware of the impossibility of performance shall immediately notify the other party, and is liable for any damages caused by late notification.

Revoking offers of employment and withdrawing from employment agreements

Offers of employment may be revoked unilaterally any time prior to acceptance by the candidate unless the offer itself specifies a deadline for acceptance. If the offer of employment specifies a deadline for accepting then it may not be revoked unilaterally before the deadline lapses. Employers may however, unilaterally withdraw from employment agreements between signing and the first day of work provided that such withdrawal is due to materially changed business conditions which make it impossible for the Company to maintain employment without unreasonable hardship to the Company, and in our assessment the spread of the global COVID-19 epidemic qualifies as such a materially changed business condition with a view to the severity of the healthcare situation in Hungary and the very significant adverse implications on business continuity – especially in certain sectors such as the tourism, catering, entertainment, gambling and film industries and companies undertaking event management, performing arts and sports services.

If you would like assistance in reviewing your contracts to understand your position and available options, please get in touch with the contacts listed with this article or your usual Dentons Budapest relationship manager.

One of the advantages of being part of a global law firm is that we have a 'COVID-19 (Coronavirus) Hub' for use by our clients. It has a range of articles and other information from Dentons firms all over the world which will be of interest, especially should you have operations in other parts of the globe. You can find the Hub [here](#).

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