

## **How the appearance of the coronavirus has affected construction projects in Hungary?**

The economic impact of the coronavirus pandemic has been significant for the construction industry. Construction production decreased by 9.1 percent in the case of buildings and by 20.6 percent in the case of other facilities. The pandemic has caused international and local border closures, halted production and given rise to delivery disruptions. Such impediments have materially increased the cost of and time requirements for the performance of construction contracts. The pandemic and the measures implemented in connection with it can qualify as a force majeure event in rare cases. However, neither the pandemic nor the special legal order or state of emergency declared in connection with it is in itself sufficient to release a party from its contractual obligations. Only those unavoidable circumstances that objectively interfere with a party's ability to perform the contract qualify as force majeure events. In the following, we address the most frequent three issues regarding construction contracts affected by COVID-19.

### **1. When can a construction contract be modified?**

The modification of a contract can be a viable solution for the parties to adapt the terms of performance to the pandemic situation. If the parties mutually agree, a contract can be modified at any time. In that case, they will only have to ensure that they properly assess and comprehensively regulate their needs because later on they will not be able to defend their inability to perform by citing circumstances that were known on the date of the modification and they will not be able to dispute the validity of the modification on the

grounds that their assumptions were wrong. Unilateral modification is only possible in the cases specified in the regulations and in the contract itself. Court-ordered contract modifications represent a rarely used option that is reserved for situations where the parties' circumstances change unforeseeably and in a manner that goes beyond normal business risks that fundamentally impact on their interests associated with the contract. However, this option is not available in the case of such negative circumstances that affect all businesses equally, such as an economic crisis or official measures implemented in response to an epidemic or pandemic.

### **2. Who should bear the extra costs incurred as a result of the pandemic?**

The general rules say that the party obliged to perform a particular obligation must bear the full cost of performance, including any extra costs incurred as a result of the pandemic. Exceptions to this rule include result-based service contracts; for example, construction contracts where the contractor can demand the reimbursement of unforeseeable costs incurred in connection with additional work. Where a party aims to claim reimbursement of such unforeseen costs incurred due to the pandemic, it is necessary to document the facts very carefully in order to prove that the costs derive from such problems that could not have been foreseen even by exercising due care and diligence.

### **3. What should you do if the pandemic prevents you from performing the contract but it cannot be terminated or modified?**

If the pandemic prevents the performance of the contract but the contract cannot be terminated or modified, the only option parties have to attempt



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to resolve the situation is to apply the legal consequences applicable in the case of a breach of contract. If you breach the contract, you can try to seek exemption from the liability-based legal consequences (damages or penalties) on the grounds that the breach was the result of a force majeure event that was beyond your control and could not have been foreseen at the time of the conclusion of the contract, and you could not be reasonably expected to avoid such an event or prevent the damage. However, the force majeure situation will not prevent the application of legal

consequences that are not liability-based, regardless of whether you have been released from liability for the breach of contract (e.g. warranty claims).

### **For more information**

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