



CERHA HEMPEL CEE NEWSLETTER *Bulgaria*

Effect of COVID-19 emergency legislation on contracts

The authorities have taken various measures in response to the COVID-19 outbreak to reduce the negative effect of the pandemic on business. The most important initiative was the Measures and Actions in the State of Emergency Act (the "**Act**") and the state of emergency announced by the Parliament, which was in force between 13 March and 13 May 2020. Some of the measures under the Act will continue to apply for additional periods following the end of the state of emergency. Below we outline the effect of COVID-19 emergency legislation on certain contracts as well as some options under general civil law.

Financing contracts

According to the Act, the consequences of late payment under financing arrangements (such as loan agreements, lease agreements, factoring agreements and the like) granted by banks or other financial institutions do not apply during the state of emergency. No penalty interest and liquidated damages will apply in such cases and obligations cannot be called early before maturity. In addition, the respective contracts cannot be terminated due to non-performance and properties cannot be seized. Similar rules apply for an additional two months with respect to financing granted by financing institutions other than banks and banks' subsidiaries.

Contracts directly affected by measures introduced by the authorities

The Act allows the health authorities to impose certain restrictions on various business operations, the most significant of which was to order the closure of some commercial sites during the

state of emergency. Some sites, such as entertainment and gaming halls, night clubs and indoor restaurants, will remain closed even after the state of emergency ends, for one additional month. As a result, landlords were unable to perform some of their obligations (e.g. providing the leased premises to tenants for the agreed purpose – operating a store). Such a situation would normally affect the tenants' obligation to pay the rent, since they are prevented from operating their businesses from the leased stores. However, attention should be paid to the specific contract clauses as they may provide for other arrangements.

Force majeure

Most legal practitioners agree that the state of emergency, together with the measures taken by the authorities in relation to the COVID-19 outbreak, would generally qualify as a force majeure event. If force majeure is invoked, the debtor under a contract is temporarily released from its obligation to effect performance, provided however that the debtor was not already in default prior to the force majeure event and it duly notifies the other party that performance under the contract is affected by force majeure. However, the concept under Bulgarian law supported in the legal doctrine is that monetary obligations cannot be affected by force majeure events which means that the respective party will still be liable to perform its payment obligations. Any existing specific clauses in the contracts dealing with force majeure should also be analysed as they would usually take precedence over statutory provisions.



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Hardship

Depending on the specific business relations, a party to a contract can potentially invoke hardship. Hardship is understood as an unforeseen event that fundamentally changes the contract relationship, as a result of which the contract becomes extremely unfair or excessive to one of the parties and is *contra bonos mores*. In the event of such a situation, the affected party can request that the court modify or terminate the contract, in whole or in part. As the COVID-19 crisis constitutes an unforeseen event, the concept of hard-

ship could be applied provided that all other requirements have been met, taking into account the particular context of the contract.

For more information

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