

## CONTRACT MANAGEMENT

Due to the current situation, the majority of businesses are faced predominantly with supply disruptions and liability for damages caused by such disruptions. **The first recommendation is to review all major client contracts and contracts with suppliers**, in particular as far as it concerns **the existence and applicability of a force-majeure clause** (if any), **the possibility of termination or renegotiation of certain contracts** if necessary, etc.

Despite the above, businesses remain generally liable for their commitments and should take into account that the possibility of their termination or renegotiation is only exceptional. Potential defaults with the fulfilment of contractual obligations towards business partners, which could occur due to the current situation, should be treated very seriously as they could lead eventually to insolvency.

### FORCE MAJEURE

There is no specific definition of “force majeure” in Czech law. Its definition is based only on legal theory and a few court resolutions. The generally acceptable definition of force majeure is “a legal event objectively unpredictable and objectively unavoidable and independent of the will of the respective party”.

The current “state of emergency” and related governmental measures due to the spread of the COVID-19 disease could be considered force majeure within the generally acceptable interpretation of this term, but we may not exclude that local courts might have a different opinion.

**However, force majeure may influence the contractual obligations of parties only to the following limited extent:**

- force majeure might be a **liberating ground** against claims for damages for breach of contractual obligation (such as damages for late delivery) and
- force majeure might be a **substantial change in circumstances** giving right to a contract change or termination.

We stress that the definition of force majeure and its possible consequences on the obligations of the contractual parties stipulated in the contract prevails over general legal regulation.

If the consequences of force majeure:

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- are stipulated in the contract, the contract regulations apply;
- are not stipulated specifically by the parties, the affected party can be liberated from payment of damages for breach of its contractual obligations and terminate the contract or agree on its change due to substantial change in circumstances. Nevertheless, the other contractual party is entitled to terminate the contract due to breach of the contractual obligations by the party affected by force majeure.

## SUBSTANTIAL CHANGE IN CIRCUMSTANCES

Czech law contains a concept of what is known as “substantial change in circumstances”, which could help businesses deal with the current situation.

If there is such a substantial change in circumstances creating gross disproportion in the rights and duties of the parties by disadvantaging one of them either by disproportionately increasing the cost of the performance or disproportionately reducing the value of the subject of performance, the affected party has the **right to claim the renegotiation of the contract** with the other party if the conditions stipulated by law are fulfilled.

However, asserting this right does not entitle the affected party to suspend the performance.

The affected party must claim the renegotiation of the contract with the other party within a reasonable time after it became aware of the change in circumstances. **This time limit is presumed to be two months.** If the renegotiation is not claimed within this limit, the affected party loses the right to submit a lawsuit to the court.

## REMEDIES

Czech law provides for the general obligation of the Czech Republic to reimburse affected natural persons and legal entities any damage that has arisen in connection with measures taken under the Crisis Act, which includes governmental measures as a consequence of the current “state of emergency” due to the spread of the COVID-19 disease declared under the Crisis Act.

However, each claim for reimbursement always needs to be assessed on a case-by-case basis.

## THREAT OF INSOLVENCY

Under Czech insolvency law, a debtor is considered bankrupt if:

- it has several creditors;
- it has due and payable debts for more than 30 days; and

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- it is not able to fulfil them.

Therefore, all businesses should keep up-to-date records about due payments and remaining periods.

Once the company is bankrupt, its directors have to file an insolvency petition. If they fail to do so, they shall compensate creditors for the damages amounting to the difference between the amount of receivables registered and the amount received by the creditor in the insolvency proceedings.

The current and the former directors may become a guarantor of the debts of the bankrupt company toward its creditors, or be required to return all benefits received from the company within the two preceding years, if it is decided that the company is insolvent, and they had known, or should have known, that the insolvency was imminent.

If directors breach their duties, they must compensate the company for any damage or harm caused to the company resulting from such breach.

Directors must summon a shareholders' meeting immediately once they become aware that the insolvency of their company is imminent, and suggest appropriate measures as to how to face such a situation. They should request instructions for business management from the shareholders at the meeting, which does not fully limit their liability, but can serve as proof that the company became aware and approved the directors' actions. This could be considered a mitigating factor.

*The document reflects the status as of March 19, 2020.*

*This document is for informational purposes only and may not be considered a legal opinion or advice on how to proceed in a particular case.*

*For any legal matters arising in these special circumstances, please do not hesitate to contact our **COVID-19 Help desk** at [covidhelpdesk@peterkapartners.com](mailto:covidhelpdesk@peterkapartners.com).*