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THE CEE LAW FIRM

IMPACT OF ANTI-EPIDEMIOLOGICAL MEASURES ON CONTRACTUAL RELATIONS

The Coronavirus pandemic has resulted in extensive measures being taken by the Slovak Government in order to limit the spread of the virus. Closed borders, restrictions on transport, closed stores, business operations and schools, a ban of public events and the associated lack of large numbers of employees have made many entrepreneurs unable to meet their obligations, and they face liability for damages.

The inability to fulfil contractual obligations can have serious consequences in the long run, in the worst case leading to insolvency or indebtedness which entails additional statutory obligations. Slovak law does not provide for direct financial support or damages to be paid by the Government to entrepreneurs affected by measures ordered thus far, therefore, it is important that entrepreneurs that cannot meet their obligations communicate with their business partners as soon as possible and review their mutual contracts, in particular the existence and applicability of a force majeure clause or change-in-law clause (if any), renegotiate contractual terms if necessary or, as the case may be, the possibility of termination of the contract.

FORCE MAJEURE (VIS MAJOR)

Force majeure in general may be interpreted as an extraordinary unforeseeable event or circumstance, out of the reach and control of the parties, that results in the impossibility of performance or impracticable performance of contractual obligations. Since Slovak law does not have a precise legal definition of force majeure, its definition in a contract (if any) is important and binding for contractual parties.

Lack of legal definition also means that it cannot be undoubtedly declared that the actual COVID-19 protection measures ordered by the Government are force majeure despite the fact that such opinion may be reasonable and generally accepted.

Depending on the wording of the force majeure clause, it may allow the parties, for example, to temporarily avoid contractual obligations and liability for damages due to failure to fulfil contractual obligations (delay), and to change or terminate the contract.

Therefore, if a contract includes a force majeure clause, attention needs to be paid to what it implies under the contract, which contractual obligations are affected by the force majeure and what steps in view of the force majeure provisions should be taken (e.g., notification of the other party about the occurrence of the force majeure event and its consequences for impossibility of performance of the contract).

TERMINATION OF COMMITMENTS AND LIBERATION FROM LIABILITY FOR DAMAGE

If a business contract does not have a force majeure clause, liability for damages caused by the breach of contractual duty (not the contractual duty itself) may be avoided by claiming circumstances excluding liability under the liberalization provisions of the Slovak Commercial Code; such provisions are applicable if the breach of contractual duty was caused by an obstacle that occurred independently of the intent of the obliged party and that prevents the party from fulfilling its obligation, if it may not be reasonably assumed that the obliged party could have averted or overcome this obstacle or its consequences, or that it could have foreseen this obstacle at the time when the obligation was established (e.g., force majeure).

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In addition to the above, depending on the nature of the contract, performances resulting therefrom and other circumstances, a permanent situation such as, for instance, unpredictable obstacle or force majeure may cause the expiry of an unfulfilled obligation by law (e.g., due to the subsequent impossibility of fulfilment of a contract or frustrating the purpose of a contract). Each contract and the related circumstances need to be considered on a case-by-case basis.

Unlike the Czech Republic, in Slovak law there is no “hardship clause”, i.e., a concept known as “substantial change in circumstances” enabling a party to claim the renegotiation of a contract with the other party if the conditions stipulated by law are fulfilled.

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This summary is for informational purposes only and may not be considered a legal opinion or advice on how to proceed in a particular case. The summary reflects the status as of March 23, 2020.

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