

FORCE MAJEURE DUE TO COVID-19 QUARANTINE IN UKRAINE: PRACTICAL ASPECTS

Let us kindly inform you that according to recent legislative changes with respect to COVID-19, the **introduction of a quarantine established by the Cabinet of Ministers of Ukraine has been included in the list of force majeure circumstances¹** provided by Part 2 Article 14-1 of the Law of Ukraine “On Chambers of Commerce and Industry in Ukraine”.

As a result of the introduction of the quarantine throughout Ukraine from 12 March 2020 until 24 April 2020 (prolongation expected), some business entities are not able to fulfil their contractual obligations and would like the opportunity to use the quarantine as a circumstance under which an entity shall be released from liability for breach of its contractual obligations.

Please, find below a brief summary of the practical aspects of the use of the COVID-19 quarantine as a force majeure circumstance in contractual relations.

According to Article 617 of the Civil Code of Ukraine, a person who has violated the obligation shall be exempted from liability for breach of the obligation if he/she proves that such violation was due to an accident or force majeure.

Not considered as a case of force majeure, in particular, shall be the failure of the debtor's counterparty to fulfil its obligations, the absence of the goods needed to fulfil the obligation on the market, or the lack of necessary funds.

The following aspects should be taken into account when considering the option of force majeure:

- The mere fact of the introduction of the quarantine shall not be considered as force majeure. Such circumstance will become force majeure only if the person proves the impossibility of fulfilling its obligations under the contract due to the quarantine.
- The existence of a force majeure circumstance relieves the party of the contract from liability for non-fulfilment or improper performance of an obligation, but does not exempt it from fulfilling obligations after the termination of force majeure.
- If the contract does not contain a force majeure provision, the parties may refer directly to the law when proving the circumstances of force majeure.

¹ Part 7 Section 1 of the law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine Aimed at Providing Additional Social and Economic Safeguards in Relation to the Spread of Coronavirus Disease (COVID-19)” as of 30.03.2020.

PETERKA PARTNERS

THE CEE LAW FIRM

- **Introduction of the quarantine shall not automatically release the relevant party from liability for non-fulfilment of its contractual obligations.** The existence of force majeure may be recognized by mutual agreement of the parties to the contract under which the contract may be amended in the way that obligations under it will be postponed until the end of the quarantine.
- If the parties to the contract have not reached a consensus, the occurrence of force majeure may be proved by a certificate from the Ukrainian Chamber of Commerce and Industry (hereinafter – “UCCI”) or the Regional Chamber. The issuance of a UCCI certificate is possible only after it establishes a causal relationship between force majeure and the inability to fulfil the obligations under a certain contract.
- Force majeure may be certified by the UCCI at the request of business entities and individuals for each individual contract.
- The application shall be considered by the UCCI within 7 business days from the day of the application (for business entities) and within 21 business days (for individuals).
- The lack of money shall not be considered force majeure, so the inability to pay cannot be attributed to force majeure unless there is a confirmation of the technical limitations on making the payment because of the quarantine.
- Also not considered force majeure shall be the suspension of activities of the company in connection with the refusal of employees to go to work during the quarantine, unless there is an appropriate order at the state level, requiring the company to cease its activity, including through mass layoffs.
- If a dispute regarding fulfilling the obligations under a contract is going to be considered by a court, it is highly recommended for the party referring to force majeure to provide the court with a UCCI force majeure certificate.

For any further information and assistance with respect to the above, and any other COVID-19 related legal matters, please do not hesitate to contact our **COVID-19 Help Desk** at: covidhelpdesk@peterkapartners.com.

Best regards,
The Kyiv PETERKA & PARTNERS Team