

PETERKA PARTNERS

THE CEE LAW FIRM

COVID-19: BELARUSIAN CHAMBER OF COMMERCE AND INDUSTRY EXPLAINS FORCE MAJEURE CIRCUMSTANCES

In Belarus, it is the Belarusian Chamber of Commerce and Industry (BelCCI) that is authorized to confirm force majeure circumstances (force majeure). In connection with COVID-19, the BelCCI has recently published, on its official website, clarification in respect of the confirmation of force majeure. In particular, the BelCCI has clarified the following:

- **Authority of the BelCCI:** that only it is authorized to confirm force majeure in relation to specific agreements – foreign trade agreements or agreements concluded between Belarusian enterprises. Moreover, if the contract is concluded between Belarusian entities, then it should contain a specific provision on the right of the BelCCI to confirm the force majeure circumstances;
- **COVID-19 and force majeure:** COVID-19 or the epidemic and pandemic that arose in connection with it cannot be considered as force majeure circumstances per se, but as force majeure may qualify the restrictive and other measures aimed at preventing the spread of coronavirus and its consequences.

Restrictive measures may include decisions of state and local authorities, and government decisions, including those that aimed at restricting supplies, the free circulation of goods and labour staff, and closing borders.

If restrictive measures were taken on the territory of foreign states, documents confirming the presence of force majeure circumstances will be, among others, certificates of force majeure issued by the organizations authorized in those states to do so.

- **Force majeure – general issues:** force majeure circumstances can include natural disasters (floods, hurricanes, fires, etc.) and public life events (wars, strikes, etc.).

Force majeure circumstances, as a rule, do not include:

- changes in exchange rates;
- decrease in revenue from the sale of goods, works, services, including in connection with the suspension of activities;
- reduction in the number of visitors to cafés, restaurants, other catering organizations, casinos, hotels, cinemas;
- increase in the cost of transporting goods, including by sea;
- reduction in the number of ships on sea transport lines.

Force majeure circumstances *are the ground for the release of entities from liability* for non-fulfilment or improper performance of obligations under agreements, *but it does not release the parties from the fulfilment of its contractual obligations*. The obligation to prove the presence of force majeure rests with the person/entity who has not fulfilled, or improperly performed, an obligation under a specific agreement.

The BelCCI has also clarified the procedure for filing applications for the purposes of confirmation of force-majeure circumstances.

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