

April 8th 2020

Legal Notice about COVID-19 and “Force Majeure” Events

It is beyond reasonable or otherwise doubt, that the period we are all going through is unusual and extraordinary. Lots of matters, both legal and practical do arise, due to this unexpected turmoil.

The term of “Force Majeure” is a phrase that we come across lots of times during these days.

In light of the pandemic COVID-19 that has seized the world, there is no doubt that parties may wish to assess applicability of force majeure clauses in their contractual arrangements, to establish the possibility of termination or suspension of performance or any other legal consequences thereof.

Such a term in an agreement cannot be considered to have been agreed beforehand, unless expressly stated in the agreement itself and may not be applied to cases overall in general terms.

The question whether COVID-19 may be considered to be a force majeure event, such that it enables parties to temporarily or permanently be excused from performance of their contractual obligations, will depend on the circumstances, the nature and content of the contract in question on an ad hoc basis.

The term “Force Majeure” does not have a universally recognised meaning under Cyprus laws and the Courts will examine the wording and intention of the parties at the time of entering into the contract. In many instances, contracts will include a specific and “closed” list of events which are said to constitute force majeure such as acts of God, wars, riots, floods, typhoons, governmental or regulatory prohibitions amounting to an unexpected event, not foreseeable by the parties involved, which effectively nullifies or suspends the contractual terms.

Therefore, whilst COVID-19 would probably qualify as a force majeure event, this will necessarily depend on several factors to be considered as above, including nature and overall contents of the contract and its governing law.

Additionally, parties may seek relief under the doctrine of frustration as enshrined in section 56 of the Cyprus Contract Law Cap. 149, although this generally applies in cases of impossibility to perform the contract, for example due to destruction of the subject matter, supervening illegality, incapacity or death. Although it is debatable to foresee how the COVID-19 outbreak may justify invocation of the aforesaid provision, it remains to be seen how this will be interpreted and applied by the Cyprus Courts.

One of the major differences between using the termination principle under section 56 and invoking the term “Force Majeure”, is that the termination as per the said section is permitted by law itself and adopted by the Courts as the parties have

made every decision regarding the eventual occurrence of any such event and have included the same in the contract in question.

The term of “Force Majeure” could be applied, inter alia, to these cases:

- Lease Agreements
- Labour Cases
- Taxes
- Construction
- Investments
- Banking
- Goods and Services

In conclusion, “Force Majeure” in relation to COVID-19 scenarios are by nature fact-specific and dependent on the content and context of the contract in issue depending on how the Courts will interpret the same in the years to come. Going forward parties may wish to pay more attention in drafting the relevant force majeure provisions by for example incorporating reference to pandemics and regulating the consequences in such eventuality. Thus acting pro-actively, is always better than seeking cure and relief after the event.

You may contact our legal team for further assistance and specific legal advice, whilst wishing you all well during these volatile times.

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