

Dear Clients,

Following the rapid spread of the new coronavirus (SARS-COV-2), we have prepared an overview of the basic legal issues that may be relevant for your business in this uncertain situation.

SARS-COV-2 AND THE IMPACT ON CONTRACTUAL OBLIGATIONS

As more and more countries introduce protective measures and restrictions in order to manage the SARS-COV-2 outbreak, businesses may find that they or their counterparties struggle to meet their contractual obligations. From a legal perspective, the main question is whether the restrictions and limitations arising from the coronavirus outbreak could enable a party to avoid its obligations by relying on a *force majeure* clause. Considering that World Health Organization declared SARS-COV-2 as a pandemic on March 11, 2020 and the Republic of Slovenia declared an epidemic the next day, it seems that quarantine and other State measures could qualify as *force majeure*, but as with all matters dependent upon the terms of the contract, each *force majeure* or material adverse change (MAC) provision must necessarily be considered on its precise terms and applicable law.

The clients experiencing difficulties in meeting their contractual obligations due to virus-related production and supply disruptions should review their relevant contracts to determine whether the contracts include *force majeure* / MAC provisions and, if so, carefully review the definition of the triggers for the protections granted under such provisions to establish whether such triggers may incorporate pandemics or epidemics or similar events and, if not, whether the general language is sufficient to include SARS-COV-2 and its consequences. If in doubt, it may be helpful to seek legal advice early in the process.

Typically, the affected party's right to relief for *force majeure* under the contract will be conditional upon the issuance of notice by it to the other party, stating the nature and duration of circumstances preventing the fulfilment of the contractual obligations. Failure of timely notification will result in the loss of the entitlement to claim protection under such clauses. A party affected by such a trigger will typically be relieved from performing the obligation affected for the duration and to the extent affected, the same applies to the other party. However, *force majeure* may not be invoked by a contractual party which, at the time of the circumstances constituting *force majeure*, is already in delay or default with respect to the fulfilment of its contractual obligations.

Since situations and regulations vary around the world and a formal dispute about the merits of enforcing *force majeure* may arise, we recommend that you diligently document and keep all relevant correspondence or documentation (e.g., evidence of the closure of suppliers' facilities, of the inability to provide transportation, of the isolation of a team or an office due to the outbreak of SARS-COV-2 at its workplace) related to your workflow, follow all relevant official guidelines and record all steps taken to avoid or mitigate the spread of the virus in the workplace so as to allow contractual performance to continue, as the burden of proof with regard to the existence of *force majeure* is upon the party invoking it. The Chamber of Commerce and Industry of Slovenia is issuing certificates to companies that claim they are unable to meet their contractual obligations in order to facilitate the demonstration that a certain event was the result of *force majeure* due to the coronavirus outbreak. These certificates would not necessarily automatically satisfy the "test" for *force majeure*, as any specific requirements of the relevant *force majeure* provision must still be satisfied.

Additionally, we recommended that clients: (i) review the financing or other related documents to determine whether there are any notice provisions that must be complied with in relation to anticipated or actual *force majeure* claims; (ii) determine whether insurances may cover any of the expected losses.

POSSIBLE LABOUR-RELATED ACTIONS OF THE EMPLOYER

Employers must respect both the workers' rights (the right to obtain work and payment for work, the right to privacy, the protection of the dignity of the worker and the protection of the personal data of workers) as well as act in accordance with special regulations regarding health and safety at work. We recommend that employers take all reasonable measures to contain or limit the spread of the virus. In accordance with the provisions of the Slovenian Employment Relationships Act employers have the right to provide workers with appropriate written work instructions (considering the nature of their business operations and any official guidelines) to avoid or at least reduce as far as possible the effects of the SARS-COV-2 upon their workforce. Additionally we advise that employers explicitly impose an obligation on employees to inform and report (e.g. if they have recently visited any endangered areas or suspect that they may have become infected, but do not show any symptoms of the disease) and to consult their superiors regarding all alarming circumstances before coming to work.

Incapacity to perform work or an impediment from coming to work

If the employer prohibits its employees coming to work due to increased risk of spreading the virus or if the workers cannot perform their work due to the closure of educational institutions, such workers are entitled to 50 % of their base salary, but not less than 70 % of the legally prescribed minimum salary. An employer's prohibition order must be legally founded on *force majeure* and not business reasons (e.g. decline in orders).

Order to work at home (annex to an employment contract) and temporary change of place of work due to extraordinary circumstances (without change of an employment contract)

Employers may unilaterally change the type or place of work specified in the employment contract, in case of natural or other disasters, when such a disaster is expected or in other exceptional circumstances, where the life and health of people or the employer's property is at risk, but only as long as such circumstances persist.

Where the nature of the business permits it and due to the protection of the employees' health, the employer may require the employees to work at home. This solution is possible when the work can be done remotely using information technology and with electronic devices owned by the employer. An employer can order work from home with a work instruction. Since this is not a regular type of work at home, but only a temporary solution aimed at the protection of the employees' health, the consent of the employees is not needed, the employment contract does not need to be amended and the labour inspectorate does not need to be informed. However, in any case the employer must verify whether the employees' home conditions are safe and healthy.

In case of temporary work at home, the employee is bound to carry out their work and is therefore entitled to a salary in accordance with the employment contract and the reimbursement of expenses for meals during work (no costs of commuting to work are paid).

Absence from work for health reasons

If an employee is absent from work due to a temporary incapacity to work due to an illness or a non-work-related injury, they are entitled to salary compensation in the amount of 80 % of the salary for the previous month for full-time work. The salary compensation is borne by the employer until the 31st business day of absence, afterwards the Health Insurance Institute of Slovenia bears the costs of such salary compensation. If quarantine is prescribed to an employee, the new Act on Emergency Measures in the Field of Wages and Contributions regulates the amount of wage compensation and the right to the reimbursement of the paid wages to workers (see below).

If businesses come to be affected due to the virus outbreak, employers may also need to take other measures based on business reasons: e.g. the introduction of part-time work, the temporary posting of workers on hold, the introduction of uneven working hours and the temporary re-allocation of working time, the change of employment contracts due to changed circumstances, the termination of employment contracts with the offer of a new contract.

INTERVENTION MEASURES INTENDED TO HELP OUT ENTERPRISES

By way of an urgent legislative procedure on March 20, 2020, the Slovenian Government adopted a first set of acts aimed at limiting the negative effect of the virus outbreak on the Slovenian economy.

The possibility of one-year deferral of loan payment

According to the new Act on Intervention Measure of Deferral of Payment of Borrower Obligations, the borrowers (i.e. companies, sole entrepreneurs, farmers, associations, cooperatives, foundations, as well as natural persons with their permanent residence in the Republic of Slovenia) who, due to business reasons connected with the SARS-COV-2 outbreak, are not able to repay their loans, may submit to the bank an application a one-year deferral of payment of all obligations under the loan agreement. The application must be submitted within six months from the termination of the state of epidemic.

Temporary suspension of employment (*čakanje na domu*) and ordered quarantine

The new Act on Emergency Measures in the Field of Wages and Contributions aids employers which, due to business reasons connected with the epidemic, are temporarily unable to ensure work for at least 30 % of their employees. Such employees may be temporarily suspended from employment for up to three months. During this time, the employees are entitled to a wage compensation of 80 % of their average salary received in the last three months. The same applies if the employee does not come to work because of the quarantine.

The State will reimburse 40 % of the paid compensation of the salary to the employers or, in the case of quarantine, the full amount of the employee's salary compensation. The employer must exercise the right to partial reimbursement of the paid salary compensation within eight days from the notification of the temporary suspension (or from the date of entry into force of the Act, if the employee was temporarily suspended before the adoption of the new act), but no later than until September 30, 2020. The same applies to the reimbursement of the paid salary compensation due to the ordered quarantine. However, the employers who are tax debtors, have violated any labour law or are subject to insolvency proceedings, are not entitled to such State assistance.

Deferral of tax obligations and submission of tax returns

The new Act on Emergency Measures in the Field of Public Finances enables business entities to defer tax payment for up to two years or allows a periodic repayment of tax in up to 24 monthly instalments.

Additionally, the taxpayers may submit their tax returns for the year 2019 two months later, namely until May 31, 2020. The deadline for the submission of annual reports for the year 2019 to the Agency of the Republic of Slovenia for Public Legal Records and Related Services is also postponed to the end of May 2020. Consequently, the deadline for submitting the indicative calculation of personal income tax for the year 2019 will be delayed by one month – until June 30, 2020. In case the state of epidemic is not officially terminated by May 15, 2020, all the deadlines will be extended for an additional 30 days.

Deferral of contribution payments for self-employed persons

A deferral of contributions due in April, May and June 2020 is granted to the self-employed persons who have no other employees and for whom self-employment is their sole basis for the inclusion in compulsory social insurance. The debtor is automatically entitled to the deferral and is not required to file an application, whereby the outstanding contributions must be paid by the beneficiary by March 31, 2022 at the latest.

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We hope that the short explanations presented above will help you organize your workflow and adopt the necessary decisions related to the spread of the coronavirus. We are at your disposal for any questions that may arise in the course of your business.

Ljubljana, March 20, 2020

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