
Is the state of emergency a manifestation of the so-called force majeure?

Given the current situation with the COVID-19 virus, can we refer to the force majeure in our business relationships?

Can we claim a forfeit from the other party of the contract if the latter does not fulfill it in the current situation?

Are there any enforcement tools to be triggered against the debtor or the vendor in the case of force majeure?

According to the "letter" of the law, the force majeure is an unforeseen or unforeseeable event of extraordinary nature. In view of this, within the category fall the orders of the public authority, which impose restrictions or prohibitions on certain activities with main consideration the preservation of public health. This category includes events such as a pandemic, an epidemic, etc., resulting in the disruption of the normal rhythm of life, when such events are themselves an objective obstacle of the fulfillment of contractual obligations.

What can the "business" does in this situation?

The situation enables to: 1) refer to and rely on force majeure and 2) relieve ourselves, in principle, only of our non-monetary obligations. In the case of contracts in which the monetary obligations of one party depend on the due fulfillment of the non-monetary obligations of the other party (as is the case with retail leases, operating leases of equipment, used in premises, which are prohibited from operating as a result of the government order), landlords are not entitled to claim rent for the period of force majeure due to the objective prohibition (the force majeure).

The fact that the debtor does not dispose with monetary assets (due to the forced termination of his business activities) does not release him from his obligations in case of loan agreements, fast, negotiable, mortgage, investment, etc. loans, the fact. In these cases, in general, if the contracts do not provide for the possibility of postponing the maturity of the liabilities due to external adverse factors, the matter should be negotiated with the respective lender.

We cannot claim a forfeit for default on the other party if this is due to force majeure. For the duration of this situation, the fulfillment of the obligations is suspended, i.e. we cannot claim a forfeit (if agreed in the contract) in view of this situation. We can claim a forfeit only if the debtor is in default before the force majeure occurred - this is the hypothesis of Art. 306, para. 1 of the Commercial Code (the obliged person is not allowed to rely on the force majeure if the latter has missed the maturity of his performance).

There are no manners (tools) of enforcement against the debtor if he has referred to force majeure as a justification for suspending performance under his contract for the duration of force majeure. The only possibility is for the contract to be terminated if its continuation causes the interest of one of the parties to fulfill the contract to be lost.

Do you need to see your contracts?

Yes, in a number of contracts, is included a clause providing for the possibility of termination of the contractual relationship in the case of long-term existence of force majeure, in which a specific term of its duration is mentioned.

For example, if the force majeure lasts for 1 year, due to the changed economic and other realities, it is logical and reasonable not to have a legal interest in the concluded contract under the conditions of the old realities. We must therefore take into account the contractual clauses we have entered into with regard to force majeure and the consequences of long-term availability of this ground beyond the time limit laid down in the contract.

With respect to other current topics, in relation to the legislation, stipulating the relationships at the state of emergency, you may find information on our website – www.penkov-markov.eu. Of course, you may address us for any additional information and assistance at lawyers@penkov-markov.eu.

The above provides general information related to the adoption of the Emergency Measures and Actions during the State of Emergency Act and it is not exhaustive, whereas it serves only as a guide for interpreting the news as of March 25th 2020.