

**Adriala: Covid-19 Comparative Legal Guide:
Contracts and Contractual Terminations**

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ALBANIA - BOSNIA AND HERZEGOVINA - BULGARIA - CROATIA - KOSOVO - NORTH MACEDONIA - MONTENEGRO - SERBIA - SLOVENIA

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ALBANIA

An overview of the impact COVID 19 pandemic outbreak on the Contracts and Contractual Terminations in Albania.

Does the Coronavirus Crisis constitute a force majeure event?

Many businesses are concerned on the impact the pandemics may have on their capacity to comply with their contractual obligations in the view of the restrictions enforced by the authorities as a response to the propagation of the pandemics.

We note that in general parties still need to comply with their contractual obligations and contracts are not automatically terminated. However, due to the current situation parties might be able to (unilaterally) terminate or adjust a contract based on contractual force majeure provisions. Challenges and contract types vary between industries and have to be assessed individually.

Force majeure is to be understood as unexpected external circumstances that prevent a party from fulfilling its contractual obligations. The underlying event must be unforeseeable and must not be the result of an action by the contracting party. A declaration of force majeure may – depending on the individual case – enable a contracting party to avoid liability for non-performance. The Coronavirus Crisis may be qualified as such. However, it has to be assessed case by case.

Which could be the approach to deal with the difficulties to comply with the contractual obligations during the Covid-19 crisis?

We would advise to clients the following:

1. Review your contracts for any force majeure or extraordinary termination clauses.
2. Contact your business partners if you expect that you might not be able to fulfil your contracts, in order to comply with your duty to mitigate damages.
3. Check if there is any remedy applicable to your individual case (warranty, insurance, transferal of risk provisions, etc.).
4. Before terminating based on force majeure or on any other bases, try to amend the contract with your business partner.

Are there any mitigation measures adopted by the Government in relation to private public partnership contracts?

The Government has so far authorized the local government to amend the contracts in the sector of public transport and waste collection with the consent of the service supplier (private party in the PPP contract). The scope of such amendments is to accommodate the restrictions and changes to the services provided by the service

suppliers – urban and interurban public transport has been suspended for the time being throughout the entire territory.

The decision of the Government provides that all expenses arising from such amendments must be covered by the municipalities. We understand that this may serve as basis for the private investor to mitigate the financial consequences of the transport restrictions.

To be noted that for the time being, these are all the sectorial measures the Government of the Republic of Albania has adopted so far in response to the extraordinary situation caused by the pandemic outbreak of COVID-19. New supporting measures from the Government are expected to follow as the situation evolves on daily basis.

BOSNIA AND HERZEGOVINA

An overview of the impact COVID 19 pandemic outbreak on the Contracts and Contractual Terminations in Bosnia and Herzegovina.

Contract termination caused by force majeure

Currently there are no decisions brought by of the Government on settlement of the contractual obligations arising between the parties and therefore it is still up to the contractual parties to agree on terms of settlement of such obligation or termination of the contract.

Law on Contractual Obligations is regulating that if after the conclusion of the contract such circumstances arise that make it difficult to fulfill one party's obligations (force majeure) or if the purpose of the contract cannot be achieved, and in both cases it is obvious that the contract no longer meets the expectations of the contracting parties a party who has difficulty in fulfilling its obligation (i.e. party which, due to changed circumstances, cannot fulfill the purpose of the contract) may demand termination of the contract.

Also, when the fulfillment of an obligation of one party becomes impossible due to an event for which neither party is responsible (such as Covid-19), the obligation of the other party also terminates. If one of the parties fulfilled its obligation, other party may request repayment.

BULGARIA

An overview of the impact COVID 19 pandemic outbreak on the Contracts and Contractual Terminations in Bulgaria.

On 24 March 2020 in the Bulgarian official journal was published the adopted at an extraordinary session of the Bulgarian Parliament (to concur with the partial veto, levied by the President on the law adopted by the Parliament on 20 March 2020) and now Bulgaria has its effective national Measures and Acts During the State of Emergency, declared by the Parliament on 13 March 2020 Act (the “**COVID Act**”¹). The COVID Act was generally given retroactive effect as of 13 March 2020 and few other provisions became effective upon publication. It sets practical legal frame for the implementation of the Declaration of the Parliament, adopted on 13 March 2020 (the “**Declaration**”²). The Declaration announced ‘state of emergency’ until 13 April 2020 and generally authorized the Government to adopt measures in compliance with its constitutional powers. Notably, the COVID Act is not confined to 13 April 2020 (as per the Declaration), but will be applicable ‘until the cancellation of the state of emergency regime and expressly delegates to the minister of public health (sometimes to the Government) to introduce other measures and restrictions on temporary basis.

After the Declaration, the Government (also endorsing most of the prescriptions of the National Anti-COVID Staff (comprising reputable medical doctors, lead by the head of the Military Academic Hospital), the minister of public health, the minister of interior, the minister of transport, the minister of foreign affairs. Heads of court institutions, municipal mayors, corporate directors, etc., implemented various ad hoc measures.

The COVID Act provides for **only few provisions in respect of the existing contracts and their termination**, such as:

- prohibition of accrual of default interest and penalties (but not interest) or the implementation of other consequences of default in respect of subjects of private law, including non-pecuniary consequences – acceleration of due dates, rescission of contracts and repossession;
- Public procurement procedures should not be applied in purchases of medication, medical appliances and award of sanitizing services;
- The administration of grants under European Structural and Investment Funds is simplified, including to unilaterally amend the relevant contracts and award without publishing notices to requests proposals, increase the amounts of the grants and the overall resources above the approved limits.;
- Payment deadlines for electricity bills of households are increased from 10 days to 20 days (and could be further amended by the minister of energy).

The sector is also affected by the **general provisions of the COVID Act** on ‘stopping-the-clocks’ and cessation of enforcement

¹ <https://dv.parliament.bg/DVWeb/showMaterialDV.jsp;jsessionid=74FCA402D131735C27A4D1C95702043C?idMat=147150>

² <https://dv.parliament.bg/DVWeb/showMaterialDV.jsp?idMat=146931>

- cessation of procedural terms and deadlines under court, arbitration court and enforcement procedures (with only few exceptions);
- limitation and other terms of substantial law, which affect rights and obligations (with only few criminal and similar law exceptions);
- terms and periods for compliance with administrative acts (other than EU funds management);
- Elongation by one month since cancellation of the state of emergency regime of all other legislative periods, expiring during the state of emergency period (including such under administrative acts);
- cessation of enforcement and freezing procedures and prohibition to form new such procedures against individuals, including salaries and pension receivables (except for alimentary, tortuous or unpaid salaries claims); similar prohibition is levied in respect of medical institutions;
- cessation of the running (stop the clock) of any procedural terms (however, no provision on stopping the running of substantial law terms).

Collateral Effects

An interesting collateral effect on lease and other housing contracts has the general prohibition on leaving premises by people under quarantine (including those returning from abroad). This prohibition (though for the period of quarantine only) would preclude the possibility to validly request a tenant under quarantine to leave and enforcement procedures are generally prohibited. Similar collateral effect exists in respect of intercity and trans-border transportation contract.

What is not in the COVID Act

The COVID Act does not arrange for other material consequences and leaves open a number of issues, which may be difficult to qualify under general law.

Are COVID prevention measures **vis-major**?

Notably, vis major may be a false friend, as it gives a standing to the other party to cease to perform and to either party to terminate a contract with the expiration of a reasonable period, so it can shoot both ways instead of being an easy solution. Absent general solution, one needs to look on individual basis. Where there are express prohibitions, some contracts could not be performed, e.g. concert tickets, restaurant reservations and similar. Certain contracts could not be made use of (lease of closed restaurants, lease of closed shops, leases of international students who went back home and could not return or should not return because of distant teaching implemented), but absent general provision on payment obligations thereunder, these are unlikely to qualify under vis major. Absent turnover, it is unlikely that affected businesses would be able to meet their payment obligation. However, lack of funds is expressly recognized to be 'subjective; and not 'objective' impossibility under general law. A more appropriate legal solution appears to be **misbalance of economic equivalence**, which is a separate instrument under Bulgarian law. However, it needs to go to court (and courts are closed now) and takes all the

time of a litigation. Such situation could be appropriately addressed only through express moratorium on both performance (including payment obligations) and on contractual terms, which is a difficult and possibly costly political decision.

Bulgarian law reads also of **impossible object of contract**, which is a reason to invalidate a contract. One of its aspects is promising something a party did not know it ceased to exist at the time of making the contract (e.g. making a transport contract after the prohibitions were issued, but without yet knowing of thee). While, again it may require court attendance, it seems an easy case in light of the above.

CROATIA

An overview of the impact COVID 19 pandemic outbreak on the Contracts and Contractual Terminations in Croatia.

Have there been any measures by the Government of the Republic of Croatia and other public authorities to address the COVID 19 situation with regard to Contracts and Contractual Terminations (incl. Real Estate Matters)?

On 17 March 2020 the Government announced a series of measures to be adopted and enacted with the aim of reducing the adverse impact of COVID 19 pandemic and widespread business closures on the private sector. Along with the Government other competent authorities also announced a variety of measures for the same reason, reducing the adverse impact of COVID 19 pandemic.

Which measures have been enacted or announced?

Measures that would directly affect contracts and contractual terminations in respect of changed circumstances and force majeure have yet not been announced. Therefore, the general statutory regime regarding contracts, performance, termination and damages apply. The interpretation of the contractual provisions in the present circumstances of COVID 19 epidemic in Croatia needs to be assessed separately in each particular case.

There is a degree of uncertainty as to what is the legal effect of the current situation and government measures (i.e. restriction of movement, closures of some businesses), so it is estimated that there will be a significant number of disputes between the contractual parties. Clients are generally advised to timely and properly document their actions and correspondence with their customers and suppliers, for use as evidence in potential future proceedings.

Could COVID19 be classified as Force Majeure or Hardship? How are these situations regulated?

Situations of Force Majeure and Hardship are regulated by two significant sources of law:

a) United Nations Convention on Contracts for the International Sale of Goods

Regarding the international contractual relationships in which the United Nations Convention on Contracts for the International Sale of Goods (furthermore: "CISG") is applicable, it is generally accepted in court and arbitral practice, as well as in scholarly writing, that Article 79 of CISG covers both the cases of physical or factual impossibility (i.e. "Force Majeure") and cases of economic impossibility, unreasonableness or unaffordability (i.e. "Hardship"). In cases of Force Majeure, the

promisor is entitled to exemption from damages and performance for the time of the duration of the impediment. The promisee is entitled to avoidance of the contract (if the promisee is substantially deprived of what it was entitled to expect under the contract) and price reduction. In cases of Hardship, the promisor is entitled to request renegotiations. The request for renegotiation does not in itself entitle the promisor to withhold performance. Upon failure to reach agreement within a reasonable time either party may resort to the court. If the court finds hardship it may, if reasonable, terminate the contract at a date and on terms to be fixed, or adapt the contract with a view to restoring its equilibrium. Depending on the circumstances of each particular case, the COVID-19 pandemic could fall under either Force Majeure or Hardship.

b) Croatian domestic law – Civil Obligations Act

Croatian Civil Obligations Act also covers situations of Force Majeure and Hardship. In case of Force Majeure, the contract between the parties ends. In case of Hardship, the promisor is entitled to either termination or adaptation of the contract. Depending on the circumstances of each particular case, the COVID-19 pandemic could fall under either Force Majeure or Hardship.

Are there any public measures which could directly affect private contractual obligations?

Yes, different measures that could impact business and the private sector were announced or enacted.

The City Council of Zagreb enacted the following measures:

- Entrepreneurs that operate their business in the premises owned by the City of Zagreb are exempt from rent. Also, the deadline for the payment of the rent for March 2020 is extended for 90 days.
- For entrepreneurs who are obliged to pay public utility charges for office space and construction land used for carrying out their business activity, the determined amount of the utility fee obligation will be reduced by 30%.
- Entrepreneurs who are obliged to pay public utility charges for office space and construction land used for carrying out their business activity, and whose work is prohibited by a decision of the Civil Protection Headquarters, are fully exempted from public utility obligations.
- Users of public areas for setting up an outdoor terrace are exempted from paying the monthly fee.

These measures will apply for the period from 1 April to 30 June 2020. Should there be a need for continued use of these measures, the period of their application will be extended in order to preserve entrepreneur's businesses and jobs in Zagreb.

Other measures that were enacted for the purpose of social distancing from the Civil

Protection Headquarters:

- Several non-essential business activities were prohibited – such as: cafes, restaurants, with the exception of food preparation and delivery services, accommodation services and the operation of public and student kitchens. Furthermore, all service activities in which close contact with customers (e.g. hairdressers, beauticians, barbers, pedicures etc.) is achieved were also prohibited.
- Business hours of food stores is shortened

Further public measures are being announced and enacted daily, and the ones directly affecting private contracts and obligations will be addressed in updated versions of this guide.

Are the measures binding or advisory?

All previously mentioned measures are binding, and severe penalties have been announced for those who will not comply with the measures.

KOSOVO

An overview of the impact COVID 19 pandemic outbreak on the Contracts and Contractual Terminations in Kosovo.

Force majeure?

In light of the measures undertaken by the Government almost every day now, businesses, traders, but individuals as well are faced with insurmountable difficulties in exercising their rights and obligations under existing contracts. The prohibitions imposed on transport, sales, services shall certainly invoke numerous calls for termination of running contracts. Can force majeure be the answer to those calls? Well, one cannot locate a provision titled force majeure in Kosovo's contracts legislation. The term force majeure is not explicitly provided for by the law of contracts. That has not however prevented good lawyers from including a force majeure clause while drafting contracts. In all those cases, depending on the wording of the force majeure clause, parties can be excluded from any contractual obligation by invoking pandemic outbreak as force majeure.

What if the contract does not have a force majeure clause?

The Kosovo Law on Obligatory Relationships (KLOR) provides in its Article 120 for "Impossibility of performance for which neither party is responsible". This provision allows for a party to be relieved from its obligation to perform under a bilateral contract, should the obligation of other party become impossible due to developments outside of either parties' responsibility. The restrictions imposed by the situation, or the government in response to pandemic of COVID 19 outbreak, might well constitute a "development outside of either parties' responsibility" and therefore trigger the application of Article 120 of KLOR. Of course, the application is dependent on the particularities and conditions of each individual case. The party that has already performed part of his/her obligation can claim restitution based upon the rules of unjust acquisition. In addition, article 335 of KLOR uses the same language - impossibility of performance - in empowering the debtor to terminate the contract upon proving circumstances that exclude his/her responsibility thereof.

Partial impossibility

Partial impossibility due to events attributable to neither of the parties is too in the focus of the KLOR, in the same provision. The law leaves it upon the discretion of the party whose right has been partly fulfilled to either rescind the contract should the partial performance fail to meet his/her need, or claim proportionate reduction of his/her own obligation should he/she opt for the contract to remain valid.

Rebus sic stantibus

Another provision in the KFOR (Article 116) foresees the occurrence of events after the conclusion of the contract that either make the performance of obligation by a party more difficult, or the purpose of the contract unachievable. This might well be the case called in question by the current pandemic situation. The law entitles the party that has suffered due to these events, unforeseeable at the time of conclusion, to claim either rescission, or revision of the contract. A just revision of the contract conditions, offered by the other party, excludes the rescission. However, such a claim cannot be made if the deadline stipulated in the contract for the obligation to be performed have passed before the occurrence of the events. The party that has already performed his/her own obligation can claim reimbursement of damages in case of rescission.

Statutory limitation

The effect of an emergency situation upon running of statutory limitation periods is provided for by Article 364 of the CLOR. The statutory limitation periods simply shall not run during a state of emergency. The Government of Kosovo has already imposed the state of emergency through its Decision 1/11 on 15 March 2020, which is also the date of stay of the statutory limitation in the territory of Kosovo. In addition, the statutory limitation period shall not run while the performance of obligation cannot be claimed at court due to insurmountable circumstances. Although the operation of Courts is not yet officially halted, though it is expected by the day, prohibition of movement, or prohibition of transport during most of the day might constitute an insurmountable circumstance to add more grounds to the stay the statutory limitation.

NORTH MACEDONIA

An overview of the impact COVID 19 pandemic outbreak on the Contracts and Contractual Terminations in North Macedonia.

If it becomes impossible for a party to perform its contractual obligations because of an external event beyond its control (such as the Covid-19 pandemic), can that party cancel its contract?

Capability of the parties to perform contractual obligations in the Vis Major circumstances (such as the Covid-19 pandemic) should be observed from perspective of actual impact to the performance of the parties involved.

In principle, there is possibility to cancel the contract in case of impossibility for a party to perform its contractual obligations, for reasons beyond control of the parties.

According to article 126 of the Law on contractual obligations, when the performance of obligations in a contract would become impossible due to an extraordinary event, which occurred after the conclusion of the contract, and before the obligation has become due, and which at the time of conclusion of the contract could not be foreseen or prevented by either party, avoided or removed and for which neither party is responsible (force majeure), the obligation of the other party is considered as canceled.

If a party's performance of its contractual obligations is adversely affected by an external event beyond its control but does not become completely impossible, can that party typically seek relief from compliance with its obligations?

In case of partial impossibility to perform its contractual obligations caused by external event beyond control of the parties, the affected party may terminate the contract in case if partial performance would not suit the counter party requirements. Other than that, the contract would remain valid and the counterparty would be entitled to appropriate partial relief from compliance with its obligations.

- If yes, what considerations should be borne in mind by such parties, in particular in relation to:
 - Any notification obligations (Is the affected party typically required to notify any counterparties of the FM Event within a specific time period?)

Any such event should be dully notified to the counter party in appropriate time period which is depending on the actual situation and should be communicated without delay.

- Any causation requirements (Is the affected party typically required to demonstrate that it would have performed its contractual obligations but for the FM Event?)

The impact of the force major event should be real and would have to result in incapability to perform obligations under the contract. Taking into consideration the present status of the things in North Macedonia each individual case of force major and its causality should be evidenced.

- Any mitigation obligations (Is the affected party typically required to demonstrate that it took specific steps to avoid the impact of the FM Event as far as possible?)

From the formulation of the respective article of the Law on Obligations is evident that each of the parties is required to demonstrate that specific steps are taken to avoid the impact of such an event.

MONTENEGRO

An overview of the impact COVID 19 pandemic outbreak on the Contracts and Contractual Terminations in Montenegro.

The outbreak of Covid-19 in the world, resulting in the recent restrictive measures imposed by the Government of Montenegro, may impact the fulfilment of contractual obligations among the parties in a legal transaction.

Under the general rules of the law of obligations, in the event of failure of one party to comply with their contractual obligations within the agreed term, the other party shall be entitled to require, in addition to the fulfilment of such obligation, the indemnification for the damages incurred, and potentially the agreement termination. The situation is different, however, in cases when the failure to comply with the obligations was caused by an outside event beyond the influence of the parties, whose occurrence could not have been prevented, avoided or relieved: the event of force majeure (*vis major*).

The law does not provide for the definition of term of force majeure, whereas in practice it is recognized as the state caused by war, pandemic, natural disaster etc. Agreements often envisage through certain provisions the rights of parties in cases of force majeure events, and most frequently include the right to release of obligations under such conditions for a specified period of time. In case of a prolonged effect of force majeure, the agreements provide for the parties' right to terminate the agreement. Hence, when the agreement does provide for force majeure event in its provisions, it is required to analyse such provisions and determine whether, under its definitions, Covid-19 pandemic could fit in the force majeure circumstances. Further steps would require the analysis of the impact of Covid-19 pandemic to the status of the particular contract.

For cases when the agreement does not provide for articles which would regulate the events of what is commonly deemed as force majeure – would require the direct application of the provisions of Law on Contracts and Torts.

Montenegrin Law on Contracts and Torts provides for the possibility of amendments to or the termination of the agreement by the court upon the relevant request of a party, in case of the following circumstances occurring upon the conclusion of the agreement: (i) circumstances which could not have been predicted, (ii) which hinder the performance of the obligation of one party to such extent that the performance of the obligation would be too burdensome or would incur too large loss to such party, and (iii) if the altered circumstances occurred at the moment or during the time such party was obligated to comply with their envisaged obligations. This means that, in case of default of a party prior to the occurrence of the altered circumstances, such party shall not be entitled to refer to the altered circumstances or require for the amendments to or the termination of the agreement.

Even though the agreement would be terminated before the competent court, in practice the parties may form a mutual extrajudicial proposal for the amendment to the agreement, with reference to the altered circumstances.

It is crucial to emphasize here that the parties may waive in advance and by virtue of the agreement the right to refer to certain altered circumstances, if such waived would not contradict the principles of due diligence and care; the inclusion of such provision in the agreement may influence the party's right to make amendments to or terminate the agreement on such grounds.

Similar contractual rights may be identified in other laws. This includes the failure to comply with the contractual obligations beyond the fault of any party, and the debtor's relief from obligations due to circumstances emerging upon the conclusion of the agreement, which the debtor could not have prevented. In the particular case, when a party is unable to fulfil their obligations, the obligations of the other party shall cease, whereby the parties shall return to the other party any potential received amounts (?). In case of partial prevention from the fulfilment of obligations, the performing party may terminate the agreement if partial fulfilment does not meet their requirements. Otherwise, the agreement shall remain in force, and the other party shall be entitled to require for proportionate reduction of their own obligations.

Thus, even though the Covid-19 pandemic would be considered as an extraordinary event under former practices of Montenegrin courts, there is no general response to how the Covid-19 pandemic may impact the rights and obligations of the parties, or whether such pandemic may be seen as extraordinary circumstances causing the parties' failure to comply with their obligations. This shall depend on the provisions of each individual agreement, the circumstances of each individual case, and the relation between the circumstances and the failure to fulfil the contractual obligations.



SERBIA

An overview of the impact COVID 19 pandemic outbreak on the Contracts and Contractual Terminations in Serbia.

The COVID-19 outbreak has put quite a challenge to businesses in Serbia – declared state of emergency, lockdown, declared state of epidemic, forced closure of shopping malls, bars, restaurants, limitations on sales margins for essential goods, no public transport of any kind, stay-at-home policies, judicial slowdown etc. Contracts are the dynamics of the trade and means of protection, but in adverse situations such as this one, they become a stone pulling a company down to the bottom. This is because contracts are mainly projected to work in normal situations, and this is not the one. So, is there a way to exit a contract in the surroundings of the outbreak or at least avoid damage claims?

Exiting the contract due to Change of Circumstances (*rebus sic stantibus*)

To exit a contract due to change of circumstances i.e. *rebus sic stantibus*, a party would have to seek termination via the court. To receive a court order terminating the contract, the party seeking termination would have to prove the following:

- i) Existence of circumstances which cause the performance of the obligation to be harder for the party or due to which the purpose of the contract cannot be fulfilled, arising after the contract has been entered;
- ii) That it is obvious that the contract no longer suits the expectations of the parties;
- iii) Per the general opinion, it would be unfair to keep the contract in force as such;
- iv) a party cannot call upon *rebus sic stantibus* if it was obliged to take such circumstances into account at the time of entering into the contract or could have avoid them or overcome them.

But even beside that, termination could be denied if the other party offered or accepted rightful modification of appropriate terms of the contract. Also, no termination would be awarded if such circumstances have occurred after the default of the party seeking termination.

As to damages, termination under change of circumstances does not necessarily relieve the terminating party from damage compensation, provided that the other party sought compensation of the rightful share of damages due to termination. Also, the party seeking termination has to inform its counterpart on the circumstances for termination immediately upon acknowledging of such facts. Otherwise it could be ordered to pay damages.

Serbian case law on termination due to change of circumstances has been scarce and so far the courts have been reluctant to give a green light for escaping the contract under *rebus sic stantibus*, requiring a load of arguments to be put in front of the court. Notable recent cases included CHF indexed housing loans, where the courts swayed in their opinions whether to allow termination or not, due to a sudden explosion in exchange course between the Swiss franc and Serbian dinar. However, the complexity of the situation triggered by COVID-19 as explained at the beginning would bring strong arguments for a party to be awarded with termination, without prejudice to the actual court decision. In any case, a clear and provable link between the outbreak and state decisions from one side and hardening of the contract performance on the other has to be established, with the party showing the required professional diligence in performing the contract. Please note that banking and finance are under special regime established by the national regulator, the National Bank of Serbia.

But even with all this said, one obstacle remains. Courts are inoperable and this shall remain until the state of emergency is lifted.

Contractual damages under COVID-19

In case of a damage claim presented in front of a Serbian court, COVID-19 per se could not be interpreted as force majeure, even if the case of epidemics has been explicitly stated in the contract as force majeure. Party calling upon COVID-19 as reasons for its default would have to prove a clear and direct link between the epidemics and its default. Facts which do play a role would include, but not limited to, the following:

1. How specific is the obligation which the party failed to perform due to COVID-19 i.e. the degree of interchangeability of the subject of the performance (for example, whether the contracted goods/services could have been replaced with interchangeable goods/services satisfactory to contractual needs or the buyer requested only specific kind of goods/services which are not replaceable, at least within the performance period; or the performance could have been done by a third party on behalf of the defaulting contracting party).
2. Has the party shown professional diligence as required under the law?
3. Has the declared state of emergency clearly affected the performance and to what extent?

As in termination, the case is strong, but the damage lawsuits are also on hold. An issue might be if an obligation has been secured by a banking guarantee. The defaulting party may seek interim measures preventing the other party from activating the guarantee, since courts are required to act on such requests during the state of emergency.

Impossibility of performance

Under Serbian contracts law, in case the performance of a party becomes impossible due to reasons for which neither party is liable, both parties shall be relieved from their contractual obligations. The other party may seek return of money paid or goods/services delivered under the contract. In case of partial impossibility, the other party may terminate the contract if partial performance doesn't suit its needs, otherwise, the contract shall remain in force and the other party may seek proportional decrease in its obligation.

Real estate contracts

Since real estate contracts require solemnization, at this moment, notaries are required to continue making contract solemnizations, notary records and minutes. Notary offices shall work from 9 AM to 3 PM. Documents are to be sent in advance, preferably via e-mail. Solemnization has to be scheduled.

No signature', manuscripts' or copies' notarization shall be done, save in especially urgent and justified cases. In such cases, a party must send a request thereto, electronically or by post, justifying the reasons for taking the requested actions of the notary.

SLOVENIA

An overview of the impact COVID 19 pandemic outbreak on the Contracts and Contractual Terminations in Slovenia.

In Slovenia, if it becomes impossible for a party to perform its contractual obligations because of an external event beyond its control (such as the Covid-19 pandemic), can that party cancel its contract?

Total Impossibility of Performance

Pursuant to Article 116 of the Obligations Code (in connection with Article 329 of the Obligations Code), if the performance of obligations becomes impossible (in full) for one party to a bilateral contract, due to a development for which neither party is responsible, the obligation of the first party shall cease, whereas the obligation of the other party shall also cease; if the latter has already performed part of their obligations, they can demand the return thereof in accordance with the rules on the return of that which was acquired unjustly.

Partial Impossibility of Performance

In the event of partial impossibility of performance, and if the partial impossibility of performance is the consequence of a development for which neither party was responsible, the other party may withdraw from the contract if the partial performance does not satisfy such party's needs; otherwise the contract shall remain in force and the other party shall have the right to demand the proportionate reduction of such party's obligations.

Rescission or Amendment of a Contract owing to a Change of Circumstances

Pursuant to Articles 112 and 113 of the Obligations Code, in the event that:

- after the conclusion of a contract, circumstances arise that render the performance of obligations by one party (hereinafter referred to also as: the First Party) more difficult, or
- owing to these circumstances, the purpose of the contract cannot be achieved,

and in both cases above to such an extent that the contract clearly no longer complies with the expectations of the contracting parties and it would in the general opinion be unjust to retain the contract in force as it is, then the party whose obligations have been rendered more difficult to perform or the party that owing to the changed circumstances cannot realise the purpose of the contract, may request the court to rescind the contract.

Rescission of a contract cannot be requested if the party invoking a change of circumstances should have taken such circumstances into consideration at the time the contract was concluded or could have avoided them or could have averted the consequences thereof.

The party requesting the rescission of the contract (i.e. the First Party) may not invoke the change of circumstances if that change occurred after the deadline stipulated for the performance of the First Party's obligation.

A party who is entitled to request the rescission of a contract, owing to the changed circumstances (i.e. the First Party), must notify the other party of their intention to request a rescission as soon as they learn that such circumstances have occurred. A party that fails to do so shall be held liable for the damage incurred to the other party as a consequence of the notification not being provided on time.

A contract shall not be rescinded if the other party offers to have the relevant contract conditions fairly amended.

Release of Debtor's Liability

Pursuant to Article 240 of the Obligations Code the debtor (i.e. the party required to perform certain contractual obligation) shall be released from liability for damages (which occurred as a consequence of non-performance), if it is shown that the debtor was unable to perform the obligation or was late in performing the obligation owing to:

- the circumstances arising after the conclusion of the contract, and
- the fact that these circumstances could not be prevented, eliminated or avoided.

In Slovenia, if a party's performance of its contractual obligations is adversely affected by an external event beyond its control (an "FM Event") but does not become completely impossible, can that party typically seek relief from compliance with its obligations?

In certain circumstances, yes. Please see above answers, especially the Rescission or Amendment of a Contract owing to a Change of Circumstances section.

If yes, what considerations should be borne in mind by such parties, in particular in relation to:

- *Any notification obligations (Is the affected party typically required to notify any counterparties of the FM Event within a specific time period?)*

With respect to the Rescission or Amendment of a Contract owing to a Change of Circumstances: The party who is entitled to request the rescission of a contract,

owing to the changed circumstances, must notify the other party of their intention to request a rescission as soon as they learn that such circumstances have occurred. A party that fails to do so shall be held liable for the damage incurred to the other party as a consequence of the notification not being provided on time.

- *Any causation requirements (Is the affected party typically required to demonstrate that it would have performed its contractual obligations but for the FM Event?)*

With respect to the Rescission or Amendment of a Contract owing to a Change of Circumstances: As stated above, the affected party must demonstrate that the specific FM Event occurred after the conclusion of a contract and that the specific FM Event renders the performance of its obligations more difficult, or that owing to the FM Event, the purpose of the contract cannot be achieved, and in both aforementioned cases to such an extent that the contract clearly no longer complies with the expectations of the contracting parties and it would in the general opinion be unjust to retain the contract in force as it is.

- *Any mitigation obligations (Is the affected party typically required to demonstrate that it took specific steps to avoid the impact of the FM Event as far as possible?)*

With respect to the Rescission or Amendment of a Contract owing to a Change of Circumstances: Article 112 of the Obligations Code mandates that the affected party shall notify the other party of their intention to request a rescission as soon as they learn that such circumstances have occurred (which is intended to mitigate the damages of the other party). In all other respects, general principles of the Obligations Code apply (duty to observe the principle of conscientiousness and fairness; prohibition of infliction of damages, etc.).

CONTACT

ALBANIA - TASHKO PUSTINA

 BOULEVARD DËSHMORËT E KOMBIT, TWIN TOWERS, COMMERCIAL CENTER 2ND FLOOR, 1019 TIRANA - ALBANIA

 +355 4 238 91 90


+355 4 238 91 90

KEY CONTACT PERSONS:

 Flonia Tashko: flonia.tashko@tashkopustina.com

 Florian Hasko: florian.hasko@tashkopustina.com

BOSNIA AND HERZEGOVINA - BAROŠ, BIČAKČIĆ & PARTNERS , SARAJEVO

 28 MARSALA TITA, 71000 SARAJEVO, BIH

 +387 33 844 808

+387 33 844 809


KEY CONTACT PERSONS:

 Nenad Baroš: nenad.baros@bblegal.ba

 Feđa Bičakčić: fedja.bicakcic@bblegal.ba

BANJA LUKA

 16 NIKOLE PASICA, 78000 BANJA LUKA, BIH

 +387 51 961 780

+387 51 961 781

KEY CONTACT PERSON:

 Predrag Baroš: predrag.baros@bblegal.ba

BULGARIA - SPASOV & BRATANOV LAWYERS' PARTNERSHIP

 29A SLAVYANSKA OFFICE CENTER "SLAVYANSKA", FLOOR 2, 1000 SOFIA, BULGARIA

 +359 2 980 18 08

+359 2 980 25 10


KEY CONTACT PERSONS:

 Georgi Spasov: georgi.spasov@sbn-law.com

 Boyko Bratanov: boyko.bratanov@sbn-law.com

CROATIA - MADIRAZZA & PARTNERS ATTORNEYS AT LAW LLP

 21 MASARYKOVA, 10000 ZAGREB, CROATIA

 +385 1 48 77 280

+385 1 49 20 801

KEY CONTACT PERSONS:

 Josip Madirazza: jmadirazza@madirazza.hr

 Tin Težak: ttezak@madirazza.hr

KOSOVO - TASHKO PUSTINA

📍 FEHMI AGANI, H. 79, K. 1, No. 1, 10000 PRISTINA, KOSOVO

☎ +383 38 71 77 55

☐ +383 38 71 77 55

KEY CONTACT PERSONS:

✉ Gentian Gurra: gentian.gurra@tashkopustina.com

✉ Floran Pustina: floran.pustina@tashkopustina.com

NORTH MACEDONIA - LAW FIRM KNEZOVIĆ & ASSOCIATES

📍 10 KOSTA SAHOV St., 1000 SKOPJE, NORTH MACEDONIA

☎ +389 2 322 06 80

☐ +389 2 322 06 90

KEY CONTACT PERSON:

✉ Dejan Knezović: dejan.knezovic@knezovic.com.mk

MONTENEGRO - PRELEVIĆ LAW FIRM

📍 130 BULEVAR SV. PETRA CETINJSKOG KULA NCO/VII FLOOR, 81000 PODGORICA, MONTENEGRO

☎ +382 20 510 506

☐ +382 20 510 507

KEY CONTACT PERSON:

✉ Dragan Prelević: dp@prelevic.com

SERBIA – BOPA BOJANOVIC PARTNERS

📍 12 VLAJKOVICEVA, 11000 BELGRADE, SERBIA

☎ +381 11 414 52 80

☐ +381 11 414 52 89

KEY CONTACT PERSON:

✉ Vladimir Bojanović: vladimir.bojanovic@bopa.rs

SLOVENIA - LAW FIRM KAVČIČ, BRAČUN & PARTNERS, O.P., D.O.O.

📍 TRG REPUBLIKE 3, 1000 LJUBLJANA, SLOVENIA

☎ +386 1 244 55 00

☐ +386 1 244 55 01

KEY CONTACT PERSONS:

✉ Matej Kavčič: matej.kavcic@kbp.si

✉ Simon Bračun: simon.bracun@kbp.si



adriala

✉ info@adriala.com
www.adriala.com