

COVID-19 A CASE OF FORCE MAJEURE? FACTSHEET

The legal concept of „Force Majeure“ (in German “höhere Gewalt”) in context of the worldwide Sars-CoV-2 (COVID-19) outbreak is currently much discussed. Many companies see themselves confronted with difficulties in the fulfilment of their contractual obligations due to Covid-19. The question therefore arises whether Covid-19 allows parties to justify acts or omissions that are contrary to a previously agreed contract.

Contractual regulation

In general, the parties to a contract may determine which events (such as war, natural disasters or epidemic diseases) qualify as cases of Force Majeure. The parties can agree on certain consequences for such cases occurring whilst the contract period.

In the absence of a suitable contractual regulation, general provisions of Austrian law must be considered.

Austrian statutory law

There is no uniform definition of Force Majeure under Austrian law. In general, it is seen as an extraordinary external event which does not occur or cannot be expected to occur in a certain regularity and which cannot be averted or rendered harmless in its consequences even by utmost reasonable care. Already in 2005 the Austrian Supreme Court qualified the infectious disease SARS as a case of Force Majeure. It is therefore likely that the current Sars-CoV-2 (COVID-19) outbreak and the related measures (such as the closure of companies and the ban on events) will also be seen as case of Force Majeure.

In the context of such classification, the following legal concepts may be of relevance:

- » If the contractually owed performance becomes permanently impossible before the performance is due, the contract could be terminated and the obligations based on the contract would cease to exist.

- » Events of Force Majeure can seriously affect the reason (basis) for concluding the contract. This would be the case if it becomes impossible or unreasonable for a party to keep the contract with its original content in place. If an amendment of the contract is not possible or would lead to a major change of the contract, the parties are entitled to withdraw from the contract.

To be considered

When looking at a contract to determine if Force Majeure could be raised, we recommend to proceed as follows:

- » Does a contract contain a Force Majeure clause? If so, which events are considered and what are the agreed consequences?
- » When was the contract concluded and what information regarding the Covid-19 outbreak was available at that time?
- » Are the parties still able to fulfill their obligations when due? Is a later fulfillment possible?
- » Can the parties be reasonably expected to keep the contract in place?

Any further questions? Get in touch!

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