



Covid-19 – Force Majeure?

Practical Advice for Further Performance of Contractual Obligations

On 11 March 2020 the World Health Organisation announced that **Covid-19 has reached the scope of pandemic**, therefore in response to the communication on 12 March 2020 **the Cabinet issued Decree No 103¹ by which the emergency situation was announced in Latvia from 12 March 2020 to 14 April 2020** (Decree No 103). Furthermore, on 14 March 2020 the Cabinet determined additional restrictions and prohibitions by Decree No 105² (Decree No 105).

The restrictions apply to everybody and significantly affect daily routines of businesses. Taking into account that business is closely related to performance of different contractual obligations the current changed situation may significantly encumber performance of obligations or performance thereof in due time and scope.

The **force majeure** institute is a legal remedy widely known yet rarely applied in business. The *force majeure* situation is caused by extraordinary circumstances, which are unforeseen, beyond the control of the parties, which the parties are unable to prevent and due to which any party is unable to perform its contractual obligations, as a result of which other parties incur or may incur loss. If *force majeure* situation is proved, such loss incurred by the other party is not subject to compensation. In such case performance of contractual obligations is either suspended for the period of existence of *force majeure* situation or the contract is terminated if the performance of the contractual obligations is no longer possible due to *force majeure*.

Considering the abovementioned consequences caused by the current *force majeure* situation, **we call to assess a necessity to take the primary precautionary measures listed hereunder:**

1. To assess whether there is a currently **valid contract**, the performance of which is encumbered or impossible as a result of Decree No 103 or Decree No 105.
2. To clarify whether the respective contracts contain a **force majeure clause** or other relevant provisions:

¹ The Cabinet Decree No 103 of 12 March 2020 "Regarding Announcement of Emergency Situation", available at: <https://likumi.lv/ta/id/313191-par-arkartejas-situacijas-izsludinasanu>.

² The Cabinet Decree No 105 of 14 March 2020 "Amendments to the Cabinet Decree No 103 of 12 March 2020 "Regarding Announcement of Emergency Situation"", available at: <https://likumi.lv/ta/id/313216-grozijumi-ministru-kabineta-2020-gada-12-marta-rikojuma-nr-103-par-arkartejas-situacijas-izsludinasanu>.

- ii. **Suspending of obligations.** If a company becomes aware of that its business partner is unable to perform a significant part of its obligations the company has to assess the necessity of suspending the performance of obligations.³
 - iii. **Withdrawal from the contract.** Assess the impact of suspending of the contract due to *force majeure* on its further validity. Where suspending of the contract albeit for a short period considerably changes the essence of the contract, early termination of the contract and possible consequences thereof must be considered. Other facts, for example, actual insolvency of the business partner or other material breach of the contract by the partner may serve as the basis for termination or contractual relations. Where the decision is made in favour of withdrawal from the contract the business partner must be respectively notified and the legal consequences of termination must be assessed.
4. **To assess additional circumstances** before sending *force majeure* notice to the other contractual party:
 - | To consider whether there are options for **mitigation of the consequences of the current situation.**
 - | To consider whether there are any **alternatives** for performance of contractual obligations.
 - | **Collecting evidence.** The party referring to a *force majeure* event is obliged to prove the occurrence of *force majeure*. The fact of occurrence of such event may be certified, for example, by using a service provided by the Latvian Chamber of Commerce and Industry – a *force majeure* statement.⁴
 - | **Review your insurance cover** and verify whether your insurance terms indicate the correct types and degrees of cover for crisis situations and whether they apply to any changes in your business. If applicable, inform your insurer about occurrence of an insured event.
5. **Follow any new government decrees announced** as a reaction to COVID-19 outbreak.

For additional information, please contact:



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³ United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (Vienna), Article 71 (3).

⁴ Latvian Chamber of Commerce and Industry. Force Majeure Statement. Available at: <https://www.chamber.lv/lv/content/231>