

## Coronavirus (COVID-19) as *force majeure*

Under Russian civil law, a legal entity is relieved from liability for failure to fulfil an obligation if such failure is caused by extraordinary and inevitable circumstances (i.e. *force majeure* circumstances).

The spread of the coronavirus and the restrictive measures authorities take to combat the pandemic may be considered as *force majeure* events. This approach with respect to agreements concluded with the Moscow Government is enshrined in an [Executive Order of the Mayor of Moscow](#)\* and, for public procurement, in a [letter of the Russian Federal Anti-monopoly Service](#)\*.

In the event of a dispute, the COVID-19 situation and the imposition of restrictive measures by the relevant authorities are universal grounds for the non-fulfilment of contractual obligations and for exemption from liability. The issue of the application of *force majeure* conditions will be decided on a case-by-case basis by a court or an arbitration tribunal, depending on the circumstances of the particular case and the terms of the contract concluded between the parties.

To this end, a number of elements will be taken into account:

- the nature of the unfulfilled obligation;
- the time period for its fulfilment;
- how the spread of the virus and the introduction of related measures prevented the fulfilment of the obligation; and
- whether the debtor under the contract could have taken measures to fulfil the obligation despite the COVID-19 outbreak.

Many agreements also provide for a specific procedure applicable to the parties in the event of force majeure, and failure to comply with it will deprive the party of the right to invoke such circumstances.

In foreign trade contracts governed by Russian law, the recognition of *force majeure* circumstances will also depend on the decision of the chamber of commerce of the country of the party defaulting on obligations and referring to *force majeure* events and other factors.

As at the time of writing, the Chamber of Commerce and Industry of the Russian Federation recognizes the spread of COVID-19 as *force majeure* and issues the relevant certificates if non-fulfilment was caused by restrictions introduced in connection with the COVID-19 outbreak.

If the agreement is governed by a foreign law, then recognition of the COVID-19 pandemic as *force majeure* and the legal consequences for the parties will be determined on the basis of the applicable rules of the governing law of the other country.

Notably, a number of jurisdictions, especially with common law systems, include rules in which a circumstance is recognized as *force majeure* only if it is expressly stated as such in the text of a contract. For instance, English law, a popular choice of law governing foreign trade contracts, lacks the concept of *force majeure* unless the contract specifically sets forth its definition, consequences and respective procedures.

In light of the above, we recommend that you now review the provisions of any agreements whose implementation may be affected by the introduction of restrictive measures by the authorities in connection with the COVID-19 situation to check if they contain *force majeure* provisions and continue to take measures to prevent or minimize losses for your company.

\* *In Russian*