

Series of articles
"Coronavirus & Business"

Coronavirus: impact of a global pandemic on trade agreements – FAQs

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Coronavirus: impact of a global pandemic on trade agreements – FAQs

The COVID-19 coronavirus pandemic and the global measures taken to prevent it are causing significant disruption to businesses worldwide with an unprecedented impact on trade and commerce between businesses. The situation is very dynamic and companies should be able to react quickly to new challenges that arise almost daily. We have developed a series of articles and answers to frequently asked questions about the effects of coronavirus, which you can find [\[here\]](#). We want to help you to initially identify the legal implications that may affect the day-to-day operation and continuity of any business. We invite you to contact the Law Firm's team with regard to any questions or doubts you may have.

Below we present questions and answers on the impact of the coronavirus pandemic on trade agreements.

1. Does the coronavirus pandemic affect the contractual obligations?

The ongoing COVID-19 coronavirus pandemic has an unprecedented impact on trade and commerce. Some entrepreneurs may invoke force majeure clauses or provisions of the Civil Code in their contracts in order to amend the content of their commitments.

2. Can coronavirus be treated as a force majeure?

The question posed in this way cannot be answered unequivocally at this time. The concept of force majeure is not defined in Polish legislation.

The analysis of case law and doctrine shows that force majeure is an event:

- (a) external, i.e. outside the structure of the company;
- (b) impossible (or almost impossible) to predict, which should be interpreted as extraordinary and sudden event;
- (c) which effects cannot be prevented, which should be interpreted as an inability to counter the imminent danger.

The condition for considering an event as force majeure is that all of the above mentioned conditions are met. The doctrine considers catastrophic phenomena caused by natural forces, such as floods, hurricanes, earthquakes, forest fires as manifestations of force majeure. Acts of public authority and social or political phenomena on a catastrophic scale are also treated as force majeure.

It is unknown how the ongoing coronavirus pandemic will be judged by the Polish courts. Although **an individual analysis of the situation** is needed in each case, it seems that including the coronavirus in the list of the force majeure events is realistic.

3. How should contracts with force majeure clause be interpreted?

The answer to that question requires, first of all, that it be determined whether the parties have included a force majeure clause in the contract and what its content is, and whether it covers the terms "epidemic" or "pandemic." It is then necessary to examine what consequences the parties foreseen in the event of force majeure, e.g. the need to submit an appropriate declaration of force majeure to the other party within the contractual deadline.

Each contract requires individual analysis and appropriate communication with the other party. We recommend an urgent review of all your contracts for the possibility of invoking the force majeure clause.

4. What happens if the contract does not contain a force majeure clause?

The Polish Civil Code does not provide a general right to suspend or terminate a contract due to force majeure. Special regulations may be provided for in regulations dedicated to specific industries, e.g. in the Transport Act or in the Act regulating tourist events and services. Additionally, we would like to point out that since 8 March 2020, a special purpose act is in force in Poland, which deals with special solutions related to combating COVID-19.

It will be crucial for the debtor entrepreneur to demonstrate that it has not performed or has not performed its obligation properly as a result of the consequences of a coronavirus pandemic and that it is not responsible for that event and that has taken all due care to perform the obligation.

What should an entrepreneur do in such a situation? In order to be able to exclude liability for non-performance or improper performance, it is first of all necessary **to gather evidence** confirming that the specific event caused by force majeure was the direct cause of the non-performance and that the entrepreneur has shown due diligence in taking action to perform the obligation.

To sum up, each situation requires an individual assessment, and proper documentation of the facts will be crucial for entrepreneurs.

5. Can an entrepreneur renegotiate the content of the contract; if so, how?

First of all, the entrepreneur should try to change the terms of the contract by renegotiating them with the other party, which may result in signing an annex to the contract.

If the renegotiation of the terms of the contract fails, the entrepreneur should consider bringing an action to amend the terms of the contract on the basis of a clause of extraordinary change in circumstances. Here too, an individual analysis of the contract is necessary.

6. What actions can an entrepreneur take?

Given the uncertainty surrounding the current situation, as well as the global extent of the effects caused by the coronavirus pandemic, we recommend that each of the entrepreneurs take the following actions first:

- a. Analyse all contracts. Determine whether the implementation of one of the contracts is at risk due to the coronavirus pandemic.
- b. Determine the law applicable to the contract.
- c. Examine the content of selected contracts to determine whether they contain a force majeure clause.
- d. Develop a legal tactic and strategy for this contract.

If you have any doubt as to whether a force majeure event has or may have an impact on the performance of specific contracts to which the entrepreneur is party or what action should be taken to prevent its consequences, we recommend that you seek legal advice.

The Law Firm Izabella Żyglicka i Wspólnicy comprehensively helps entrepreneurs affected by the coronavirus pandemic. If you need any help with the interpretation of contracts or other legal problems related to the coronavirus pandemic, don't hesitate contact us.

In addition, we would like to point out that Izabella Żyglicka i Wspólnicy is a member of the international **Ally Law association**, so our international partners are at your disposal in case the contract is determined to be governed by foreign law.

Do you have more questions? Contact our lawyer

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