

**CORONAVIRUS**
**CORONAVIRUS:  
LEGAL IMPLICATIONS AND OTHER ISSUES**

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**1 THE INTERNATIONAL EMERGENCY AND CONTRACTUAL RELATIONS**

After a first declaration of **public health emergency of international relevance** (January 30, 2020), on **March 11, 2020**, the World Health Organization declared that the international outbreak of the new Coronavirus, Covid – 19, represents a pandemic in view of the alarming levels of spreading and seriousness and difficulty of containment. As is known, this implies the adoption of severe security measures and temporary limitations to personal freedom for the purpose of public health protection. This pandemic may inevitably have an impact on your business activity. Therefore, we highlight what the legal implications might be, focusing, firstly, on the current contractual relations.

**FORCE MAJEURE**

Whether your business activity is affected by interruptions or delays by reason of the health threat and the adoption of the related law enforcement measures, thus risking to being in breach with regard to the obligations arising out of the agreements entered into with third parties (e.g. partner companies, principals), you have the possibility to rely on the principles concerning the **cause of force majeure**, whose application depends on the applicable national law and the clauses contained in the agreement.

Force majeure is a concept common to many national laws, although the Italian legal system does not provide a definition. The case of force majeure is an extraordinary, unpredictable and unavoidable fact, to which is impossible to resist and that cannot be overtaken with the diligent effort of the debtor aimed at ensuring the punctual fulfilment of the obligation.

This concept derives from the French Code Napoleon and is contemplated **not only by the Italian private law but even by the Chinese law**. Actually, the Chinese law on contracts (PRC Contract Law, art. 117, co. 2) defines the force majeure as an event or circumstance that is objectively unpredictable, inevitable and insurmountable.

In the **Italian legal system**, if the contractual service has become definitively impossible for reasons of force majeure, the obligation extinguishes; instead, if the impossibility is just temporary, the debtor, as long as it persists, is not liable for the delay in the fulfilment. The discipline of the force majeure directly applies to contractual relations even if it is not provided by a specific contractual clause. In fact, it constitutes the expression of a broader principle that regulates the general rules on contracts (the principle of the non imputability of the breach).

If the applicable law is the Chinese law, even in this case, unless otherwise agreed between the parties and without prejudice of the application of a specific contrary discipline, the debtor is not liable in the event for reasons of force majeure is impossible to comply with the contract. For this purpose, the breaching party, has to inform the other party, within a reasonable time, giving evidence of the impediments. Pursuant to the Chinese law, the cause of force majeure represent a reason for termination of the agreement.

**In case the law applicable to the contract is the English law**, it is necessary to pay more attention to the content of the agreement itself. This is likely of the fact that the concept of force majeure does not stand out automatically, but it is necessary that the contractual regulation provides a specific clause, which excludes the debtor's liability for breach by reason of force majeure. If such clause has not been negotiated, it will be necessary to resort to other remedies.

It needs to be outlined that the contracts may occasionally be regulated not by a national law but **by an International Convention** (e.g. United Nations Convention on international sale of goods agreements, so-called Vienna Convention dated April 11, 1980), by the **general principles of the international trade** (so-called *lex mercatoria*) or by the **UNIDROIT Principles of the International Commercial Contracts**. The cause of force majeure and the related effects on contractual relations may therefore be subject to different outcomes depending on the applicable law.

**EXCESSIVE ONEROSNESS/HARDSHIP**

The concept of force majeure stands alongside the concept of cause of hardship. As a matter of principle, even this concept identifies an unpredictable event uncontrollable by the parties that makes the performance of the contractual obligation particularly onerous, by imposing to the parties a review of the contractual obligations.

The hardship is expressly defined, for example, by the UNIDROIT Principles. These latter provide that the hardship applies when events that materially alter the contractual balance occur, or in case of an increase of the costs of the obligation of one of the parties, or for the decrease of the value of the consideration. The disadvantaged party does not have the right to suspend the performance of the agreement but has the right to ask the renegotiation of the contract that shall be carried out without unjustified delay and shall indicate the reasons on which it is based.

**POSSIBLE LIMITATION TO THE APPLICABILITY OF FORCE MAJEURE**

In any case, the reason of force majeure does not operate automatically; it needs to be verified if the law applicable to the contract or the wording of the related contractual clause imposes limitations to its applicability. In the current situation, characterized by the pandemic spreading of Covid-19, there are several elements to take into account before invoking force majeure in order to justify possible contractual breaches.

■ Above all, it is necessary to evaluate if the pandemic or the measures adopted by the governments have actually had an impact on the contractual obligations by preventing or delaying them.

■ If the answer is affirmative, it is necessary, secondly, to ascertain that the pandemic and the related measures fall under the concept of force majeure. Some agreements might include in fact a precise list of events or circumstances defined as “force majeure”. Commonly, it includes earthquakes, volcanic eruptions, natural catastrophes, epidemics, wars, invasions, armed conflicts, blockages, embargos, national strikes, government measures. From this point of view, the concerned extraordinary event is relevant both as an epidemic and as a condition for the adoption of law enforcement measures from the competent authorities.

■ Thirdly, contracts may provide some prerequisites for the applicability of force majeure. Thus, a contract might for example provide that the party that intends to invoke the cause of force majeure, shall notify the other party within a certain period of time, or by means of a specific method of communication (registered letter or email).

■ We highlight that some contracts may provide that, in case the suspension of the contractual obligation of one of the two parties, by reason of force majeure, persists for more than a specific period of time, the party that has to receive the performance of the obligation shall have the **right to terminate the agreement**.

In case you are suffering from the impact of such international emergency on your business activity and, in particular, on your contractual relations, it will be of the utmost importance to analyze your contracts in order to verify that the applicable law or the contract itself does not provide limitations of this kind. Lastly, you should bear in mind that the burden of proof shall be borne by the party who invokes force majeure. The latter shall therefore provide to the other party sufficient elements to prove the existence of force majeure and to demonstrate that the obligation has become impossible for that reason.

**FORCE MAJEURE SHIELD**

The Chinese Council for the Promotion of International Trade (CCPIT) is providing force majeure certificates for companies seated in China that intend to avail of the provisions or clauses that let them suspend the fulfilment of their contractual obligations. In order to obtain the certificate the companies shall submit appropriate documentation to the CCPIT (as for example, the proof of the delays, annulment of the transports, or customs declarations).

**ACTIONS TO BE TAKEN WITH REGARD TO CURRENT CONTRACTUAL RELATIONS**

Conclusively, in order to manage the effects of Coronavirus on the performance of your commercial contracts it is necessary, firstly, to identify the law applicable to the contract, for the purposes of determining the possibility for the spread of the Coronavirus to be accounted as a cause of force majeure or hardship. Secondly, it needs to be verified if the contract provides or not a clause on force majeure or hardship and its width. If so, the content of the clause itself will determine the possibility for the spread of the Coronavirus to be accounted as a cause of force majeure or hardship and the effects and formalities required to the party that invokes its application. For the purposes of the interpretation of the clause on force majeure, in case of doubt, the law applicable to the contract will be relevant.

**2 LABOUR LAW ISSUES**

The spread of Covid-19 has repercussions even on the measures that shall be adopted by the employers.

Among them we underline: (i) the necessity to update the risk evaluation; (ii) the identification, together with the competent doctor and the person in charge for the Prevention and Protection Service, of suitable devices for individual protection (e.g. disposable gloves, certified masks); (iii) the arrangement of specific emergency plans aimed at facing even the contagion risks and special protocols on health surveillance; (iv) the information and training of the employee in relation to the new specific risk (providing, for example constant updates on the basis of official sources, the names and contacts of the employer and the person in charge of the emergency plan, the information concerning the procedure for requesting medical assistance, in case of flu symptoms or breathing problems).

**SMARTWORKING, WORK SHIFTS, ORDINARY LEAVE OF ABSENCE AND VACATION**

We also point out that it has been provided to possibility to apply the smartworking method for the whole duration of the state of emergency to every subordinate employment relationship even in the absence of the individual agreements set out therein; the disclosure requirements set forth under article 22 of the Law no. 81 dated May 22, 2017, are complied with electronically, also by means of the documentation made available by the National Institute for the Insurance against accidents at Work website [art. 1 lett. d) of the Prime Minister's Decree (“D.P.C.M.”) dated March 4, 2020]. It has also been recommended to public and private employers to promote the fruition by the employees of periods of leave of absence or vacation (art. 1, lett. e) of the D.P.C.M. dated March 8, 2020, referred to by the D.P.C.M. dated March 9 2020 with extension to the whole national territory).

**3 PERSONAL DATA PROTECTION**

The health threat provoked tension in the relation between public safety, on the one hand, and health protection on other hand.

As a previous consequence, the processing of the data related to health without the previous consent of the concerned individual is forbidden unless one of the cases set forth under art. 9 of the EU General Data Protection Regulation 679/2016 (“GDPR”) occurs. Among the exceptions, the necessity to process data (2016) to particular categories, as the ones related to health) “for public interest reasons in the field of public health, such as the protection from serious cross-border threats to health[...]” stands out. On the matter, the Privacy Authority, with decision dated February 2, 2020 on the “draft of the ruling bearing urgent provisions of civil protection”, deemed it certainly admissible the processing of data related to health by the involved organizations such as the Civil Protection. Subsequently, on March 2, 2020 the Privacy Authority provided an indication on the approach that the companies shall follow. In this respect, it specified that the processing of data related to health is **not allowed for companies which cannot substitute health authorities or the civil protection**. In fact, the gathering of such data is attributable to public authorities and not to private companies. Therefore, companies shall not submit a questionnaire to their employees/suppliers/visitors to gather data related to their health and movements or to detect their temperature.

The ascertainment and gathering of information related to the typical symptoms of Coronavirus and other information on recent travels of any individual are attributable to healthcare professionals and to the system activated by the Civil Protection, that are the organs deputated to grant the compliance with the public health rules recently adopted.

However, this is without prejudice to the obligation for the employee to report to the employer any dangerous situation for health and safety at the workplace.

It is possible to affix a sign at the entrance of the premises of the company, and send a notice to clients and suppliers indicating that if they have been in contact with people at risk or experience flu symptoms or simply fever or cough they cannot have access to the premises of the company. In conclusion, employers are not allowed to take autonomous initiatives, which involve the gathering of data also on employees's health that are not normatively provided by the competent authorities.

**4 HEALTH AND HYGIENE PREVENTIVE MEASURES**

On the whole national territory it is recommended the application of health and hygiene preventive measures (art. 3 comma 7 and Annex 1 of the Prime Minister's Decree dated March 8, 2020):

- Frequent hand-washing. It is recommended to make available in every public premises, gym, supermarket, pharmacy, and other aggregation place hydroalcoholic solutions for hand-washing;
- avoid close contact with people that suffer from acute breathing infections;
- avoid hugs and handshakes;;
- maintaining, in social contacts, a interpersonal distance of at least one meter;
- breathing hygiene (sneeze and/or cough in a tissue avoiding the contact of the respiratory secretions with hands);
- avoid the promiscuous use of bottles and glasses, in particular during sports activities;
- do not touch eyes, nose and mouth with hands;
- cover mouth and nose while sneezing or coughing;
- do not take antiviral medicines and antibiotics, unless prescribed by a doctor;
- clean surfaces with disinfectant based on alcohol or chlorine;
- use the mask only in case of suspected sickness or in case of assistance to sick people.

**5 URGENT MEASURES FOR CONTAGION CONTAINMENT ON THE WHOLE NATIONAL TERRITORY – UPDATED TO THE PRIME MINISTER'S DECREE DATED MARCH 11, 2020**

The next step further to the adoption of the Prime Minister's Decree (“D.P.C.M.”) dated March 9, 2020 (so-called #iorestoacasa decree), with which the whole national territory became protected zone and saw the application of the measures provided by art. 1 of the D.P.C.M. dated March 8, 2020, initially adopted only for some areas with strengthened containment, has been the adoption of a new D.P.C.M. on March 11, 2020. The latter, with validity from March 12 until March 25 2020, provides the closing of the commercial activities. Among the adopted measures we underline: the suspension of the bar, pub, restaurant activities; the closing of hairdressers, and beauty salons; opening exclusively of food markets, gas stations, newsstands, tobacconists, pharmacies and parapharmacies; in compliance with the hygienic-sanitary regulations, bank, finance and insurance services, the activity of the agricultural livestock and food-product transformation sectors remain guaranteed. The Decree also specifies the provisions to be observed in relation to productive and professional activities, summarized as follows:

- highest level of implementation of smartworking, if possible considering the nature of the activity, with regard to the non-suspended activities;
- incentive to paid vacation and leaves;
- closing of company departments which are not fundamental for the production;
- if it is not possible to implement smartworking, using of safety anti-contagion protocols and, if it is not possible to respect the precautionary distance of one meter, adopting individual protection devices;
- incentive of workplace sanitization operations;
- limited to the production activities, maximum limitation of movements inside the premises of the company and restricting the access to common spaces.

For the sole production sector, agreements between employers and trade unions organizations and are favored, with regard to the aforementioned points.

The restrictive measures provided by the D.P.C.M dated March 9 and valid until April 3 2020 remain confirmed, such as the block of sport events, the suspension of the teaching activity in schools and universities and the limitation of moving in and out of national territory except when justified by: (i) working needs, (ii) situations of need, (iii) health reasons to be certified by a self-declaration whose truthfulness may be verified even with subsequent controls (being allowed the return in the place of domicile, accommodation or residence). And absolute prohibition of movements is provided for the persons subject to the quarantine measure or that resulted positive to the virus.

The sanction for the violations of the movements prohibitions is the one set forth under article 650 of the Italian Criminal Code (breach of the authority's measures: sanction provided arrest up to three months or the fine up to EUR 206.00) unless it cannot be configured the more serious crime provided by article 452 the Italian Criminal Code (culpable crimes against public health that punishes all the conducts liable to lead to a danger for public health).

**6 TRAVEL TITLES AND PACKAGE TRAVEL REFUND**

It is provided the refund of plane/train/ferry tickets in the internal or terrestrial waters in favor of several subjects (e.g. people who are in quarantine; positive to Coronavirus; have purchased tickets for destinations that provide restrictions for Italian citizens - art. 28 of the Decree-Law n. 9 dated March 2, 2020). In such hypothesis it occurs a case of supervening impossibility pursuant to art. 1463 of the Italian Civil Code.

**7 EXTRAORDINARY MEASURES ON THE PERFORMANCE OF THE JUDICIAL ACTIVITY**

On March 8, 2020 it has been published on the Official Gazette the **Decree-Law n. 11 dated March 8 2020**, with extraordinary and urgent measures to contrast the epidemiologic emergency and contain the negative effects on the performance of the judicial activity. The above-mentioned Decree provides that **starting from March 9 ad until March 22 2020 the hearings of civil and criminal pending proceedings before any judicial office are postponed ex officio** to a later date. The suspension itself also regards the deadlines for fulfilment of any act regarding the said proceedings. In both cases however there are some exceptions (including but not limited to, proceedings within the jurisdiction of the Juvenile Court related to adoptability declarations, foreign unaccompanied minors, minors removed from the family and situations of serious prejudice).

In the following period, from March 23 until May 31 2020, the heads of the judicial offices, having consulted the health regional authority will adopt the necessary organizational measures in order to grant the compliance with the health and hygiene indications provided by the competent authorities.

Similar measures have been adopted also by the administrative and accounting justice.

As provided by the above-mentioned Decree-Law 11/2020, without prejudice of the measures provided by art.10 of the Decree Law n. 9 dated March 2 2020 which established, among other things, the suspension until March 31 2020, and the postponing to a later date of the hearings related to civil pending proceedings before the judicial offices of the districts of the Courts to which the Municipalities initially identified as the so-called red zone belong (annex 1 to the Prime Minister's Decree dated March 1 2020), subject to exceptions.

The same suspension applies with reference to judicial deeds, communications and notifications that anybody needs to carry out in the regions to which the Municipalities initially identified as the red zone belong.

**8 AVVOCATI ASSOCIATI FRANZOSI DAL NEGRO SETTI SUPPORTS OSPEDALE MORELLI IN SONDALO AND OPERA SAN FRANCESCO PER I POVERI IN MILAN**

Avvocati Associati Franzosi Dal Negro Setti decided to support Ospedale Morelli in Sondalo and Opera San Francesco per i poveri in Milan. In a moment of particular difficulty for the Country, the Law Firm wanted to offer its contribute to who is fighting at the forefront against Coronavirus and in favor of who takes care of the people that are not cured in hospitals, collapsing because of the emergency or the ones that the desert of the cities makes even poorer. With everyone's contribute we are confident that we will get through it!

**9 ACTIVITY OF THE LAW FIRM**

The Law firm is ensuring through smartworking complete assistance to its clients.

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