

## **COVID-19 and its impact on international business contracts**

On March, 11 2020 the coronavirus outbreak has been labelled a pandemic by the World Health Organization (WHO). Countries have taken radical measures to protect their populations, including complete lockdowns. The protective measures have far reaching consequences, also economically. In a lot of countries production or delivery is hindered or impossible, sometimes merely because of the fact that the employees are not allowed to leave their houses and to go to work.

### **What are the legal consequences of COVID-19 on international supply contracts?**

It depends on the contract which law applies. If not explicitly excluded the UN Convention on the International Sale of Goods, abbreviated as « CISG », applies if parties whose places of business are in different Contracting States or when the rules of private international law lead to the application of the law of a Contracting State. Most countries in the world are party to the CISG (the USA, China, most EU member states except the UK and Portugal, Singapore, ... ). It is notable and sometimes surprising for parties that, if they agreed to the applicability of a « national » law, it means that they have chosen (unconsciously) for the applicability of the CISG. For example, if a Belgian company and a German company agreed to apply Belgian law on their contract, this means that not Belgian intern law will apply but the CISG, because it is part of the Belgian law. The CISG applies on contracts for the sale of goods, but not on contracts for services only, nor on contracts with consumers, sale of ships, aircrafts and electricity.

### ***Force Majeure and art. 79 CISG***

Art. 79 CISG states that « *a party is not liable for a failure to perform any of his obligations if he proves that the failure was due to an impediment beyond his control and that he could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it or its consequences.* »

As applied on the outbreak of the corona virus, a party would be discharged or excused if he can prove that the epidemic prevented it from manufacturing and delivering the goods and that the party had no way to avoid or overcome that impediment.

The timing of the conclusion of the contract can be an important element to appreciate the unforeseeability of the impediment. In this context can be referred to a decision regarding the SARS disease which rejected the plea of force majeure, finding that the outbreak of this disease occurred two months prior to the signing of the contract and was, therefore, not unforeseeable.

Temporarily impediments will only temporarily excuse the non-performing party. If the impediment disappears, the party has to execute his obligations as soon as possible.

### ***What can parties do now ?***

It is recommended to verify which set of rules applies on the international sales contract and if force majeure is defined. Indeed, parties are allowed to extend or to limit the scope of force majeure. If parties have qualified an epidemic as force majeure, there will be few room for discussion about this question. If this is not the case, the circumstances of the fact will be decisive.

Both parties have to take action. Pursuant to art. 79 (4) CISG, the party who fails to perform must give notice to the other party of the impediment and its effect on his ability to perform. If the notice is not received by the other party within a reasonable time after the party who fails to perform knew or ought to have known of the impediment, he is liable for damages resulting from such non-receipt. The other party must take measures to mitigate the damage, resulting from the breach. If he fails to take such measures, the party in breach may claim a reduction in the damages in the amount by which the loss should have been mitigated. Be prepared for possible disputes and act now.

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