

## The impact of the Covid-19 on French Business Law

The entire world has been facing the threat of the Covid-19 Coronavirus pandemic since it devastated China last December and spread to other states around the world.

Faced with the health emergency, the French government introduced health and economic measures with a single goal: to limit the spread of the virus in our country. Consequently, on March 16<sup>th</sup> 2020, President Emmanuel Macron ordered<sup>1</sup> the confinement of all who are in the French territory and the closure of all businesses considered non-essential to the continuity of the nation.

This article will deal with the impact of the coronavirus on French Business Law and more precisely with:

- The confinement measures constituting an event of force majeure,
- The possibility to suspend or terminate a contract in an event of force majeure,
- The possibility to renegotiate the contract,
- The commercial lease,
- The possibility to defer the payment of certain bills,
- The help of mediators and other representatives,

### ***Does the coronavirus itself or the confinement measure constitute an event of force majeure?***

According to Article 1218 of the Civil Code<sup>2</sup>, an event of force majeure is an unforeseeable event at the date of conclusion of the contract which cannot be prevented by any reasonable measure and which is beyond the control of the parties to the contract.

Judges have never recognized epidemics or pandemics as events of force majeure. As a result, the Covid-19 pandemic may as well not be recognized as such.

Nevertheless, the containment measures, because of their economic impact on businesses, might constitute an event of force majeure. Judges will have to deal with this question on a case by case basis, once the courts will reopen, so at the earliest on April 17<sup>th</sup> 2020.

### ***Why should you pay attention to your contract before invoking an event of force majeure?***

The terms and conditions of the contract might contain force majeure clauses specifying whether a pandemic constitutes an event of force majeure. These clauses generally also deal with the applicable notice period as well as the modalities of notification.

### ***What are the consequences of an event of force majeure for the contract?***

- In all contracts, an event of force majeure will suspend the performance of the obligations under the contract, when the impossibility to perform is temporary; and will lead to the termination of the contract, when the impossibility is permanent.

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<sup>1</sup> Speech of the President of the Republic, « Adresse aux Français », March 16<sup>th</sup>, 2020. Available on: [https://www.youtube.com/watch?v=MEV6BHQaTnw&feature=emb\\_logo](https://www.youtube.com/watch?v=MEV6BHQaTnw&feature=emb_logo) ;

<sup>2</sup> Code civil, art. 1218. Available on: <https://www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000006070721&idArticle=LEGIARTI000006436903>

- In contracts between professionals, each party has the possibility to terminate the contract without notice period if the other party fails to perform its obligation according to Article L.442-1 last paragraph of the French Commercial Code<sup>3</sup>.
- In contracts between a consumer and a professional, Article L.221-15 paragraph 2 of the French Consumer Code<sup>4</sup> provides that the professional shall be discharged from its liability by proving that the failure to perform the contract is the result of an event of force majeure.

***Do insurance policies provide cover for epidemic-related operating losses?***

It is very unlikely in practice. However, you should check your business insurance policy.

***Can a party to a contract request the renegotiation of the contract in the context of the Covid-19 pandemic?***

Article 1195 of the French Civil Code provides for the renegotiation of contracts concluded after October 1<sup>st</sup> 2016 in case of hardship. This provision applies when unforeseeable events occur, which fundamentally alter the equilibrium of a contract resulting in an excessive burden being placed on one of the parties involved. The latter may then request its contracting party to renegotiate the contract. If the parties are unable to reach an agreement, they may agree to terminate the contract, on the date and under the conditions they determine. As a last resort, one of the parties may refer the matter to court to obtain the revision or termination of the contract. However, French courts will be closed until at least April 17<sup>th</sup> 2020.

***What can a company do if a clause in its lease agreement provides for the obligation to remain open?***

For the moment, there is no decree or order on the particular point. Confinement measures can be used to request the suspension of rent payments and thus avoid the termination of the lease. If you have an uncooperative landlord, you should not hesitate to contact either the mediator at the Banque de France or the mediator of the DIRECCT.

***Can companies suspend the payment of their electricity, gas and rent bills?***

No, since the government has still not adopted a text defining under which circumstances electricity, water, gas and rent bills can be deferred. Therefore, you should negotiate with your co-contractor until this text is adopted.

***How can a company deal with economic difficulties resulting from the containment measures?***

- Referring its case to the credit mediator or the mediator of the DIRECCT, if the company is not in a situation of cessation of payment.
- Having recourse to an ad hoc mandate or a conciliation. However, it is particularly costly. The ad hoc agent fees are about 30,000 euros.

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<sup>3</sup> Code de commerce, art. L442-6 I 5°. Available on : <https://www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000033612862&cidTexte=LEGITEX000005634379&dateTexte=20161211> ;

<sup>4</sup> Code de la consommation, art. L221-15. Available on : <https://www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000032226852&cidTexte=LEGITEX000006069565&dateTexte=20160701> ;