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Commercial contracts how to (re)negotiate in light of Covid-19

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The current emergency situation and the containment measures issued in the last month led to severe limitations on the operation of companies and commercial activities, thus leading to delays or even to the impossibility of fulfilling contractual obligations. Moreover, the **pandemic**, that can be qualified as an **unforeseeable** and **extraordinary event**, assumes relevance as a factor that could lead to an **alteration of the contractual balance**.

Our professionals, constantly updated, have been questioning themselves about the remedies available to operators and companies both for agreements currently in force and for agreements still under negotiation.

For agreements currently in force between the parties, in particular for long term agreements, the principle of **contractual fairness and good faith**, in force under Italian law, plays a fundamental role, which shall allow the parties to **renegotiate** the contents and the mutual obligations, in order to avoid the termination of the agreement.

With reference, instead, to the agreement that are currently being negotiated and stipulated, greater attention shall have to be paid to their contents, in particular through the provision of specific '**Covid-19**' **clauses**, by which, in principle, the parties acknowledge the existence of the issue, and by accepting it, they are obliged to renegotiate the agreement if the health emergency should persist in the medium-long term.

The attention paid to these problems can be observed in light of **Article 91 of the so called "Cura Italia" Decree**, which is a provision of considerable interest. Indeed, Article 91 provides that compliance with the containment measures implemented in order to face the Covid-19 shall always be considered for the purpose of **excluding the debtor's liability for failure or late performance of its due obligation**.

Moreover, in order to protect Italian companies, with particular regard to their international relations, due consideration shall be given to the possibility of including, at the time of the conversion in Law of the "*Cura Italia*" Decree or in the decree scheduled for April 2020, a provision aiming at protecting **export activities**, which shall provide that the progressive restrictions (up to the closure) of many economic activities and the limitations on the movement of employees and collaborators may integrate a "**force majeure event**", such as to exclude the supplier's liability in the event of failure or delay in fulfilling its contractual obligations.

In the meantime, in line with the practice of other foreign legal systems, including the Chinese one, in order to deal with the health emergency also from an economic and commercial point of view, the **MISE (Ministry of Economic Development)** issued a measure on March 25, 2020 ([link](#)) authorizing the **Chambers of Commerce and UNIONCAMERE to issue certificates in English attesting the declarations of companies regarding the existence of force majeure causes due to the Covid-19 emergency**. Such certificates could prove to be very useful especially in international contracts and litigation.

Certificates are expected to be issued by each chamber.

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