

The Legal Impact of COVID-19 on the Business Market



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I- Introduction

Concerns about spreading coronavirus became a global concern and have affected the world of law and the economy. Coronavirus, officially called COVID-19, pushed law firms to take precautions to protect their employees and clients.

Nowadays not only businesses are being impacted by the virus outbreak as a result of both the labor market and their supply chain but also the consequences of the virus affected all the markets including the law market. Effectively, cross borders transactions, merger and acquisitions, due diligence and several deals were put on hold.

As the COVID-19 outbreak rapidly spreads, law firms are being cautious about the well-being of their people and clients are taking precautionary measures citing safety concerns and fears about the virus as the reason behind the workflow perturbation. Such precautions range from cancelling business trips, partnership annual global meetings, closing offices with remote working measures in addition to doing awareness campaigns, taking hygiene measurements, and other preemptive measures.

II- COVID-19's Impact on the Conduct of Litigation

Courts require the attendance of litigants or their legal representatives. Often other parties such as witnesses are required to attend, as well as court staff and, of course, the judges. In the presence of COVID-19, judicial authorities have taken preliminary measures (justified visits to justice palaces, fever measurements by infrared forehead thermometer, compulsory gloves and masks on), to decide afterwards closing the courts doors, suspend the proceedings and restricts the follow ups to critical cases namely in criminal sector¹. Such measurements delayed the deadlines, hearings, and issuance of judgments and decisions delaying the destiny of many serious cases.

In such emergencies, it is recommendable to consider new means and use technology in the courts during emergency situations such as conducting online judicial services (submitting the motions via email, conducting substantive hearings mainly in civil litigation via videoconference technology rather than physical hearings ...)²

The Council of Ministers in Lebanon held a meeting on 15/3/2020 and has declared general mobilization until March 29 at midnight, all deadlines are on hold during this period, due to the unfortunate current situation and the drastic spread of Corona virus.

¹ Decision of the Ministry Of Justice and Supreme Judicial Council in Lebanon dated 3/3/2020.

² Richard Susskind's latest book, *Online Courts and the Future of Justice* (OUP, 2019).

A draft law is currently being discussed in the Parliament to suspend the deadlines and set new deadlines in view of the exceptional circumstances the country is going through. No one will be subject to penalties for being unable to pay or do what is required during this period before the Ministry of Finance or before the real estate departments... for example, all these deadlines and their extensions will be determined by the law that the Parliament will approve when held.

The main decisions taken by The Council of Ministers of Lebanon impacting the business market are³:

- Closure of the airport and all terrestrial and maritime ports from Wednesday 18/3/2020 until midnight 29/3/2020 however some exceptions apply.
- Closure of public administrations, institutions and municipalities ,except for:
 - The essential work in ministries, public administrations, public institutions and municipalities, according to a mechanism issued by the ministers or the competent authority, under the responsibility of those who violate those decisions.
 - The Bank of Lebanon and all banks in coordination with the Banks Association, money transfer companies and institutions and exchange institutions, with the minimum necessary to ensure the requirements of their daily operations.
- Suspension of work in companies, private institutions and commercial shops of all kinds, and offices of liberal professions, taking into consideration urgent matters related to the work circumstances, in coordination with the syndicates of such liberal professions except for certain professions like bakeries...
- The Ministry of Justice is assigned to prepare the necessary texts to suspend legal, judicial, administrative and contractual deadlines as of October 18, 2019.

III- COVID-19 impacted the Implementation of Legal Commitments

Coronavirus could impede contracting parties to perform their contractual obligations under many types of contracts especially those requiring travel or involving the delivery of goods and services.

³ Minutes number 11 of the Council of Ministers meeting held on 15/3/2020 resolution number 1.

To begin with, each person is legally bound to preserve public health according to articles 604 and 606 of the Lebanese penal code, anyone who by carelessness, negligence or non-observance of laws or regulations, has spread a contagious human disease will be punished. ⁴ Not taking appropriate measures in order to fight any epidemic, disease or any alive being that can be a danger to health is subject to prison and penalties.⁵

In response to the escalating coronavirus (COVID-19) crisis, which was officially declared a global pandemic by the World Health Organization (WHO), the contracting parties should implement changes to their contracts.

IV- Can the Virus be considered a “Force Majeure” Event?

A “force majeure” is an unforeseeable, unavoidable and beyond the parties’ control event that renders contractual performance too difficult or even impossible leading sometimes to termination if exceeding a certain period of time. ⁶

Commercial contracts usually stipulate provisions pertaining to parties’ rights in the event of a so-called “force majeure” event.

In the context of coronavirus outbreak, the right to assert force majeure is typically governed by the provisions of the contracts and the parties’ obligations will depend on, among other factors:

- the contract stipulates the reasons("epidemic" or "pandemic" or in more general terms such as "disease" or "illness")and the consequences of force majeure event (suspension of performance or termination);
- the factors listed in that the contract entailing force majeure event;
- the extent to which coronavirus actually prevented the party from performing its contractual obligations, delayed it or made it more expensive; and
- Whether the party alleging force majeure was able to mitigate the effects of coronavirus thus able to perform its contractual obligations.

⁴ Article 604 of the Lebanese penal code.

⁵ Article 606 of the Lebanese penal code.

⁶ Legal Dictionary - Law.com. (2020). Retrieved 12 March 2020, from <http://dictionary.law.com/Default.aspx?selected=796>

In the absence of the above listed factors, the parties may need to consider the application of the “frustration of purpose” theory which excuses a party from performing its contractual obligations in the event the subject matter of the contract or the means of performance have been destroyed, resulting in the impossibility of performance; or the main purpose of the contract has been frustrated by an event that the parties could not have reasonably foreseen at the time of the contract formation. In this regard, many courts decisions affirmed that SARS constituted Force Majeure. The SARS outbreak in 2002 and 2003, in many aspects, is similar to the current COVID-19 outbreak.

A final judgment made by the Shaanxi Tongchuan Medium People’s Court on 29 June 2015 stated that from 28 April 2003 to 20 May 2003, SARS constituted Force Majeure and that the contractual parties shall not be liable for losses occurred during this period⁷. Also, the PRC Supreme People’s Court ruled on 2 September 2016 that in the specific case in question SARS constituted Force Majeure.⁸

Concerning the destiny of the contracts in the presence of coronavirus, their effective dates play a crucial role in determining whether coronavirus constitutes force majeure event or frustration of purpose.

For example, in Lebanon a tenant may not pay the rental allowance under these circumstances once the general mobilization has been announced, any dispute that may arise between the landlord and the tenant regarding the payment of the rent must be related to the force majeure. The latter exempts the tenant from his judicial responsibility.

Those contracts entered into before December of 2019 may evidence frustration of purpose or force majeure because they merely could not anticipate a pandemic occurring shortly pursuant to the signature date.

Nowadays and as of December 2019, pandemic may be listed amongst force majeure events or as a frustration of purpose as the parties entering into a contract should negotiate the impact of coronavirus being noticeably foreseeable.⁹

The qualification of force majeure will always be subject to the sovereign appreciation of the judges who will determine if the epidemic of coronavirus (Covid-19) constituted an event of force majeure according to the facts of each case.

Since every deal and every project is unique, we recommend consulting with an attorney at law for the evaluation of the impact of coronavirus on the ongoing contract.

⁷ [2015] Tong Zhong Min Er Zhong Zi No. 00030

⁸ [2016] Zui Gao Fa Min Zai No. 220

⁹ Saint-Denis de la Réunion, 29 déc. 2009