

COMPLIANCE WITH CONTRACTS IN A PANDEMIC SCENARIO

An Overview according to the Brazilian Law

Is the **Covid-19** disease pandemic caused by the rapid expansion of the **Coronavirus** in the world, by itself, a case for **force majeure**? Can I claim **excessive burdensome** and ask for the **termination** of a contract? What about my clients? Can they choose **not to comply** with what was agreed because of this scenario?

General Premise

Bear in mind that the concepts of **force majeure** and **excessive burden** should not be considered generically, in the abstract. They both occur in the **specific case**. In other words, the existence of the pandemic and/or its effects neither necessarily mean a case of force majeure or excessive burdensome under its contract, nor does it automatically authorize a party to breach its obligations and/or to consider the contract as extinct.

Force Majeure

It is necessary to analyze whether the pandemic scenario and/or its repercussions (for example, the enactment of new laws, impositions by public authorities, physical or factual restrictions) would prevent and/or hinder the fulfillment of the obligations and/or the terms of the contract **inevitably** (the causal relationship between the event of force majeure and the **effective impossibility of complying** with obligations).

Excessive Burden

In addition to the analysis between **cause and effect** in the specific case and the **unpredictability**, consider that the panorama imposed by the Covid-19 pandemic has brought and will bring repercussions for all, in different degrees of severity and importance, according to several factors. Therefore, the situation of **extreme advantage** for only one party may not be present. The termination for excessive burden is an **extraordinary measure**, especially in the situation brought by the coronavirus, in which the **preservation of the relationships** to the maximum possible extent is so important.

WHAT NOW?

The moment calls for
caution, as well as
flexibility and creativity.

Analyze each situation individually.

Be proactive – Do not wait for the contractual relationship to become critical to analyze the possibilities.

Study alternative forms of solution. Extending terms, discounts, reductions of scope, even for a limited time, can be feasible and sustainable options.

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