

Despite decline in the spread of COVID-19, force majeure (vis maior) unfortunately remains a central issue for many economic operators

Although the COVID-19 virus appears to spread more slowly, which will hopefully not change, the issue of force majeure (vis maior) may be the subject of many disputes, lawsuits in the near future, and unfortunately we may have to reckon with a second wave of the pandemic. Therefore, we still shall keep our eye on the regulations regarding force majeure

If force majeure might be the case, 6:142 § of Hungarian Civil Code shall be examined, which stipulates that a party is released from liability for damages caused to the other party by breach of contract if it proves that the breach was caused by a circumstance beyond its control which was unforeseeable at the time of concluding the contract and could not be expected to avoid this condition or repair the damage. Let us have a look on the examination of this regulation.

1. A description of the existence of force majeure, i.e. the circumstances of the event

The COVID-19 pandemic is an exceptional pandemic of an exceptional nature, unavoidable by the contracting parties, which the contracting parties could not have foreseen when concluding the contract or placing the orders in question, and which was due to external circumstances and events beyond the control of the contracting parties.

All this corresponds to the concept laid down by the Hungarian judicial practice (especially the case law of Curia), according to which force majeure means an "irresistible force" of natural or human origin, which is of an absolute nature, i.e. it cannot be prevented by means available to people.

2. Determining the effect of force majeure, i.e. the impediment to the performance

The significant decline in the activities of many companies, the significant closure of their stores and the resulting drop in turnover can be directly linked to the pandemic as an unavoidable circumstance, the effects of which have not been resolved after the current downturns (e.g. tourism, automotive industry), furthermore others was forced to cease their entire operation.

In view of this, the company, in its economic situation due to the pandemic, is not able to fulfill its contractual payment obligations through no fault of its own.

3. Exclusion of the liability, lack of applicability of legal consequences

If the force majeure is fulfilled regarding the operation and economic situation of the given company's, according to 6:142 § of Civil Code, the liability of the company is excluded for non-fulfillment of its contractual obligations.

That is, the company is not obliged to pay until the economic effect of the situation caused by force majeure on the company ceases. Thus, the company is not burdened by the legal consequences of non-payment during the period of force majeure.

4. Mitigation, increased obligation to cooperate

Of course, as a party affected by force majeure, the company is obliged to make all reasonable efforts to prevent, eliminate, avoid or mitigate the effects and consequences of force majeure as far as possible, and the contracting parties are obliged to cooperate more in eliminating the effects of force majeure. Furthermore, both parties are obliged to cooperate in order to mitigate

the consequences of force majeure. Reasonable alternatives might be e.g. return of goods, installment payment, further payment rebate.

5. Determination of force majeure

The occurrence, the circumstances and the effects of force majeure regarding the company concerned should be communicated directly to the business partner and tried to be enforced on this way. If the partner refuses to take this into account, there is a legal obligation to negotiate in B2B connections before the lawsuit is filed, and only then will the possibility be open to sue if these are ineffective.

All this must be taken into account when handling any claims based on force majeure or in the event of litigation. If you have any further questions on the subject, we are at your disposal.