

Legal Alert of Uzbekistan

Legal consequences of restrictions imposed in connection with coronavirus disease (COVID-19): some features of the force majeure clause.

Contact information



Dinara Tanasheva, LL.M.
Partner, Tax & Law Services
Leader for Kazakhstan and Central Asia
Phone: +7 (727) 258 59 60
Dinara.S.Tanasheva@kz.ey.com



Zafar Vakhidov
Director, Tax & Law
Phone: +998 (78) 140 64 82
Zafar.Vakhidov@uz.ey.com

The success of international commercial activities depends on the timely fulfillment of the obligations assumed by the parties. However, due to the current outbreak of coronavirus disease (COVID-19) and government response measures aimed at preventing its spread, there may be cases of non-fulfillment or improper fulfillment of obligations. In this regard, the conditions for exemption from liability in the law or in contracts play a very important role in practice.

In accordance with the United Nations Convention on Contracts for the International Sale of Goods, a party is not liable for a failure to perform any of his obligations if he proves that the failure was due to an impediment beyond his control and that he could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it, or its consequences.

The Uzbekistan legislation also envisages the conditions of exemption from liability. Thus, according to the Civil Law of the Republic of Uzbekistan, a party which has not performed an obligation or has performed an obligation in an improper manner shall bear liability unless he proves that proper performance became impossible as the result of force majeure.

In order to prevent the spread of coronavirus disease (COVID-19) and protect the life and health, the government has taken a number of restrictive measures. Thus, in accordance with the Resolution of the Special Republican Commission for the Preparation of a Program of Measures to Prevent the Spread of a New Type of Coronavirus in the Republic of Uzbekistan:

- regular flights between the Republic of Uzbekistan and all foreign countries have been suspended;
- citizens of foreign countries and stateless persons (with the exception of permanent residents of the Republic), as well as passenger vehicles (buses, cars and railway vehicles) were prohibited from entering the territory of the Republic of Uzbekistan through all checkpoints across the state border;
- all entertainment venues and activities have been suspended;
- all types of public events have been suspended, including celebrations and sport competitions;
- all enterprises and institutions in Tashkent city, regardless of their form of ownership, were required to provide their employees with regular vacations or organize their work remotely (online or distance);

- in Tashkent city, all markets and shops, with the exception of grocery stores and pharmacies, have temporarily ceased operations.

Moreover, the Presidential Decree On the Priority Measures to Mitigate the Negative Impact on the Sectors of the Economy of the Coronavirus Pandemic and Global Crisis (hereinafter – the "Decree") established that the Ministry of Investment and Foreign Trade of the Republic of Uzbekistan (hereinafter – the "Ministry"), the Chamber of Commerce and Industry of the Republic of Uzbekistan shall within three days publish official notification of force majeure for the duration of the above restrictions.

Therefore, these circumstances may be basis for exemption from liability. Further, the agreement may be terminated due to force majeure, if the agreement of the parties provides for this.

What is a force majeure?

According to the current Uzbekistan legislation, force majeure is an emergency, unavoidable and unforeseen circumstances caused by natural phenomena or socio-economic circumstances that does not depend on the will and actions of the parties, in connection with which they cannot fulfill their obligations.

The legislation does not directly provide that a pandemic or an epidemic is a force majeure circumstance, but the abovementioned restrictive measures taken by the government are force majeure circumstances. Moreover, in accordance with the Tax Code of the Republic of Uzbekistan, a force majeure circumstances excluding the guilt of a person in committing a tax violation are established by the presence of well-known facts, publications in the media and other means that do not need special sources of evidence.

How to confirm a force majeure?

In general, if the parties to an international transaction have doubts about the occurrence of force majeure and their consequences to contract performance, a party to the contract, for which the fulfillment of obligations was impossible due to force majeure may submit a written application to the Ministry for confirmation of the force majeure circumstances. The Ministry does not issue certificates for local (within Uzbekistan) transactions.

The Ministry issues a certificate within 20 (twenty) business days from the date of submission of the application with all required documents. Nonetheless, in accordance with the Decree, the Ministry is now obliged to issue the certificates for the period of restrictions caused by coronavirus disease (COVID-19) at the request of any business entity in 1 (one) day.

The Ministry may refuse to issue a certificate in the following cases:

- force majeure circumstances specified in the application are not established (hardly applicable to the above circumstances);
- false or distorted information in the submitted documents;
- if the Ministry has concluded that the force majeure circumstances specified by the applicant are not the reason for non-performance of the applicant's obligations.

Can force majeure serve as a basis for termination of the contract?

As a general rule, force majeure is not a ground for termination of the contract. However, the contract may provide for a maximum duration of force majeure, after which any party have the right to terminate the contract, as well also for other force majeure related terms. The term for notifying the other party of the occurrence of force majeure are also usually set by the contract.

What are the other bases for termination of the contract in the Republic of Uzbekistan?

Pursuant to Uzbekistan civil law, a substantial change of circumstances from which the parties proceeded in the conclusion of the contract is a basis for its change or termination. A change of circumstances shall be considered substantial when they have changed to the extent that, if the parties could have reasonably foreseen this, the contract would not have been concluded by them at all or would have been concluded on significantly different terms.

If the parties have not reached an agreement to change the terms of the contract in accordance with substantially changed circumstances or to terminate it, the contract may be amended or terminated by court if the following conditions are simultaneously present:

- at the time of the conclusion of the contract the parties proceeded on the basis that such a change of circumstances would not occur;
- the change of circumstances was brought about by causes that the interested party could not overcome after they arose with the degree of conscientiousness and circumspection that was demanded of it by the nature of the contract and the conditions of commerce;
- performance of a contract without change of its terms would so disturb the correlation of the contract-related property interests of the parties and would entail such damage for the interested party that it, to a significant degree, would be deprived of that which it had the right to expect upon conclusion of the contract;
- it does not follow from the customs of commerce or the nature of the contract that the risk of change of circumstances is borne by the interested party.

In case of termination of the contract due to substantially changed circumstances, a court, on demand of one of the parties, shall determine the consequences of termination of the contract proceeding from the necessity of just distribution among the parties of the expenditures borne by them in connection with the performance of this contract.

Thus, in order to amend or terminate the contract in connection with the pandemic, it is necessary: (1) to obtain a certificate for confirmation of the force majeure circumstances, and (2) if the other party does not agree with this qualification to apply to the court for forced termination or amendment of contract.

We hope that provided information will be useful to you. The following specialists can answer your additional questions:

Dinara Tanasheva, LL.M.
Partner, Tax & Law Services Leader
for Kazakhstan and Central Asia
Phone: +7 (727) 258 5960
Dinara.s.tanasheva@kz.ey.com

Zafar Vakhidov
Director, Tax & Law
Phone: +7 (727) 258 5960
Zafar.Vakhidov@uz.ey.com

This publication has been carefully prepared, but it necessarily contains information in summary form and is therefore intended for general guidance only, and is not intended to be a substitute for detailed research or the exercise of professional judgment. Ernst & Young can accept no responsibility for loss occasioned to any person acting or refraining from action as a result of any material in this publication.
On any specific matter, reference should be made to the appropriate adviser.

About EY

EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

EY works together with companies across the CIS and assists them in realizing their business goals. 5,500 professionals work at 19 CIS offices (in Moscow, St. Petersburg, Novosibirsk, Ekaterinburg, Kazan, Krasnodar, Rostov-on-Don, Togliatti, Vladivostok, Almaty, Nur-Sultan, Atyrau, Bishkek, Baku, Kyiv, Tashkent, Tbilisi, Yerevan, and Minsk).

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information about our organization, please visit ey.com.

For more information about our organization, please visit www.ey.com

EY Offices

Almaty	+7 727 258 5960
Nur-Sultan	+7 7172 58 0400
Atyrau	+7 7122 99 6099
Baku	+994 (12) 490 7020
Bishkek	+996 312 391 713
Donetsk	+380 (62) 340 4770
Ekaterinburg	+7 (343) 378 4900
Yerevan	+374 (10) 500 790
Kazan	+7 (843) 567 3333
Kyiv	+380 (44) 490 3000
Krasnodar	(+7861) 210 1212
Minsk	+375 (17) 209 4535
Moscow	+7 (495) 755 9700
Novosibirsk	+7 (383) 211 9007
St. Petersburg	+7 (812) 703 7800
Tashkent	+998 (78) 140 6482
Tbilisi	+995 (32) 43 9375
Togliatti	+7 (8482) 99 9777
Yuzhno-Sakhalinsk	+7 (4242) 49 9090

www.ey.com/en_uz

© 2020 Ernst & Young LLC Audit Organization
// JV Ernst & Young Advisory LLC

All Rights Reserved.