
COVID-19 and the legal implications of Force Majeure in Mexico.

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As we know, the COVID-19, commonly known as “coronavirus” has led to a worldwide pandemic; the reports of the World Health Organization (“WHO”) have established extreme contingency measures that everyone should follow in order to reduce further infections. The contingency measures have escalated quickly, and in some countries a state of emergency has been declared; this has started to affect or limit the continued conduction of business as usual. It is clear that the COVID-19 will have a great impact in our lives, and also in our businesses and legal transactions.

Among other precautionary measures, the pandemic is now causing the closing of airports, public places, transport services and distribution channels, which will likely compromise production and distribution channels, and could potentially result in defaulting obligations. In this respect, Mexican law, as well as most civil and commercial contracts, contemplate this sort of scenarios, especially within the clause known as force majeure, sometimes also referred as “acts of god”.

The concept of force majeure refers to unavoidable events, whether foreseeable or unforeseeable, that prevent the fulfilment of a legal obligation. In this regard, and taking into consideration that many countries have now declared a state of emergency due to the pandemic, and a similar reaction may be soon expected from Mexico with the intention of confronting the pandemic, it is likely that we will get to a point in which some of the obligations contained in both domestic and international contracts will be as deferred or even extinguished by one of the parties under this criteria, alleging that the obligations could not be fulfilled due to a force majeure situation in relation to COVID-19.

When recognizing force majeure, Mexican law makes reference to an impediment in the fulfilment of the contractual obligations whether altogether, or in a temporary manner, consequently opening the possibility so the contractual obligations may be extinguished or deferred without generating any liability or penalty to the responsible party derived from the default. It is clear that the fact that any of the parties choosing to suspend, interrupt or postpone the contractual obligations could compromise both the cash flow and also the operation of both parties, besides generating a potential chain reaction with other economic entities and activities. The contractual defaults that could be incurred in each case will vary significantly; therefore, the case by case analysis of this situation is essential.

In consideration of the foregoing, we recommend that your business contemplates a proper diagnosis of the force majeure provisions in relation to the most sensitive and relevant contracts of your business and as part of your business continuity plan, looking to identify the actions that can be taken to mitigate or foresee and prevent the effects of any potential interruption or extinction of any such contractual obligations, and as the case may be, determine an action plan for the company which may contemplate the documentation of the facts and immediate notifications to any

counterpart under a contract in which the company may be affected through the enforcement of force majeure provisions.

We are convinced that the sooner that preventive measures are taken and the involved risks are calculated, the company will be in better chances to move forward with the lesser possible effects.

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