

Covid-19 Impact on Luxembourg Contractual Obligations



In this unprecedented health crisis, many economic actors are facing the impossibility of fulfilling their contractual obligations or do not wish to honour them because they are no longer commercially viable.

As numerous contracts expressly provide for force majeure or material adverse change clauses, the parties will have to analyse if the current situation is covered by these contractual provisions and how they will deal with this scenario.

In the absence of relevant specific clauses, what are the possibilities offered by Luxembourg law?

The legal concept of force majeure

The debtor of an obligation may invoke force majeure to dissolve a contract or exonerate himself from any liability towards his co-contractor.

Without going into detail, force majeure is a legal concept provided for in our law to remedy an unforeseeable and uncon-

trollable situation at the time of entering into a contractual commitment that makes it impossible to perform the agreed contractual obligation.

The current pandemic and related safety measures (forced closures and containment) will certainly be considered by the courts as an unforeseeable event – at least with respect to contracts entered into sufficiently in advance of the spread of the disease.

In order to claim the dissolution of a contract, its impossibility of performance must be total and definitive. A temporary or partial impossibility will not constitute a case of force majeure. A temporary impossibility may, however, lead to a temporary suspension of the agreed obligations.

Therefore, force majeure does not relieve debtors that could theoretically comply with their contractual obligations but no longer wish to because, given the current situation, their contracts are no longer commercially viable. These specific debtors could find relief in the application of the legal unpredictability doctrine (*imprévision*).

The legal doctrine of unpredictability (*imprévision*)

Our courts have until now taken a very cautious approach in the application of this doctrine.

Based on the limited available case law, the minimum conditions to be met to benefit from this doctrine are the following:

- (i) the contract must contain reciprocal obligations (i.e. both parties have obligations according to the contract),
- (ii) these obligations have to be continuing obligations to be performed over time (e.g. a maintenance contract for several years), and
- (iii) the economic changes that have occurred during the performance of the contract, justifying its revision must be significant, have escaped the reasonableness of the forecasts and the action of the parties.



If these conditions are met, the debtor will have elements to argue for the dissolution of the contract.

There is no doubt that this concept will be the subject of numerous discussions before our courts given that the current events could not have been reasonably anticipated.

In light of the above, it should be stressed that the current pandemic does not automatically entitle a contracting party to a unilateral termination of its obligation and that every situation should be thoroughly assessed on a case-by-case basis.

Your Contacts at Luther



Mathieu Laurent

Avocat à la Cour, Partner
Luther S.A. Luxembourg
P +352 27484 662
mathieu.laurent@
luther-lawfirm.com



Robert Goerend

Avocat à la Cour,
Senior Associate
Luther S.A. Luxembourg
P +352 27484 665
robert.goerend@
luther-lawfirm.com



Marie Romero

Avocat à la Cour,
Senior Associate
Luther S.A. Luxembourg
P +352 27484 666
marie.romero@
luther-lawfirm.com