



EY Global Law Covid-19 Tracker – Force Majeure

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Introductory text

- ▶ This document provides a snapshot of the legal position on force majeure in more than 40 jurisdictions around the world.
- ▶ Policy changes and new legislation is being proposed and implemented on a daily basis. Court judgments are being handed down on this topic all over world.
- ▶ This document, therefore, is updated on an ongoing basis but should not be relied upon as legal advice. It is designed to support conversations about policies that have been proposed or implemented in key jurisdictions
- ▶ You should consult with your local EY Law team to check for the latest developments. In addition, please note that not all jurisdictions are reflected in this document.

As the spread of the coronavirus (Covid-19) continues to accelerate throughout the world, it is essential for businesses to stay agile. This particularly applies to multinational companies working across many different jurisdictions, having to take into account varying legal regulations.

In this tracker, EY Law professionals maintain an overview of the law as it relates to a key topic at this challenging time – the Force Majeure clause. Typically a clause in every organization’s standard terms and conditions, legal teams are spending a lot of time thinking about how it applies in a Covid-19 context. We have put together a summary of the legislation, regulations, case law and doctrines, where applicable, as it relates to force majeure in more than 40 countries around the world.

Staying informed of the latest information will be essential in adapting to the new business landscape we are now facing. EY’s local corporate and commercial law [professionals in your jurisdiction](#) are available to discuss your specific queries. We will continue to update this document as further information comes to hand.

With best wishes,



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EY teams have developed additional trackers to help you follow changes on our dedicated [ey.com](#) page [here](#), including:

- ▶ [Immigration Policy](#)
- ▶ [Labor and Employment Law](#)
- ▶ [Tax Controversy](#)

EY professionals are updating the trackers regularly as the situation continues to develop.

Jurisdictions covered

Albania	Bulgaria	El Salvador	Hong Kong	North Macedonia	Singapore	United Kingdom
Argentina	Canada	Finland	Hungary	The Netherlands	Slovakia	Uruguay
Austria	Chile	France	Italy	Paraguay	Spain	Uzbekistan
Australia	China Mainland	Georgia	Japan	Poland	Sweden	Vietnam
Belgium	Colombia	Germany	Kazakhstan	Portugal	Switzerland	
Bosnia and Herzegovina	Denmark	Guatemala	Lithuania	Russia	Ukraine	
Brazil	Dominican Republic	Honduras	Luxembourg	Serbia	United Arab Emirates	

(1) Can a contracting party use the concept of force majeure in the context of Covid-19 in your jurisdiction to justify not performing its obligations under an agreement? If not defined in an agreement, how difficult is it to prove that a pandemic/epidemic is a force majeure event in your jurisdiction?

In Albania, the concept of force majeure per se is not explicitly defined by law, but it is generally accepted that it is an event that cannot be reasonably controlled and is caused by natural causes such as earthquakes, fires, flooding etc.

As regards epidemic/pandemic diseases, there is no legal definition or any unified case law practice for their treatment as force majeure. However, based on specifics of the case at hand, there are grounds that the emergency situation followed by the restrictive measures undertaken by the government in Albania, is considered as force majeure.

(1.1) Does pandemic/epidemic need to be defined in an agreement as a force majeure event in order to be valid in your jurisdiction?

See response to Q1.

(1.2) Is a pandemic/an epidemic a force majeure event stipulated by law, case law or regulation in your jurisdiction?

See response to Q1.

(2) Does the force majeure trigger the right of suspension or termination of the agreement or are there other criteria to consider?

There is no specific definition in the law about the duration of the suspension or the termination of the contract.

(2.1) In the former case (suspension), for how long would the agreement be suspended (again case law, law)?

See response to Q2.

(2.2) Does the right to suspend also automatically lead to the right to terminate if the force majeure event continues?

See response to Q2.

(3) If the concept of force majeure is unknown in your jurisdiction, are there any other valid arguments to justify the non-performance of a party's obligations?

See response to Q1.

(1) Can a contracting party use the concept of force majeure in the context of Covid-19 in your jurisdiction to justify not performing its obligations under an agreement? If not defined in an agreement, how difficult is it to prove that a pandemic/epidemic is a force majeure event in your jurisdiction?

Even when not specifically defined in an agreement, the Argentine law provides for a definition of force majeure and considers it as an exonerating circumstance in contractual relationships, except if otherwise agreed upon by the parties (e.g. if they agree that one of them assumes the consequences of a force majeure event).

In this regard, section 1730 of the Argentine Civil and Commercial Code (CCC) defines force majeure as “the event that could not be foreseen or that, having been foreseen, could not be avoided. The fortuitous case or force majeure exempts [the affected party] from liability, unless otherwise provided”. Force majeure in Argentina is typically an exceptional case of restrictive interpretation, and its evidence must be full and conclusive, it is an exception of the general principle of effective performance in matter of contracts. Parties must act with due care and foresight, but certain events beyond their control may be considered a force majeure situation.

(1.1) Does pandemic/epidemic need to be defined in an agreement as a force majeure event in order to be valid in your jurisdiction?

When dealing with an epidemic or pandemic event, circumstances such as publicity, media coverage, government measures, and all kinds of consequences around the globe or domestically, that are of common knowledge and available to the general public, could ease the evidence of such event. Likewise, government measures trying to contain the spread of an epidemic (such as suspension of massive events, travel bans, delays in performance, isolation orders, etc.) are very likely to be considered as an act-of-government-caused force majeure event (in Argentina, officially publicized government acts do not even need to be proved by the alleging party). As a rule, unless specifically excluded by the parties in the agreement, epidemic or pandemic events are likely to be considered force majeure events.

In fact, the qualification of force majeure may depend on the circumstances of each particular contract and the reasonable foreseeability that an act or event could have (i.e. in the event of a pandemic, it is likely that governments would impose travel bans, so the discussion would turn around the nature of the obligation, the likelihood of such government measure to happen, and if the parties could have foreseen such measures). It is likely that a court would, in the case of a ruling that exempts the liability of a non-performing party, provide for an equitable solution to the best of its ability. Since there is not a closed list of situations that would configure a force majeure event, it is not strictly necessary to define epidemic/pandemic in an agreement in order to consider such event a force majeure scenario. In this regard the definition provided by law is broad enough to cover such events and many others.

Hence, an epidemic/pandemic, such as any other catastrophic event or situation that would exceed the ability of a party to control the outcome or performance of any given obligation, as long as it is reasonable (i.e. earthquake, tsunami, etc.), is a textbook definition of a force majeure event, and falls into the definition provided by section 1730 of CCC.

(1.2) Is a pandemic/an epidemic a force majeure event stipulated by law, case law or regulation in your jurisdiction?

A pandemic/epidemic can be considered a force majeure event under the Argentine law. Furthermore, other local regulations from the health enforcement authorities may also ratify such situation when the event arises.

(2) Does the force majeure trigger the right of suspension or termination of the agreement or are there other criteria to consider?

Upon occurrence of a force majeure event, the Argentine law foresees the possibility to suspend or have the obligations assumed definitively extinguished, depending on the impact of such event in the contract and obligations arising therefrom (sections 955 and 956 of the CCC). Moreover, the local law provides for two cases which might apply to force majeure events, entitling one of the parties to suspend the execution of its obligations arising from a contractual relationship:

(i) In bilateral contracts, when the parties must comply simultaneously, one of them may suspend the performance of its obligations, until the other meets or offers to comply, if so far it has not yet done it or is unable to do so; and

(ii) a party may suspend performing its obligations if it suffers a serious threat of harm to its rights because the other party has suffered a significant impairment in its ability to comply (e.g. to withhold payments if the other party would become quarantined or isolated and unable to perform certain obligation, thus threatening the rights of the complying party). The limitation of liability provided by Section 1730 of the CCC would not apply if a force majeure situation is adduced in an abusive way or breaching the good-faith principle. We must highlight that, when ruling on a contractual dispute, courts must consider the principle of inalterability of the contract and good faith principles.

(2.1) In the former case (suspension), for how long would the agreement be suspended (again case law, law)?

See response to Q2.

(2.2) Does the right to suspend also automatically lead to the right to terminate if the force majeure event continues?

See response to Q2.

(3) If the concept of force majeure is unknown in your jurisdiction, are there any other valid arguments to justify the non-performance of a party's obligations in your jurisdiction?

Considering the previous answers, this question would not apply.

(1) Can a contracting party use the concept of force majeure in the context of Covid-19 in your jurisdiction to justify not performing its obligations under an agreement? If not defined in an agreement, how difficult is it to prove that a pandemic/epidemic is a force majeure event in your jurisdiction?

In Australia, force majeure is a contractual concept, and the scope and effect of a force majeure clause is determined on a case-by-case basis, by reference to the wording of the clause and the relevant facts. As a general rule, force majeure clauses will not be implied into contracts.

A contracting party can invoke a force majeure clause in the context of Covid-19 to justify non-performance if there is a clause to that effect in the contract, and Covid-19 within the defined force majeure events. Contracting parties will need to consider if the outbreak of Covid-19 is genuinely a force majeure event in the context of the contract, i.e. whether the pandemic has caused real restrictions that prevent the affected party from performing its contractual obligations. This will depend on how the force majeure clause is drafted and how the clause can be interpreted.

The effect of the force majeure clause differs between contracts and may not confine to non-performance. Common consequences of activating a force majeure clause include suspension of contractual obligations, excuse from liability for non-performance or delay, termination of contract, extensions of time, renegotiation of certain terms or certain contract remediation or governance measures.

A clause which refers to force majeure without defining the event or specifying its scope in content and consequence could be void for uncertainty.

If the contract does not contain a force majeure clause, the contracting parties may need to consider if the contract has been “frustrated”. Generally the requirements of frustration of contract are that the performance of the contract is completely impossible (e.g. not just delayed or somewhat impeded/more expensive to deliver). However, it should be noted that frustration terminates a contract, rather than suspend it.

(1.1) Does pandemic/epidemic need to be defined in an agreement as a force majeure event in order to be valid in your jurisdiction?

As stated in Q1 above, in order to invoke a force majeure clause, one of the conditions is that the defined events need to cover the relevant force majeure event. In the case of Covid-19 force majeure event, the defined events will need to cover epidemic/pandemic (Covid-19 has been classified as such). However, in some cases Covid-19 may not be the actual force majeure event. Other common categories of force majeure event that may be triggered by the Covid-19 crisis may include changes in law or regulation, acts of governmental authorities, the restriction or suspension of licences etc, and delays in transportation or communications.

(1.2) Is a pandemic/an epidemic a force majeure event stipulated by law, case law or regulation in your jurisdiction?

No

(2) Does the force majeure trigger the right of suspension or termination of the agreement or are there other criteria to consider?

Refer response to Q1 - rights would depend on the wording of the clause.

(2.1) In the former case (suspension), for how long would the agreement be suspended (again case law, law)?

Refer response to Q1 - rights would depend on the wording of the clause and whether it allowed for suspension. If so, the contract would define how long that suspension would be.

(2.2) Does the right to suspend also automatically lead to the right to terminate if the force majeure event continues?

Refer response to Q2.1 - this would depend on the contract (unless the doctrine of frustration applied, as per response to Q1.)

(3) If the concept of force majeure is unknown in your jurisdiction, are there any other valid arguments to justify the non-performance of a party's obligations in your jurisdiction?

Not applicable.

(1) Can a contracting party use the concept of force majeure in the context of Covid-19 in your jurisdiction to justify not performing its obligations under an agreement? If not defined in an agreement, how difficult is it to prove that a pandemic/epidemic is a force majeure event in your jurisdiction?

Yes, basically force majeure could be an option. However details would have to be clarified for every single case.

Proving a pandemic/epidemic is a force majeure event is not that easy, because it has to be proven by the debtor that the pandemic/epidemic has actually been the trigger for not performing the contractual obligations.

(1.1) Does pandemic/epidemic need to be defined in an agreement as a force majeure event in order to be valid in your jurisdiction?

It is advisable to define pandemic/epidemic as force majeure event in agreements. Austrian law does not explicitly define "force majeure". Nevertheless, it is generally known as coincident higher power of permanent or at least unforeseeable duration (following Sect. 1447 General Civil Code). Typical examples are war and natural disasters (earthquake, storm, flooding). A pandemic/an epidemic would most likely be qualified as a case of higher power too but the burden of proof for this rests with the debtor.

(1.2) Is a pandemic/an epidemic a force majeure event stipulated by law, case law or regulation in your jurisdiction?

No, a pandemic/an epidemic is not explicated governed as force majeure event by Austrian law. However, under the Austrian Act on Package Travel ("Pauschalreisegesetz"), which is based on the EU-directive 2015/2302, it is possible to withdraw from a journey due to exceptional or unavoidable circumstances. Outbreaks of serious diseases are qualified as such circumstances according to recital 31 of the EU-directive. Also, according to a labor law ruling of the Austrian Supreme Court ("OGH") a pandemic/an epidemic could be qualified a case of force majeure.

(2) Does the force majeure trigger the right of suspension or termination of the agreement or are there other criteria to consider?

In the case of force majeure, if not agreed otherwise, the contract will be terminated in its entirety. There is no suspension. However, in the case of partial impossibility, the contract shall be terminated partially only.

(2.1) In the former case (suspension), for how long would the agreement be suspended (again case law, law)?

Refer response to Q2.

(2.2) Does the right to suspend also automatically lead to the right to terminate if the force majeure event continues?

Refer response to Q2.

(3) If the concept of force majeure is unknown in your jurisdiction, are there any other valid arguments to justify the non-performance of a party's obligations in your jurisdiction?

Not applicable.

(1) Can a contracting party use the concept of force majeure in the context of Covid-19 in your jurisdiction to justify not performing its obligations under an agreement? If not defined in an agreement, how difficult is it to prove that a pandemic/epidemic is a force majeure event in your jurisdiction?

Please refer to the answers under Q1.1 and Q1.2.

(1.1) Does pandemic/epidemic need to be defined in an agreement as a force majeure event in order to be valid in your jurisdiction?

No. Where not mentioned/defined in the agreement, it remains possible to fall under the legal definition and prove that the case in question falls under the force majeure (please see next point for the requirements).

(1.2) Is a pandemic/an epidemic a force majeure event stipulated by law, case law or regulation in your jurisdiction?

Force majeure is generally admitted under Belgian law. It is included, however not extensively regulated under the Belgian Civil Law. Moreover, pandemic/epidemic is not included under the force majeure definition in the Belgian law.

For the event to be considered as force majeure, the alleged event or circumstance must meet the following cumulative criteria:

- ▶ Be unavoidable and unforeseeable.
- ▶ Not be attributable to the party who is seeking exemption from force majeure.
- ▶ Render performance of the agreement or obligation impossible.

There is a vast amount of doctrine discussing and debating different approaches and outlining the interpretation of the above criteria.

The concept of force majeure is reflected in the Belgian Civil Code under articles 1147 and 1148 of the Belgian Civil Code. The legal definition as outlined in these articles can be contractually extended, limited or clarified by the parties (parties can also include an exhaustive list of force majeure events). It is even advisable to provide for the conditions and consequences of the force majeure in the contract, as well as clearly mention which of the force majeure events could trigger the termination of the contract (if any). If the force majeure becomes permanent, it will, in principle, lead to the termination of the contract without retroactive effect.

The Covid-19 has been confirmed to be a force majeure event by National Employment Office of Belgium in the framework of the temporary unemployment.

(2) Does the force majeure trigger the right of suspension or termination of the agreement or are there other criteria to consider?

Belgian case law and doctrine makes a distinction between the temporary versus permanent force majeure. If the debtor is temporarily unable to perform the obligation under the agreement, the agreements is suspended and the debtor must carry it out as soon as they are able to perform their obligations, unless the agreement has lost any meaning or usefulness due to the delay. If the force majeure becomes permanent, it will, in principle, lead to the termination of the contract without retroactive effect.

It remains for the parties or the judge to decide whether the particular force majeure falls under the temporary or permanent. This remains the point of uncertainty in Belgium, however six criteria have been established in order to support the analysis. These criteria (which are not exhaustive nor decisive) help to determine whether the agreement still has its purpose and thus can be maintained once the circumstances which have led to a force majeure ceased to exist.

(2.1) In the former case (suspension), for how long would the agreement be suspended (again case law, law)?

See response to Q2.

(2.2) Does the right to suspend also automatically lead to the right to terminate if the force majeure event continues?

See response to Q2.

(3) If the concept of force majeure is unknown in your jurisdiction, are there any other valid arguments to justify the non-performance of a party's obligations in your jurisdiction?

As stated below, force majeure is known and generally accepted under Belgian law, falling under the general contract law. The parties can however contractually extend, limit and even exclude the situation accepted as force majeure under the Belgian law.

(1) Can a contracting party use the concept of force majeure in the context of Covid-19 in your jurisdiction to justify not performing its obligations under an agreement? If not defined in an agreement, how difficult is it to prove that a pandemic/epidemic is a force majeure event in your jurisdiction?

The Law on Contracts and Torts applicable in Bosnia and Herzegovina does not regulate the term “force majeure” as such. It does, however, regulate the legal institute impossibility of fulfilment of the obligation. This situation exists when the fulfilment of a contractual obligation by one contractual party became impossible due to circumstances for which that contracting party is not to blame. In this case, the obligation comes to an end, but the debtor affected by the inability to fulfil its obligations is obliged to prove the existence of the circumstances exempting him from liability.

Starting from the above mentioned, pandemic/epidemic must be directly correlated to the impossibility of fulfilment of obligation(s) of one or both parties, and affected party needs to be able to prove it.

(1.1) Does pandemic/epidemic need to be defined in an agreement as a force majeure event in order to be valid in your jurisdiction?

Although there is no obstacle to define it in an agreement, it will, ex lege, lead to termination of the agreement, or part of the agreement, if impossibility of fulfilment occurs. Please refer to response to Q1.

(1.2) Is a pandemic/an epidemic a force majeure event stipulated by law, case law or regulation in your jurisdiction?

No, there is no such provision in any Bosnian law or bylaw, nor there is similar court practice in this regard.

(2) Does the force majeure trigger the right of suspension or termination of the agreement or are there other criteria to consider?

As explained above, the force majeure is not regulated explicitly in the applicable laws. The impossibility of fulfilment of the obligation, however, leads to the contractual relation between the parties to end by force of law. In that case, each party that fulfilled any part of its obligation may request the restitution of the same.

If, however, disability of fulfillment is only partial, the other party may request to terminate the agreement if it is not interested in the partial fulfillment of the contractual obligation. Otherwise, the agreement remains in force and the other party can request proportional decrease of its obligation.

(2.1) In the former case (suspension), for how long would the agreement be suspended (again case law, law)?

See response to Q2.

(2.2) Does the right to suspend also automatically lead to the right to terminate if the force majeure event continues?

See response to Q2.

(3) If the concept of force majeure is unknown in your jurisdiction, are there any other valid arguments to justify the non-performance of a party's obligations in your jurisdiction?

See response to Q2.

(1) Can a contracting party use the concept of force majeure in the context of Covid-19 in your jurisdiction to justify not performing its obligations under an agreement? If not defined in an agreement, how difficult is it to prove that a pandemic/epidemic is a force majeure event in your jurisdiction?

It is important to keep in mind that this subject is highly dynamic and there are no legal precedents.

Taking as a reference the measures that have been adopted worldwide to contain Covid-19, as well as the severe financial repercussions of the pandemic, some companies may face the impossibility of complying with certain contractual obligations. In this context, it is important to analyze the legal consequences of a default, the legal characterization of the event that gave rise to non-compliance, including the possibility of configuring force majeure hypothesis or excessive burden.

The Brazilian Civil Code establishes that fortuitous event and force majeure exclude the liability of compensation for damage/prejudice occurred in the course of a contract. The concept adopted for fortuitous event is a natural event, or the event derived from the force of nature (like flood, Covid-19 or an earthquake). In turn, force majeure is known as the damage occurred from the act of someone else, like an invasion of territory, a war or the revolution, a theft, etc. Due to such events, there is no control of the circumstances by the Parties which extrapolates the "business risk", and that's why the supplier of goods or services is released from indemnifying due to possible damages.

Each claim must be analyzed on a case-by-case basis, considering the nature of the obligation, time and context of the assumption of the obligation, the event which gave rise to the breach and its estimated duration, as well as the financial and social consequences for the Parties involved.

(1.1) Does pandemic/epidemic need to be defined in an agreement as a force majeure event in order to be valid in your jurisdiction?

See response to Q1.

(1.2) Is a pandemic/an epidemic a force majeure event stipulated by law, case law or regulation in your jurisdiction?

See response to Q1.

(2) Does the force majeure trigger the right of suspension or termination of the agreement or are there other criteria to consider?

See response to Q1.

(2.1) In the former case (suspension), for how long would the agreement be suspended (again case law, law)?

See response to Q1.

(2.2) Does the right to suspend also automatically lead to the right to terminate if the force majeure event continues?

See response to Q1.

(3) If the concept of force majeure is unknown in your jurisdiction, are there any other valid arguments to justify the non-performance of a party's obligations in your jurisdiction?

See response to Q1.

(1) Can a contracting party use the concept of force majeure in the context of Covid-19 in your jurisdiction to justify not performing its obligations under an agreement? If not defined in an agreement, how difficult is it to prove that a pandemic/epidemic is a force majeure event in your jurisdiction?

According to Bulgarian law, force majeure is an unforeseen or unavoidable event of an extraordinary nature the consequences of which cannot be overcome, despite the efforts made.

Pandemic/epidemic may be a ground for force majeure, however subject to certain conditions, not in every case. The measures taken by the state in relation to a pandemic/epidemic when restricting/impeding the performance of specific obligations could be a force majeure.

Explicit criteria should be met and the presence or absence of force majeure should be examined on a case by case basis considering the following:

- ▶ Force majeure shall occur after the conclusion of the agreement;
- ▶ A direct link between the force majeure and the inability to fulfill the contractual obligations shall be present;
- ▶ If the debtor was already in default at the moment of occurrence of the force majeure, they may not invoke such;
- ▶ The case-law has consistently held that in demonstrating force majeure, it must be established in a clear manner that the party claiming the force majeure has done all in its powers but still could not prevent the consequences of the event;

- ▶ If a party was able to consider the force majeure circumstances in the light of its obligations under the particular agreement and failed to undertake some actions in order to prevent its default, force majeure could not be invoked by such party;

The evidence for a force majeure is specific for each case. In the scenario of Covid-19 pandemic/epidemic, the broad media coverage of the "epidemic" is not enough. Ground and evidence for force majeure may be a decree issued by the state authorities (e.g. the Council of Ministers) prohibiting public events, i.e. concerts, sport events, etc.; official order for placing a factory/office where infection has been detected under quarantine, etc. but this would not affect the traders which activity is not related to the specific restrictions imposed by the respective authority.

In the commercial practice, a special certificate is commonly used as a document proving force majeure. Bulgarian Chambers as the Bulgarian Chamber of Commerce and Industry (BCCI) and the Bulgarian Chamber of Commerce (BCC) issue certificates for force majeure which are usually accepted by the state and arbitration courts. In order to issue a force majeure certificate BCCI/BCC request evidences of the particular force majeure. Along with the official documents, additional documents could also be presented.

(1.1) Does pandemic/epidemic need to be defined in an agreement as a force majeure event in order to be valid in your jurisdiction?

Bulgarian law does not require force majeure or pandemic/epidemic to be explicitly defined in an agreement.

(1.2) Is a pandemic/an epidemic a force majeure event stipulated by law, case law or regulation in your jurisdiction?

Bulgarian law does not state which events should be considered as force majeure and do not define explicitly a pandemic/an epidemic. However, Bulgarian legal theory and case law provide some examples of force majeure: severe draught, flood, earthquake, embargo, moratorium, etc. Pandemic/epidemic may also be considered as a force majeure if all criteria set above are met. As stated in Q1, the mere existence of pandemic/epidemic is not sufficient to claim force majeure.

(2) Does the force majeure trigger the right of suspension or termination of the agreement or are there other criteria to consider?

Bulgarian law only refers to the right of suspension of the agreement in the event of force majeure. The suspension should last for the period during which the force majeure is present. The law does not provide explicit deadlines and does not refer to right to terminate the agreement on the ground of force majeure. Bulgarian Commercial Act also introduces six cumulative prerequisites in the presence of which the debtor is not liable for the default in the event of force majeure:

- ▶ The deal is commercial according to the meaning set in the Commercial Act;
- ▶ Force majeure has occurred;
- ▶ The debtor has informed the other party in writing in due time about the force majeure and its possible consequences for the execution of the agreement;
- ▶ The execution of obligation and respective counter-obligations are suspended for the duration of force majeure;
- ▶ The default of the party is caused by the force majeure;
- ▶ The execution of obligations continues immediately after the force majeure has ended.

However, when the other party no longer has interest in the fulfillment of the agreement, it may terminate it and in such case the party could be facing eventual claims for incurred damages by the first party if there are such.

(2.1) In the former case (suspension), for how long would the agreement be suspended (again case law, law)?

See response to Q2.

(2.2) Does the right to suspend also automatically lead to the right to terminate if the force majeure event continues?

See response to Q2.

(3) If the concept of force majeure is unknown in your jurisdiction, are there any other valid arguments to justify the non-performance of a party's obligations in your jurisdiction?

Not applicable as force majeure may be justified if all criteria set above are met.

(1) Can a contracting party use the concept of force majeure in the context of Covid-19 in your jurisdiction to justify not performing its obligations under an agreement? If not defined in an agreement, how difficult is it to prove that a pandemic/epidemic is a force majeure event in your jurisdiction?

In Canada, the concept of force majeure (FM) exists by virtue of contract and therefore must be included in a contract in order to be relied on. Most FM clauses in commercial contracts outline the circumstances that are said to be beyond the parties' control that could, if triggered, render the performance of the contract impossible. While some FM clauses do explicitly list "disease" as a circumstance (which could be applicable to Covid-19), others do not and, instead, rely on "catch all" phrases such as "any other cause beyond the party's control". For successful reliance on FM, the parties would likely have had to either expressly dealt with this concept in their contract through the inclusion of language such as "disease" or "pandemic" or through some type of catch-all language which could be argued includes a disease/pandemic like Covid-19. The precise drafting of the parties' contract is going to be important, as well as the specific facts/context of the situation, as these disputes are assessed on a case-by-case basis by the courts. A party would also have to demonstrate that there are no reasonable alternatives available to allow them to perform their obligations under the contract (note: if the contract is merely more difficult or expensive to honor – a typical FM provision would unlikely be triggered).

Ultimately, whether Covid-19 could constitute an event of FM is going to depend on the precise language of the contract, whether this type of circumstance was

contemplated in the drafting of the contract and the specific facts of the situation. As these are all fact based determinations, it is difficult to predict whether Covid-19 will generally constitute FM in commercial contracts. It should also be noted that any party claiming FM and an inability to fulfill contractual obligations, will likely have an obligation to continue to try and mitigate the impacts of their non-performance. The obligation to mitigate impact also applies to the party who would have benefited from the performance of the contract.

Canada does have a common law concept of "frustration" that could apply in circumstances where there is no FM clause included in a contract. Frustration occurs when an event happens after a party has entered into a contract which renders the obligations under the contract impossible to perform. Typically, the concept of frustration has a higher standard than FM and also results in a different outcome - depending on the wording of the FM, a contract could be suspended until the FM is no longer impacting the performance of the contract, whereas, the effect of frustration is normally to end the contractual relationship entirely between the parties. Again, whether this concept would apply (and be successful) is very fact specific and, as such, it is difficult to predict whether the impact of Covid-19 could lead a court to determine that a commercial contract has been frustrated.

(1.1) Does pandemic/epidemic need to be defined in an agreement as a force majeure event in order to be valid in your jurisdiction?

See response to Q1.

(1.2) Is a pandemic/an epidemic a force majeure event stipulated by law, case law or regulation in your jurisdiction?

See response to Q1.

(2) Does the force majeure trigger the right of suspension or termination of the agreement or are there other criteria to consider?

See response to Q1.

(2.1) In the former case (suspension), for how long would the agreement be suspended (again case law, law)?

See response to Q1.

(2.2) Does the right to suspend also automatically lead to the right to terminate if the force majeure event continues?

See response to Q1.

(3) If the concept of force majeure is unknown in your jurisdiction, are there any other valid arguments to justify the non-performance of a party's obligations in your jurisdiction?

See response to Q1.

(1) Can a contracting party use the concept of force majeure in the context of Covid-19 in your jurisdiction to justify not performing its obligations under an agreement? If not defined in an agreement, how difficult is it to prove that a pandemic/epidemic is a force majeure event in your jurisdiction?

It could. In Chile, the law does include force majeure as a cause to terminate an obligation, insofar as three elements are proved: unpredictability, irresistibility, and external nature.

As mentioned above, it may be quite difficult as the three elements need evidence. Nonetheless, Chilean legislation does provide that “notorious and public facts” may not need evidence to be supported.

(1.1) Does pandemic/epidemic need to be defined in an agreement as a force majeure event in order to be valid in your jurisdiction?

Not necessarily, though it would help.

(1.2) Is a pandemic/an epidemic a force majeure event stipulated by law, case law or regulation in your jurisdiction?

You could say that the broad definition may include a pandemic/epidemic insofar as the three abovementioned elements are met. However, it would depend on the actual circumstances of the party (as for some, for example, the Covid-19 situation may prove more damaging and irresistible to the fulfillment of the obligation than to others).

(2) Does the force majeure trigger the right of suspension or termination of the agreement or are there other criteria to consider?

Under Chilean law, force majeure would typically lead to termination.

(2.1) In the former case (suspension), for how long would the agreement be suspended (again case law, law)?

See response to Q2.

(2.2) Does the right to suspend also automatically lead to the right to terminate if the force majeure event continues?

See response to Q2.

(3) If the concept of force majeure is unknown in your jurisdiction, are there any other valid arguments to justify the non-performance of a party's obligations in your jurisdiction?

Not applicable.

(1) Can a contracting party use the concept of force majeure in the context of Covid-19 in your jurisdiction to justify not performing its obligations under an agreement? If not defined in an agreement, how difficult is it to prove that a pandemic/epidemic is a force majeure event in your jurisdiction?

In the past month, the Chinese courts have expressly confirmed that the outbreak of Covid-19 in Mainland China constitutes a force majeure event.

(1.1) Does pandemic/epidemic need to be defined in an agreement as a force majeure event in order to be valid in your jurisdiction?

See response to Q1.

(1.2) Is a pandemic/an epidemic a force majeure event stipulated by law, case law or regulation in your jurisdiction?

See response to Q1.

(2) Does the force majeure trigger the right of suspension or termination of the agreement or are there other criteria to consider?

If a contract or agreement is governed by Chinese law, the affected party is entitled to suspend performance or even terminate the contract without incurring any liabilities for such contractual breach in accordance with the Chinese Contract Law.

In order to balance and protect the interests of both of the contractual parties as well as encourage the parties to perform the contracts in good faith, the Chinese courts urge that if the contract can be performed during the epidemic outbreak period, both parties should be encouraged to continue to perform in accordance with the contract.

If one party is capable of performing the contract but refuses to perform, it shall be liable for breach of contract.

If the contract cannot be performed due to the influence of the epidemic, the parties concerned should vary the contract through negotiation, and their obligations shall be performed in the form of alternative performance or delayed performance.

If the purpose of the contract is frustrated due to the failure of alternative performance or delay in performance, the contract may be terminated upon the request of the parties.

(2.1) In the former case (suspension), for how long would the agreement be suspended (again case law, law)?

See response to Q2.

(2.2) Does the right to suspend also automatically lead to the right to terminate if the force majeure event continues?

See response to Q2.

(3) If the concept of force majeure is unknown in your jurisdiction, are there any other valid arguments to justify the non-performance of a party's obligations in your jurisdiction?

Not applicable.

(1) Can a contracting party use the concept of force majeure in the context of Covid-19 in your jurisdiction to justify not performing its obligations under an agreement? If not defined in an agreement, how difficult is it to prove that a pandemic/epidemic is a force majeure event in your jurisdiction?

The concept of force majeure is defined under Colombian Law as an exonerating circumstance of contractual obligations. According to articles 64 and 1604 of the Colombian Civil Code (CCC), in order to consider an event as force majeure, it must meet the following requirements:

- (i) Unforeseeable, considering that the parties could not reasonably predict the event because it's infrequent, exceptional, surprising, and improbable
- (ii) Irresistible, which means that it is objectively impossible to avoid it and to perform the obligation
- (iii) Unrelated to the debtor's negligence and, in general, to the parties' activities.

Additionally, Colombian law provides some examples of force majeure events that could apply in the context of Covid-19 such as the measures or acts exercised by the authorities, and even epidemics (see respectively articles 64 and 847 of the CCC). However, this is not considered to be a complete or exhaustive list. In the context of the Covid-19, it is important to note that the pandemic itself is not necessarily or automatically a force majeure event.

Nevertheless, the Colombian courts apply a restrictive interpretation for them to consider the force majeure as an exceptional case, and therefore a complete case-by-case analysis based on facts, time and circumstances is required.

The party seeking the application of force majeure shall have to prove its existence and explain how such event affects the fulfilment of its contractual obligations. In the Covid-19 case, the burden of proof can be eased whenever the event is deemed to be a well-known fact, or a government act or a law that tries to mitigate the spread of the pandemic. Nevertheless, the parties must demonstrate that the event fulfils all the requirements for force majeure.

The parties can include force majeure application within an agreement, defining the events and circumstances and even excluding its exonerating capacity, as far as it does not infringe the good faith principle and the requirements of the law. If they remain silent, the general provisions of the law might be applied.

Finally, if the event is not irresistible in the sense that performing the obligation is still possible but extremely hard or burdensome, the parties could refer to the recognition of hardship, which allows the parties to renegotiate the agreement as long as they continue to perform their obligations.

(1.1) Does pandemic/epidemic need to be defined in an agreement as a force majeure event in order to be valid in your jurisdiction?

As mentioned in Q1, the parties may not necessarily define a pandemic/epidemic as a force majeure event in order to pursue its application.

If they remain silent, the general provisions of the law will be applied. If there is no agreement between the parties regarding the force majeure event, the final decision would be taken by the judges or arbitrators (as applicable).

(1.2) Is a pandemic/an epidemic a force majeure event stipulated by law, case law or regulation in your jurisdiction?

Colombian law includes a general definition of force majeure, as explained in Q1.

Additionally, the law contemplates some examples in order to facilitate the interpretation: the CCC uses the case of an epidemic as an example of force majeure (fortuitous event in Colombian law, see article 847 CCC), in an event of cattle and animal loss.

However, it is not enough to argue that the law considers an epidemic or a government authority's act as an example of a force majeure event: all the requirements for such event must be proved as well as the existence on how such event affects the fulfilment of the party's contractual obligations.

(2) Does the force majeure trigger the right of suspension or termination of the agreement or are there other criteria to consider?

Force majeure is a concept that applies to a certain obligation or obligations and not necessarily to the agreement as a whole. Therefore, one must analyze the agreement considering its particularities and the role and relevance of the obligation(s) affected by the force majeure event in order to conclude whether the continuity, suspension or termination is the best option.

For example, the parties could agree that, whenever a force majeure event arises, the agreement or certain obligations would be suspended for a period of time. If the performance is not possible after this period, the parties could decide to terminate the agreement.

(2.1) In the former case (suspension), for how long would the agreement be suspended (again case law, law)?

The law does not establish a maximum term in day, months or years, nevertheless the suspension shall last for as long as the cause that generated the force majeure prevails. If there is no agreement between the parties regarding the suspension period, the final decision would be taken by the judges or arbitrators, as applicable.

(2.2) Does the right to suspend also automatically lead to the right to terminate if the force majeure event continues?

As seen in the response to Q2, the application of a force majeure event does not automatically trigger the suspension or termination of an agreement. The parties can decide whether the Agreement shall be suspended and then terminated or directly terminated.

(3) If the concept of force majeure is unknown in your jurisdiction, are there any other valid arguments to justify the non-performance of a party's obligations in your jurisdiction?

Not Applicable

(1) Can a contracting party use the concept of force majeure in the context of Covid-19 in your jurisdiction to justify not performing its obligations under an agreement? If not defined in an agreement, how difficult is it to prove that a pandemic/epidemic is a force majeure event in your jurisdiction?

The concept of force majeure is an acknowledged principle under Danish law. Under Danish law, a party is entitled to not perform its obligations under an agreement and is exempted from liability relating hereto where the performance is rendered impossible due to extraordinary events that the affected party could not and should not have predicted, prevented or overcome. Typical examples of force majeure events under Danish law are outbreak of war, rebellion, embargo and natural disaster.

As mentioned, performance shall be rendered impossible which means that the fact that performance is made more burdensome, more expensive or even unprofitable is in itself not enough to classify a certain event as force majeure. For example, if a seller of goods can use a different sub-supplier (though more expensive) in order to fulfil an agreement with a buyer, the seller will be required to do so.

Generally, the threshold for acknowledging an event as force majeure is very high and the burden of proof is with the claiming party. Where a party wants to claim that a force majeure event exists which terminates or

suspends the party's obligation to perform in accordance with the agreement, the claiming party must notify the contracting party hereof as soon as possible. If the claiming party does not observe this duty of notification, it may be liable for any loss that the contracting party could have avoided if duly notified.

No Danish case law exists in respect of acknowledging health emergencies, epidemic or pan epidemic as force majeure events and the current situation is unprecedented (at least in the context of modern law). It is our assessment that Covid-19 can – depending on the specific circumstances – constitute a force majeure event under Danish law. This will ultimately depend on inter alia the wording of the specific contract and the timing of entering into the contract.

The concept of force majeure applies under Danish law whether mentioned in the specific contract or not, but the contract may make the assessment of what constitutes a force majeure event more stringent or may ease the assessment. Furthermore, the contract may include a hardship-clause (not commonly used under Danish law). Hardship-clauses comprise

situation where performance is possible, but unreasonably burdensome due to events outside the parties' control. Accordingly, hardship-clauses are less rigid than force majeure clauses. When assessing whether the Covid-19 justifies non-performance, the specific contract will have to be reviewed carefully.

The timing of entering into the specific contract is also relevant - was the contract entered into prior to or after the outbreak of the Covid-19? On 30 January 2020, WHO announced that the Covid-19 is a Public Health Emergency of International Concern and accordingly the Covid-19 can likely not be considered unpredicted in respect of contracts entered into after this date, i.e. the Covid-19 is unlikely to constitute a force majeure event in respect of such contracts. For contracts entered into prior to 30 January 2020, but after the outbreak of the Covid-19, an assessment of the specific circumstances will have to be made.

The threshold for acknowledging an event as force majeure is very high and the burden of proof is with the claiming party.

(1.1) Does pandemic/epidemic need to be defined in an agreement as a force majeure event in order to be valid in your jurisdiction?

No, not necessarily.

(1.2) Is a pandemic/an epidemic a force majeure event stipulated by law, case law or regulation in your jurisdiction?

Epidemic or pan epidemic is not specifically mentioned as a force majeure event stipulated by law or regulation in Denmark and as mentioned above, no Danish case law exists in respect of acknowledging health emergencies, epidemic or pan epidemic as force majeure events.

(2) Does the force majeure trigger the right of suspension or termination of the agreement or are there other criteria to consider?

As a starting point a force majeure event will trigger a right of suspension for as long as the force majeure event exists. If the force majeure event is permanent or of long or indefinite duration, the force majeure event may lead to a right to terminate.

(2.1) In the former case (suspension), for how long would the agreement be suspended (again case law, law)?

See response to Q2.

(2.2) Does the right to suspend also automatically lead to the right to terminate if the force majeure event continues?

See response to Q2.

(3) If the concept of force majeure is unknown in your jurisdiction, are there any other valid arguments to justify the non-performance of a party's obligations in your jurisdiction?

The concept of force majeure is known in Denmark.

(1) Can a contracting party use the concept of force majeure in the context of Covid-19 in your jurisdiction to justify not performing its obligations under an agreement? If not defined in an agreement, how difficult is it to prove that a pandemic/epidemic is a force majeure event in your jurisdiction?

Yes, as long as they can prove whether or not Covid-19 affects the fulfilment of the obligation.

It will depend on the impact of the pandemic/epidemic on the fulfilment of each individual obligation.

(1.1) Does pandemic/epidemic need to be defined in an agreement as a force majeure event in order to be valid in your jurisdiction?

Force majeure events, including (possibly) a pandemic/epidemic, do not have to be defined in a contract to be valid in the Dominican Republic.

(1.2) Is a pandemic/an epidemic a force majeure event stipulated by law, case law or regulation in your jurisdiction?

Force majeure events are not exactly defined in the law, but the Article 1148 of the Dominican Civil Code states the following: *"Damages do not proceed, when as a consequence of force majeure or fortuitous event, the debtor was unable to give or do what he is obligated to, or did what he was forbidden to do."* It follows that the invocation of the concept of force majeure applies only in cases where there is a direct relationship between force majeure (an event that cannot be avoided or foreseen) and the fulfilment of that obligation in particular.

(2) Does the force majeure trigger the right of suspension or termination of the agreement or are there other criteria to consider?

In the case of the Dominican Republic, it would be difficult to prove that the Covid-19 outbreak constitutes a force majeure event capable of exempting the parties from contractual non-compliance, since, to this date, there have only been 2 confirmed cases of the virus in the country.

However, to determine whether or not the Covid-19 is a cause of suspension or termination of the contract, one must evaluate each individual case, each individual contract and, in particular, each individual obligation in order to verify the extent to which the Covid-19 outbreak affects or not the compliance of that specific obligation.

(2.1) In the former case (suspension), for how long would the agreement be suspended (again case law, law)?

See response to Q2., it will depend on the circumstances of each particular case.

(2.2) Does the right to suspend also automatically lead to the right to terminate if the force majeure event continues?

See response to Q2., it will depend on the circumstances of each particular case.

(3) If the concept of force majeure is unknown in your jurisdiction, are there any other valid arguments to justify the non-performance of a party's obligations in your jurisdiction?

Not Applicable.

(1) Can a contracting party use the concept of force majeure in the context of Covid-19 in your jurisdiction to justify not performing its obligations under an agreement? If not defined in an agreement, how difficult is it to prove that a pandemic/epidemic is a force majeure event in your jurisdiction?

If “pandemic” is not established in the contract as an “event of force majeure”, the force majeure should be proved by the claiming party. For the application of the aforementioned principle to proceed, it is necessary that:

- (a) The force majeure must be argued before the competent authority;
- (b) The force majeure must be duly accredited; and
- (c) That the authority before whom it is alleged favorably resolves the origin of the event. The World Health Organization (WHO) has described the outbreak of Covid-19 as a pandemic.

If not defined in the agreement, force majeure has 4 conditions:

- i) That the event occurs regardless of the will of the party who alleges it (the laws and regulations of Salvador establishes that the party is not exempt from liability when the act occurs due to its fault or default);
- ii) It is required that this event be unforeseen, that the parties have not had the opportunity to anticipate it;
- iii) The event is required to be insurmountable;
- iv) The event must result in a permanent impossibility of executing the obligation. It is required that this event be unforeseen, that the parties have not had the opportunity to anticipate it.

(1.1) Does pandemic/epidemic need to be defined in an agreement as a force majeure event in order to be valid in your jurisdiction?

Not necessary, but if it is established in the agreement is easier for the party to allege it and prove it.

(1.2) Is a pandemic/an epidemic a force majeure event stipulated by law, case law or regulation in your jurisdiction?

No. The Civil Code of El Salvador establishes in its Article 43 that *“It is called force majeure or fortuitous event the unforeseen that is not possible to resist, like a shipwreck, an earthquake, the seizure of enemies, the acts of authority exercised by a public official, etc.”* The established assumptions are non-exhaustive, but “pandemic or epidemic” is not one of the mentioned events.

(2) Does the force majeure trigger the right of suspension or termination of the agreement or are there other criteria to consider?

It could trigger the right of suspension but the force majeure must be duly accredited.

- Article 1418 of El Salvador's Civil Code states that a claimant needs to prove the existence of the fact constituting the force majeure, and that as a consequence of it, it became impossible to fulfill its obligations.
- Also, according to the Article 1429 subparagraph 2 of El Salvador's Civil Code, the default caused by force majeure or fortuitous event does not give rise to compensation for damages.

(2.1) In the former case (suspension), for how long would the agreement be suspended (again case law, law)?

While the force majeure event persists. The El Salvador's Civil and Commercial Procedural Code establishes in Article 146 the "General principle of terms' suspensions ", according to which the person constrained by a just cause does not have a term from the moment in which the impediment starts until its cessation. It is considered just cause that comes from force majeure or fortuitous event, that places the party in the impossibility of performing the act itself.

(2.2) Does the right to suspend also automatically lead to the right to terminate if the force majeure event continues?

No. The law establishes that the person constrained by a just cause does not have a term from the moment in which the impediment starts until its cessation, but it is not established the right to terminate an Agreement automatically by force majeure, unless it is established in the referred Agreement as a "cause for termination."

(3) If the concept of force majeure is unknown in your jurisdiction, are there any other valid arguments to justify the non-performance of a party's obligations in your jurisdiction?

The concept of "force majeure" is established in the local jurisdiction. The Civil Code of El Salvador establishes in its Article 43 that "*It is called force majeure or fortuitous event the unforeseen that is not possible to resist, as a shipwreck, an earthquake, the seizure of enemies, the acts of authority exercised by a public official, etc.*"

(1) Can a contracting party use the concept of force majeure in the context of Covid-19 in your jurisdiction to justify not performing its obligations under an agreement? If not defined in an agreement, how difficult is it to prove that a pandemic/epidemic is a force majeure event in your jurisdiction?

Please see response to Q1.1 and Q1.2 below.

(1.1) Does pandemic/epidemic need to be defined in an agreement as a force majeure event in order to be valid in your jurisdiction?

The question of what would form a force majeure event would be resolved on a case-by-case basis, depending on factors such as the wording of the force majeure clause and the impact of the pandemic/epidemic on the possibility to perform the obligations set out in the agreement. A strong indication of the force majeure event would be, for example, if the failure to perform is caused by local authorities acting under the Communicable Diseases Act or Emergency Powers Act.

(1.2) Is a pandemic/an epidemic a force majeure event stipulated by law, case law or regulation in your jurisdiction?

Please see response to Q1.1.

(2) Does the force majeure trigger the right of suspension or termination of the agreement or are there other criteria to consider?

The question would be solved on basis of the wording of the agreement and the circumstances. A clear black and white answer is not available based on law and/or case law.

(2.1) In the former case (suspension), for how long would the agreement be suspended (again case law, law)?

The question would be solved on basis of the wording of the agreement and the circumstances. A clear black and white answer is not available based on law and/or case law.

(2.2) Does the right to suspend also automatically lead to the right to terminate if the force majeure event continues?

The question would be solved on basis of the wording of the agreement and the circumstances. A clear black and white answer is not available based on law and/or case law.

(3) If the concept of force majeure is unknown in your jurisdiction, are there any other valid arguments to justify the non-performance of a party's obligations in your jurisdiction?

Not applicable.

If the parties did not agree upon a force majeure clause, the party who is not able to fulfil its liabilities might seek to amend the agreement based on the claim that the agreement has become unreasonable due to the changed circumstances. Force majeure clauses can become applicable in agreements concerning sales of goods also by analogous application of the force majeure provisions in the Sale of Goods Act.

(1) Can a contracting party use the concept of force majeure in the context of Covid-19 in your jurisdiction to justify not performing its obligations under an agreement? If not defined in an agreement, how difficult is it to prove that a pandemic/epidemic is a force majeure event in your jurisdiction?

Under French law, force majeure is defined as an event falling outside the control of the debtor, which could not be reasonably foreseen at the time of conclusion of the contract, whose effects cannot be avoided by appropriate measures and which precludes the debtor from performing its obligation (Article 1218, §1 of the French Civil Code). French law does not provide for any exhaustive list of force majeure events, but gives only a general definition.

The question whether a pandemic/epidemic qualifies as force majeure event requires a complete case-by-case analysis. Pandemics/epidemics will be considered a force majeure events in some cases, whereas it will not be considered as such in other cases, depending on the factual circumstances.

Although there is no clear, general and definitive case-law on the topic, the following court rulings may provide some useful guidance. Please note however that these rulings are directly connected to the facts of the case and must therefore be carefully read:

- ▶ There is no force majeure when the epidemic is pre-existing to the contract (Court of Appeal of Saint-Denis de la Réunion, 29 December 2009, no 08/02114)
- ▶ There is no force majeure when the epidemic is known, endemic and non-lethal (Court of Appeal of Basse-Terre, 17 December 2008, no 17/00739).

Besides the force majeure concept, French law also recognizes the concept of hardship (Article 1195 of the French Civil Code). The difference with force majeure is that hardship covers the situation where the performance of the obligation is not impossible (even temporarily), but became excessively onerous because of an unpredictable event for the party which did not accept such risk. In such situations, French law does not allow non-performance of the obligation, but provides for a renegotiation mechanism during which the party must continue performing its obligations.

(1.1) Does pandemic/epidemic need to be defined in an agreement as a force majeure event in order to be valid in your jurisdiction?

No. Even if an event is not expressly listed in the agreement as force majeure event, French courts are still able to assess and determine whether the event qualifies as force majeure from a legal point of view.

It should be noted that parties may contractually set up the definition or the effects of the force majeure in their agreements, either by extending the scope of the force majeure (e.g. enumeration of specific events to be qualified as force majeure in the contract), or by reducing its perimeter (e.g. the debtor accepts to bear the risks of non-performance even if the cause of the non-performance is a force majeure event), subject however to prohibition of unfair clauses in Business-to-Consumer relationships (Article L. 212-1 of the French Consumer Code) and of significant imbalance in Business-to-Business relationships (Article L. 442-1 of the French Commercial Code).

(1.2) Is a pandemic/an epidemic a force majeure event stipulated by law, case law or regulation in your jurisdiction?

Pandemic/epidemic is not expressly listed as force majeure event stipulated by law or by case law in France. As mentioned above, the French Civil Code does not provide for any list of force majeure events, but only gives a general definition which parties may adapt. Pandemic/epidemic may be recognized as force majeure by courts, depending on the factual circumstances of the case. See Q1 for some court rulings on the topic.

(2) Does the force majeure trigger the right of suspension or termination of the agreement or are there other criteria to consider?

The effects of the force majeure on the agreement depend on the extent to which the debtor is precluded from performing its obligations:

- ▶ If the hindrance is only temporary or partial, performance of the obligation is delayed for the duration of the effects of the event, except if the delay would justify termination of the agreement (Article 1218, §2 of the French Civil Code).
- ▶ If the hindrance is definitive and complete, the debtor is automatically and proportionally discharged from its obligations and the agreement is automatically terminated, except otherwise provided in the agreement (Articles 1218, §2 and 1351 of the French Civil Code).

If the force majeure event continues, then the event could (depending on the case) be qualified as definitive and complete hindrance, therefore allowing for automatic termination of the agreement.

Regarding the risks/losses incurred by non-performance of the agreement because of a force majeure event, the principle under French law is that the risks/losses shall be borne by the debtor. In other words, the party who cannot perform its obligation because of force majeure shall bear the losses incurred by such hindrance, and is not able to claim for the consideration initially provided in the agreement.

(2.1) In the former case (suspension), for how long would the agreement be suspended (again case law, law)?

See response to Q2.

(2.2) Does the right to suspend also automatically lead to the right to terminate if the force majeure event continues?

See response to Q2.

(3) If the concept of force majeure is unknown in your jurisdiction, are there any other valid arguments to justify the non-performance of a party's obligations in your jurisdiction?

In addition to force majeure, a valid way under French law to justify the non-performance of a party's obligations would be defense of non-performance (Article 1219 of the French Civil Code, as per the French legal concept of "exception d'inexécution"), subject however to strict conditions.

(1) Can a contracting party use the concept of force majeure in the context of Covid-19 in your jurisdiction to justify not performing its obligations under an agreement? If not defined in an agreement, how difficult is it to prove that a pandemic/epidemic is a force majeure event in your jurisdiction?

If not defined in an agreement, proving whether a pandemic/epidemic is a force majeure might pose significant difficulties in Georgian jurisdiction.

(1.1) Does pandemic/epidemic need to be defined in an agreement as a force majeure event in order to be valid in your jurisdiction?

It is advisable to explicitly indicate pandemic/epidemic as a force majeure event due to the absence of direct regulatory provisions regarding force majeure in general and its preconditions.

(1.2) Is a pandemic/an epidemic a force majeure event stipulated by law, case law or regulation in your jurisdiction?

The law or regulations do not define the notion of force majeure, therefore there is also no reference as to whether pandemic/epidemic event constitute a force majeure event. With respect to the case law, at this stage we have not identified the case law in which the court would consider epidemic/pandemic as a force majeure event in the absence of the contractual agreement between the parties.

In addition, readers should note that the Georgian Chamber of Commerce is entitled to verify the existence of a force majeure event based on the voluntary application of individuals or legal entities.

(2) Does the force majeure trigger the right of suspension or termination of the agreement or are there other criteria to consider?

In general, the case law on force majeure events show that the courts advocate for the suspension of the obligations rather than its termination. In such cases, the obligation would be suspended for the period of time during which the obligation cannot be fulfilled due to the respective impediment.

The right to terminate/repudiate the agreement may be applicable where the grounds for execution of the agreement have substantially changed after the execution and the adaptation of the agreement to such changes is impossible.

(2.1) In the former case (suspension), for how long would the agreement be suspended (again case law, law)?

See response to Q2.

(2.2) Does the right to suspend also automatically lead to the right to terminate if the force majeure event continues?

See response to Q2.

(3) If the concept of force majeure is unknown in your jurisdiction, are there any other valid arguments to justify the non-performance of a party's obligations in your jurisdiction?

Even though the Georgian jurisdiction does not directly regulate force majeure at the statutory level, the concept itself is still present in the local case law to some extent. Moreover, the Civil Code of Georgia offers a limited scope of provisions that justify the non-performance of a party's obligations. The closest counterpart of the generally acclaimed notion of force majeure in the Georgian jurisdiction would be the impossibility of performing of obligation. According to the mentioned mechanism, no default shall be deemed to have occurred if the obligation is not performed due to circumstances not caused by the obligor's fault. Thus, the absence of the obligor's fault may justify the failure to perform obligation in due time.

Another provisions that is in a relative proximity with the force majeure is the Georgian counterpart of "hardship" and it provides that a party to the agreement may not be required to strictly observe the unchanged agreement, where the circumstances that constituted the grounds for execution of the agreement have substantially changed and the agreement is not adopted to such changed circumstances.

(1) Can a contracting party use the concept of force majeure in the context of Covid-19 in your jurisdiction to justify not performing its obligations under an agreement? If not defined in an agreement, how difficult is it to prove that a pandemic/epidemic is a force majeure event in your jurisdiction?

Force majeure is an external event that has no operational connection and cannot be averted even by extreme, reasonably expected diligence (Federal Court of Justice, NJW 1987,1938). This does not include circumstances that fall within the risk sphere of a contractual partner. Also a self-responsible behavior of third parties who are not in the sphere of a contractual party usually excludes the assumption of force majeure (LG Frankfurt am Main, NJW-RR 1991,1205).

The German legal system, however, does not know any explicit legal paragraph of force majeure, as is the case, for example, in the UN Convention on Contracts for the International Sale of Goods. For this reason, corresponding force majeure clauses can most often only be found in contracts. If no force majeure clause has been contractually agreed upon, there is the possibility to assert an adjustment of the contract or even its termination due to the loss of the basis of the contract. In addition, rights to refuse performance or rights of retention exist.

Epidemics or pandemics have been decided in the jurisdiction of German law, primarily in connection with travel contracts and supply contracts due to the SARS virus or pandemic influenza. However, the decisions in these cases have not always been made on the basis of force majeure clauses. The decisions concerning the SARS virus, for example, made a distinction for the assumption of a right of termination according to whether people could be threatened in their bodies or their lives by the epidemic. If people are not endangered and, on the basis of the information and knowledge available, further developments after the epidemic does not lead to damage to a person's body or life, termination rights were not recognized unless a force majeure clause had been negotiated.

Unless a contract expressly stipulates that the existence of a pandemic or epidemic is to be assumed, reference is made to official announcements which, on the basis of public law standards, establish the existence of an epidemic or pandemic. It is therefore advisable to lay down concrete conditions and points of reference for the assumption of an epidemic or pandemic in force majeure clauses.

(1.1) Does pandemic/epidemic need to be defined in an agreement as a force majeure event in order to be valid in your jurisdiction?

See response to Q1.

(1.2) Is a pandemic/an epidemic a force majeure event stipulated by law, case law or regulation in your jurisdiction?

See response to Q1. The concept of "force majeure" is known in German legal practice.

(2) Does the force majeure trigger the right of suspension or termination of the agreement or are there other criteria to consider?

The provisions on force majeure generally contain a graduated approach. Initially, the focus is on adapting the contract to the changed and aggravated circumstances. In other words, the contract is to be continued with modified content. If this is not reasonable for one or both parties, the contract can be terminated. The German civil law system provides regulations in this respect in § 313 of the German Civil Code (BGB). This is a provision on the discontinuation of the basis of the contract or the disturbance of the basis of the contract, which refers to the contract and where an external event from outside has a severe impact on the contract.

(2.1) In the former case (suspension), for how long would the agreement be suspended (again case law, law)?

See response to Q2.

(2.2) Does the right to suspend also automatically lead to the right to terminate if the force majeure event continues?

See response to Q2.

(3) If the concept of force majeure is unknown in your jurisdiction, are there any other valid arguments to justify the non-performance of a party's obligations in your jurisdiction?

The determination that a case of force majeure exists is reserved in German jurisdiction for absolutely exceptional cases. As a rule, this includes wars or threats of war with widespread civil war conditions. An objective assessment of the objective situation is decisive for the assessment whether the execution of a contract is affected by an event coming from outside which is to be qualified as force majeure. Purely subjective assessments are not sufficient.

In the interest of increasing legal certainty and clarity in the application of the law, it is therefore advisable from the perspective of German law to include epidemic and pandemic regulations in force majeure clauses. These should, on the one hand, describe in abstract and concrete terms the cases of application in which an epidemic or pandemic is to be assumed and, on the other hand, specify on the legal consequences side the instruments which the contracting parties can exercise (right to adjust the content of the contract or right of termination).

(1) Can a contracting party use the concept of force majeure in the context of Covid-19 in your jurisdiction to justify not performing its obligations under an agreement? If not defined in an agreement, how difficult is it to prove that a pandemic/epidemic is a force majeure event in your jurisdiction?

Moderately difficult. Notwithstanding the existence of the pandemic/epidemic does not have to be proven, its effects and their direct/indirect relation to the default need to be proved.

(1.1) Does pandemic/epidemic need to be defined in an agreement as a force majeure event in order to be valid in your jurisdiction?

No, there are no provisions in the law regarding the need of a definition in the contract.

(1.2) Is a pandemic/an epidemic a force majeure event stipulated by law, case law or regulation in your jurisdiction?

No, Guatemalan Law does not define Force Majeure. Nevertheless article 1426 of Guatemalan Civil Code does establish that the obliged party is not responsible for the breach of an obligation in the case of force majeure.

(2) Does the force majeure trigger the right of suspension or termination of the agreement or are there other criteria to consider?

Unless agreed in other form in the contract, by law the only other consideration is that Force Majeure is not considered as a justification for breaching an obligation is the said obligation was overdue at the time of the force majeure event.

(2.1) In the former case (suspension), for how long would the agreement be suspended (again case law, law)?

There are no specific regulations about the period but the general knowledge and the majority of contracts establish that the period of suspension shall include only the period strictly related with the event and the subsequent necessary recovery or normalization period.

(2.2) Does the right to suspend also automatically lead to the right to terminate if the force majeure event continues?

Not automatically but depending on the kind and duration of both the event and of the obligation, a termination could be the reasonable result of the event.

(3) If the concept of force majeure is unknown in your jurisdiction, are there any other valid arguments to justify the non-performance of a party's obligations in your jurisdiction?

Not applicable.

(1) Can a contracting party use the concept of force majeure in the context of Covid-19 in your jurisdiction to justify not performing its obligations under an agreement? If not defined in an agreement, how difficult is it to prove that a pandemic/epidemic is a force majeure event in your jurisdiction?

In Honduras jurisdiction, a force majeure event is defined as an act of God, something you cannot offer resistance to. A pandemic/epidemic would be considered something irresistible, ergo making it a force majeure event.

(1.1) Does pandemic/epidemic need to be defined in an agreement as a force majeure event in order to be valid in your jurisdiction?

No, it is not necessary, but it would be preferable to define it as such.

It remains important to specify in any FM clause that a force majeure event will be considered a reasonable cause to terminate the agreement.

(1.2) Is a pandemic/an epidemic a force majeure event stipulated by law, case law or regulation in your jurisdiction?

The law does not define specific events that are considered as force majeure, it only defines them as something you cannot offer resistance to. A epidemic/pandemic would be considered as such.

(2) Does the force majeure trigger the right of suspension or termination of the agreement or are there other criteria to consider?

The force majeure is not a cause to terminate an agreement. But, the force majeure absolves the liability of a party in the non-compliance of its obligations.

In this case, it will depend on what each contract establishes regarding the suspension/termination of the contract. If the parties agreed to terminate the agreement based on a force majeure event, then it can cause the termination of such agreement. If its not established in the contract, it is not a cause to suspend/terminate the agreement.

If the parties have agreed to consider the force majeure as a reasonable cause to terminate the agreement, it must be written and included in the agreement. Otherwise, it is not valid.

(2.1) In the former case (suspension), for how long would the agreement be suspended (again case law, law)?

This will also depend on what the agreement states.

(2.2) Does the right to suspend also automatically lead to the right to terminate if the force majeure event continues?

It will depend on the agreement, and if it allows the suspension of the contractual relationship.

(3) If the concept of force majeure is unknown in your jurisdiction, are there any other valid arguments to justify the non-performance of a party's obligations in your jurisdiction?

Not applicable.

(1) Can a contracting party use the concept of force majeure in the context of Covid-19 in your jurisdiction to justify not performing its obligations under an agreement? If not defined in an agreement, how difficult is it to prove that a pandemic/epidemic is a force majeure event in your jurisdiction?

In Hong Kong, force majeure will only be available if an agreement expressly provides for it (though the narrower doctrine of frustration, discussed in question 1.2, may apply). To determine whether the breaching party may be excused from their contractual liabilities due to a force majeure event, the first step would be to check if there is a force majeure clause in the Hong Kong law contract which expressly provides for performance to be excused if it is rendered impossible by the occurrence of an unforeseen and unavoidable event which is beyond the control of the contracting parties.

(1.1) Does pandemic/epidemic need to be defined in an agreement as a force majeure event in order to be valid in your jurisdiction?

See response to Q1.

(1.2) Is a pandemic/an epidemic a force majeure event stipulated by law, case law or regulation in your jurisdiction?

See response to Q1.

(2) Does the force majeure trigger the right of suspension or termination of the agreement or are there other criteria to consider?

If a force majeure clause is effective and applicable, depending on the language used in the clause, it may lead to the following consequences:

1. parties are entitled to suspend their contractual obligations and avoid liabilities for any failure or delay in performance;
2. the contract may be terminated (after a specified period of time); or
3. contract governance measures or mediation measures may be enhanced so parties may gain “step-in” rights or be subject to extra reporting requirements.

(2.1) In the former case (suspension), for how long would the agreement be suspended (again case law, law)?

See response to Q2.

(2.2) Does the right to suspend also automatically lead to the right to terminate if the force majeure event continues?

See response to Q2.

(3) If the concept of force majeure is unknown in your jurisdiction, are there any other valid arguments to justify the non-performance of a party's obligations in your jurisdiction?

As discussed in questions 1 and 2, there is the concept of force majeure in Hong Kong. However, there is also the doctrine of frustration that may apply to justify non-performance of a party's obligation due to the outbreak of the Covid-19.

To rely on frustration, the contract must not have addressed the frustrating event (be it epidemic outbreak, quarantine, illegality, travel restrictions or other events), and it must be established that without default of either party, the outbreak either renders the contract incapable of being performed, or renders the performance something radically different from what was contracted for. The threshold for the latter requirement is high. A contract is automatically discharged upon frustration, excusing the contracting parties from the performance of any future obligations.

(1) Can a contracting party use the concept of force majeure in the context of Covid-19 in your jurisdiction to justify not performing its obligations under an agreement? If not defined in an agreement, how difficult is it to prove that a pandemic/epidemic is a force majeure event in your jurisdiction?

Please refer to the answers in the following questions.

(1.1) Does pandemic/epidemic need to be defined in an agreement as a force majeure event in order to be valid in your jurisdiction?

No, the Hungarian Civil Code provides for an exculpation mechanism for force majeure – i.e., if a force majeure is proven, the party breaching an agreement may be relieved from its liability for the breach.

(1.2) Is a pandemic/an epidemic a force majeure event stipulated by law, case law or regulation in your jurisdiction?

It is for judges to decide what qualifies as a force majeure (i.e. it is not prescribed by law, but may be set out in a contract). The following needs to be evidenced for a party to be relieved of its liability stemming from a force majeure event: that (i) the breach was the consequence of circumstances that are beyond its control, (ii) such circumstances cannot be foreseen when the agreement was concluded, and (iii) it was not expected to prevent the cause of damages or mitigate the damages. If the above criteria may be proven, a pandemic may justify the occurrence of a force majeure event.

(2) Does the force majeure trigger the right of suspension or termination of the agreement or are there other criteria to consider?

This is a case-by-case issue and there is very limited case law available (as the new Civil Code introduced five years ago changed the force majeure regime). If the breach is temporary, a judge is likely to require the parties to cooperate and seek to remedy the breach once possible (i.e. a suspension would occur). If the performance of the contract becomes impossible, the agreement terminates by virtue of law and the original (pre-contract) situation needs to be reinstated (which often involves a compensation element).

(2.1) In the former case (suspension), for how long would the agreement be suspended (again case law, law)?

See response to Q2.

(2.2) Does the right to suspend also automatically lead to the right to terminate if the force majeure event continues?

See response to Q2.

(3) If the concept of force majeure is unknown in your jurisdiction, are there any other valid arguments to justify the non-performance of a party's obligations in your jurisdiction?

Force majeure is known and applied as mentioned.

(1) Can a contracting party use the concept of force majeure in the context of Covid-19 in your jurisdiction to justify not performing its obligations under an agreement? If not defined in an agreement, how difficult is it to prove that a pandemic/epidemic is a force majeure event in your jurisdiction?	(1.1) Does pandemic/epidemic need to be defined in an agreement as a force majeure event in order to be valid in your jurisdiction?	(1.2) Is a pandemic/epidemic a force majeure event by law/case law/regulation in Italy?
<p>Pursuant to article 1218 of the Italian Civil Code, which regulates the contractual liability, the debtor who does not exactly fulfill the obligation due, shall be liable to pay damages if he/she does not prove that the non-fulfillment or delay was caused by the impossibility of performance resulting from a cause not attributable to him/her. It follows that only if the non-fulfillment is caused by the impossibility of performance resulting from causes other than those attributable to the debtor, the obligation will be discharged, and the debtor is released from any obligation. Otherwise, the default obliges the debtor to pay damages. However, even if the party cannot be held liable for the unfulfillment of the obligations undertaken and cannot be requested to pay for the compensation of damages, the other party would be entitled to request for the return of the performance already performed.</p> <p>The impossibility of performance excusing the defaulting party is usually referred to cases where the impossibility was caused by fortuitous case or force majeure. However, fortuitous case and force majeure are not defined by the law.</p> <p>Moreover, in order to be excused the debtor must in any case behave diligently to avoid the consequences of the event considered fortuitous case or force majeure.</p> <p>Consistently, article 1256 of the Italian Civil Code states that a contractual obligation expires when,</p> <p>for reasons not attributable to the debtor, its performance becomes "impossible". The release of the debtor due to the impossibility of executing the agreement, therefore, can occur only in the event of an objective impossibility of performing the obligation itself and in the absence of any fault or negligence of the debtor in the determination of the event that made the performance of the obligation impossible. In particular, the "non-attributable cause" consists in an unsurpassed impediment to the fulfilment of the obligation, not due to the willful misconduct or fault of the debtor. It should be an unpredictable event in relation to the nature of the agreement and market conditions.</p> <p>Among the causes, any order or prohibition that has arisen from the administrative authority ("factum principis") shall be included. When such a measure occurs, the directives issued by it are in principle mandatory. Therefore, citizens, businesses or public bodies are required to rigorously apply their contents, which however cannot be considered extensible beyond the terms provided for their scope.</p> <p>In the case of the Covid-19 epidemic, the spread of the virus has been classified as a health emergency of international significance by the World Health Organization on January 30, 2020. In Italy, the state of health emergency was declared by resolution of the Council of Ministers on January 31, 2020 and with Legislative Decree n. 6 of</p>	<p>February 23, 2020, providing urgent measures regarding the containment and the handling of the epidemiological emergency deriving from the Covid-19 and granting the President of the Council of Ministers and the Presidents of the Regions the power to adopt the most suitable measures to contrast and contain the progressive spread of the virus.</p> <p>Therefore, the mandatory measures issued by the health authority to contain and reduce the spread of an epidemic are to be considered a case of force majeure. In particular, such provisions are those required by Law Decree 6/2020 and the measures adopted in its execution by the Government and the Presidents of the Regions. Only in relation to them and in their strict application can we speak of force majeure in a technical sense. Outside of them, the behaviors adopted and the directives imparted do not have the value of imperative measures, but of measures taken in application of the precautionary principle. The practical consequence is that legally the directives they apply are not binding.</p> <p>In the light of the above, pandemic/epidemic is not per se necessarily a case of force majeure, but may become a case of force majeure under specific circumstances, either directly or as a consequence of the legal measures adopted to fight it.</p> <p>The legislative or administrative measures, adopted in the light of general and public interests, can make the execution of an agreement impossible, regardless of the behavior of the obliged. In particular, according to the main case law, the impossibility in the fulfilment of contractual obligations can be invoked only if the factum principis wasn't reasonably and easily foreseeable, according to common diligence, at the time of the execution the obligation, or if the breaching party could not have overcome or remove the resistance of the public administration.</p> <p>This is a circumstance that acts as a waiver of the debtor's liability regardless of the contractual provisions in place.</p> <p>However, the "emergency circumstances" are often contractually regulated in the hardship or force majeure clauses, which must also be taken into due consideration since they can overlap or derogate from the legal framework and therefore entail the party to withdraw from the agreement or terminate it.</p>	<p>See response to Q1.1.</p>

(2) Does the force majeure trigger the right of suspension or termination of the agreement or are there other criteria to consider?

The emergency from Covid-19 could have suspensive or extinctive effects on the commitments undertaken. On the one hand, the complexity of being compliant to the contract per se does not free the debtor from its obligation but creates only a barrier that the debtor should overcome with due diligence.

On the other hand, the debtor can be released from their obligation if its performance is objectively impossible and the debtor did not cause the impossibility through their fault. Thus, if the impossibility is temporary, the debtor is not liable for the delay until the impossibility persists and must perform his/her obligation unless there is a possible excessive burden. In particular, article 1256 ICC specifies that the obligation is extinguished if the impossibility to perform it persists until, considering the title or the nature of such obligation, the debtor can no longer be considered obliged to execute the agreement or the creditor no longer has an interest in achieving it.

Orders or supervening prohibitions coming from legislative or administrative bodies that make performance impossible can be invoked to get rid of the obligation or responsibility for the delay. However, they could not be invoked if the same orders or prohibitions could be reasonably and easily foreseen when the obligation is assumed.

The Covid-19 emergency could also lead to an excessive onerousness of the obligations that must be performed. This excessive cost does not prevent the performance but allows the debtor to request the termination of the contract or the reduction of the performance or the adjustment of the consideration. Indeed, the Covid-19 spread and the related restrictive measures may have caused an imbalance of the obligations undertaken within the agreement caused by an extraordinary and unforeseeable events.

(2.1) In the former case (suspension), for how long would the agreement be suspended (again case law, law)?

See response to Q2.

(2.2) Does the right to suspend also automatically lead to the right to terminate if the force majeure event continues?

See response to Q2.

(3) If the concept of force majeure is unknown in your jurisdiction, are there any other valid arguments to justify the non-performance of a party's obligations in your jurisdiction?

Other than the considerations explained above, under Italian law a party may decide not to perform the obligations undertaken within the agreement in cases where:

- ▶ The other party does not fulfil his/her own obligations;
- ▶ The financial and patrimonial conditions of the other party have substantially changed after the execution of the agreement and therefore there is reasonable grounds to believe that the party will not fulfil their own obligations.

(1) Can a contracting party use the concept of force majeure in the context of Covid-19 in your jurisdiction to justify not performing its obligations under an agreement? If not defined in an agreement, how difficult is it to prove that a pandemic/epidemic is a force majeure event in your jurisdiction?

For Japan, force majeure is a recognized concept under Japanese law. The Civil Code of Japan sets forth the general rule, which the parties may modify, regarding the party who bears the risk in the event of a force majeure, which is the obligor. Thus, in a force majeure event, the obligor may be excused from performance but it also will not be entitled to payment under the contract.

Please note that there is an exception to the general rule but this exception will disappear once the amended Civil Code takes effect on April 1, 2020 (or in just a few weeks). The exception is the obligee will still need to pay the obligor, despite the obligor not being able to perform due to the force majeure event, if

- (1) the purpose of the contract is the creation or transfer of real rights regarding specified things or
- (2) the subject matter of the contract with conditions precedent has been lost or damaged due to reasons not attributable to the obligor. Again, this exception will no longer exist from April 1st.

This would depend on the facts. If force majeure is included in the agreement, and it covers an event like Covid-19, that would certainly help. Short of that, or if no force majeure clause is in the agreement, the burden would be on the party seeking to be relieved of its obligations under the agreement. There is not enough case law to be able to provide a simple yes/no response. Legal advice should be sought because it will depend on the facts.

(1.1) Does pandemic/epidemic need to be defined in an agreement as a force majeure event in order to be valid in your jurisdiction?

This would depend on the facts. If force majeure is included in the agreement, and it covers an event like Covid-19, that would certainly help. Short of that, or if no force majeure clause is in the agreement, the burden would be on the party seeking to be relieved of its obligations under the agreement. There is not enough case law to be able to provide a simple yes/no response. Legal advice should be sought because it will depend on the facts.

(1.2) Is a pandemic/an epidemic a force majeure event stipulated by law, case law or regulation in your jurisdiction?

See response to Q1. & Q1.1.

(2) Does the force majeure trigger the right of suspension or termination of the agreement or are there other criteria to consider?

Again, there is not enough case law on this and this will be fact dependent. If performance can still be carried out but later due to the current force majeure event, then there's a chance that performance can be delayed and not excused. Otherwise, the agreement could be terminated if performance is for instance impossible due to the force majeure event.

(2.1) In the former case (suspension), for how long would the agreement be suspended (again case law, law)?

See response to Q2.

(2.2) Does the right to suspend also automatically lead to the right to terminate if the force majeure event continues?

See response to Q2.

(3) If the concept of force majeure is unknown in your jurisdiction, are there any other valid arguments to justify the non-performance of a party's obligations in your jurisdiction?

Not applicable. See response to Q1.

(1) Can a contracting party use the concept of force majeure in the context of Covid-19 in your jurisdiction to justify not performing its obligations under an agreement? If not defined in an agreement, how difficult is it to prove that a pandemic/epidemic is a force majeure event in your jurisdiction?

In accordance with Kazakhstani legislation, the list of force majeure events is non-exhaustive. If the agreement specifically provides for that or if the parties wish, the parties may seek a certificate/conformation from the National Chamber of Entrepreneurs of the Republic of Kazakhstan (NCE) that the force majeure events occurred and affected the respective agreement.

Please note that companies affected by Covid-19 and state quarantine measures are able to obtain this certificate for free. Therefore, experts suggest that it is possible to prove that the epidemic/pandemic is a force majeure event even if it is not stipulated in an agreement, provided that the event in fact served as the basis for default under the agreement.

(1.1) Does pandemic/epidemic need to be defined in an agreement as a force majeure event in order to be valid in your jurisdiction?

Kazakhstani law does not obligate the parties of the agreement to specifically list/indicate each potential force-majeure event in the agreement. In general, most advisers believe that indication of pandemic/epidemic in a contract is practically desirable.

(1.2) Is a pandemic/an epidemic a force majeure event stipulated by law, case law or regulation in your jurisdiction?

Kazakhstani legislation does not specifically define a pandemic/an epidemic as a force majeure event. However, as indicated in response to Q1.1, such events may be recognized as a force majeure by NCE based on applications of parties.

(2) Does the force majeure trigger the right of suspension or termination of the agreement or are there other criteria to consider?

Kazakhstani legislation does not clearly provide for a right of the parties to terminate or suspend the agreement due to force majeure event. Generally, the occurrence of force majeure does not cancel the fulfilment of the contract by default, but only releases parties from liability for late performance thereunder.

However, a strong argument can be made that a force majeure event does trigger the right to suspend the agreement. On a separate note, the parties may provide in the agreement that the force majeure event is a basis for amendment, suspension or termination of the agreement, and, while not common, it is not unknown.

(2.1) In the former case (suspension), for how long would the agreement be suspended (again case law, law)?

As indicated in response to Q2, Kazakhstani legislation does not clearly stipulate suspension of the agreement. Further, Kazakhstan is a civil law system and does not have case law. However, as mentioned above, it may be argued that the agreement is suspended for the term the party (or parties) is (are) affected by the force majeure event.

(2.2) Does the right to suspend also automatically lead to the right to terminate if the force majeure event continues?

Force majeure event may be only a ground for exemption from liability for non-performance of obligations under the respective contract and possibly also for its suspension. However, such a condition on automatic termination may be also established in contracts.

(3) If the concept of force majeure is unknown in your jurisdiction, are there any other valid arguments to justify the non-performance of a party's obligations in your jurisdiction?

Kazakhstani legislation contains the concept of force majeure, and, therefore, it can be established in contracts as a ground for exemption from the liability for non-performance of obligations. However, as indicated in response to Q2, it should be proved by the non-performing party.

(1) Can a contracting party use the concept of force majeure in the context of Covid-19 in your jurisdiction to justify not performing its obligations under an agreement? If not defined in an agreement, how difficult is it to prove that a pandemic/epidemic is a force majeure event in your jurisdiction?

Yes, the affected party could use the force majeure concept in the context of Covid-19.

The concept of force majeure is described in the Lithuanian Civil Code, article 6.212 and Government resolution Nr.840 (date of issue 15 July 1996). Force majeure is defined as an exceptional event or circumstance which is beyond the control of the affected party and which the affected party could neither have foreseen or provided against before entering into the agreement, nor avoided once it had arisen. By Lithuanian law, a force majeure event shall not include such circumstances as absence in the market of goods needed for the performance of the obligation, lack of necessary financial resources of the affected party, or violation of their own obligations committed by the debtor.

Important points to be considered:

Notice: If the party is unable to perform the agreement due to force majeure, it shall promptly notify the other party so as to mitigate the other party's potential loss, and shall provide evidence within a reasonable time to substantiate such notification. The notification component is the main procedural requirement to assert a force majeure event has taken place.

Force majeure certificates: The Lithuanian Chamber of Commerce, Industry and Crafts is responsible for delivering force majeure certificates. The Chamber has announced an expedited procedure to obtain a force majeure certificate for "Coronavirus cases". The affected party must present the motivation and all documents to confirm the impossibility of performance of an agreement. However, these certificates are not final: companies and courts will have to examine each agreement and specific circumstances to determine if a force majeure clause applies and performance under the agreement is excused.

Courts: The force majeure clause and the surrounding circumstances will need to be evaluated by courts on a case-by-case basis. In addition to the force majeure event, courts also require a showing that the party attempted to perform the agreement regardless of the event, perhaps by finding an alternative source of supply. The affected party must take into consideration that if it fails to utilize its best efforts to overcome the impact of the epidemic/pandemic event on its non-performance, it may not be able to successfully later invoke force majeure.

Another provision related to force majeure is the concept of hardship (Lithuanian Civil Code, article 6.204). Hardship covers the situation where the performance of the obligation is possible but became excessively onerous because of the fundamental change in circumstances of a party, which did not contemplate or accept such risk when contracting. Accordingly, hardship clauses are less rigid than force majeure clauses. In such situations, the law does not allow non-performance of the obligation, but provides for a renegotiation mechanism during which the party must continue performing its obligations.

(1.1) Does pandemic/epidemic need to be defined in an agreement as a force majeure event in order to be valid in your jurisdiction?

No, there is no requirement to define pandemic/epidemic criteria in an agreement.

Even if the agreement does contain a force majeure clause, it is still not certain that a party will be able to rely on it to protect against claims for non-performance as a result of the difficulties caused by the epidemic/pandemic.

Force majeure clauses are interpreted strictly by the courts - so it will be necessary to consider the precise terms of any given clause and the contract itself.

The possibility to assert a force majeure event is very limited. The jurisprudence on the topic is not extensive.

(1.2) Is a pandemic/an epidemic a force majeure event stipulated by law, case law or regulation in your jurisdiction?

No, there is no special law, case law or regulation regarding pandemic/an epidemic force majeure event.

(2) Does the force majeure trigger the right of suspension or termination of the agreement or are there other criteria to consider?

Under Lithuanian Law, when the impeding circumstance is temporary, the affected party is excused from civil liability, including damages, in relation to its non-performance or delay.

(2.1) In the former case (suspension), for how long would the agreement be suspended (again case law, law)?

This suspension is valid only for such a period which is reasonable, taking into account the effect of that impeding circumstance on the performance of the agreement.

(2.2) Does the right to suspend also automatically lead to the right to terminate if the force majeure event continues?

The suspension doesn't lead automatically to the termination of the agreement.

However, a confirmed force majeure event shall not deprive a party of exercising the right to dissolve the agreement, or to suspend its performance, or to require interest due.

(3) If the concept of force majeure is unknown in your jurisdiction, are there any other valid arguments to justify the non-performance of a party's obligations in your jurisdiction?

Not applicable.

(1) Can a contracting party use the concept of force majeure in the context of Covid-19 in your jurisdiction to justify not performing its obligations under an agreement? If not defined in an agreement, how difficult is it to prove that a pandemic/epidemic is a force majeure event in your jurisdiction?

Under Luxembourg law, force majeure is deemed to arise when a party's performance is prevented by an event beyond its control, the effects of which could not have been foreseen at the time the contract was entered into and avoided by appropriate measures.

In this respect, the event hindering performance of the contract should be:

- (i) External (i.e. outside the contracting parties' control);
- (ii) Unforeseeable at the time of the conclusion of the contract; and
- (iii) Unpreventable or unavoidable (through the exercise of reasonable diligence by the contracting party).

The Covid-19 may not be considered unforeseeable given recent precedents, however the scale of response seems without precedent. Luxembourg Courts will have to assess if the Covid-19 constitutes a foreseeable contingency for which reasonable measures could have been taken by the affected party. In this regard, the Courts will have to rely on WHO declarations and national health service guidance.

(1.1) Does pandemic/epidemic need to be defined in an agreement as a force majeure event in order to be valid in your jurisdiction?

If the words "pandemic/epidemic" are listed as force majeure events into a contract, a party to a contract containing a force majeure clause should not have too much difficulty in asserting that the Covid-19 triggers the provision of that clause since the World Health Organization classified Covid-19 as a pandemic event.

In the absence of any definition, a party may seek to rely on the doctrine of force majeure to discharge the contract (article 1148 of the Luxembourg Civil Code). Such reliance is only likely to be successful if the effect of the Covid-19 can be shown to render the performance of the contract impossible, or only possible in a very different way from that originally contemplated. Mere inconvenience, or hardship, or financial loss in performing the contract, or delay which is within the commercial risk undertaken by the parties, will usually be insufficient to invalidate a particular contract.

(1.2) Is a pandemic/an epidemic a force majeure event stipulated by law, case law or regulation in your jurisdiction?

To the best of our knowledge, there is no Luxembourg case law/regulations defining a pandemic/an epidemic event as a force majeure event. However, according to French and Belgian case law (which may be followed by a Luxembourg Court), in case of illness, the Courts decided that, except when the concerned party weakens by his fault in order not to fulfill his/her obligations, an unpredictable disease which affects the possibility of a party to execute a contract, may be considered as a force majeure event. Please note that the notion of "force majeure" is subject of judicial interpretation and is constantly evolving. As mentioned above, Luxembourg Courts will have to assess if the Covid-19 constitutes a foreseeable contingency for which reasonable measures could have been taken by the affected party. In this regard, the Courts will have to rely on WHO declarations and national health service guidance.

(2) Does the force majeure trigger the right of suspension or termination of the agreement or are there other criteria to consider?

A debtor is released where they cannot perform an obligation by reason of a force majeure event. The obligation is extinguished and force majeure precludes the debtor for all damages (article 1148 of the Luxembourg Civil Code).

However, the situation is different when, amongst other things:

- (1) A contract expressly stipulates that a debtor shall pay damages even in the case of a force majeure event;
- (2) The impossibility to execute the contract is only temporary. When the obstacle disappears, the contract, which has been suspended, is not terminated and continues to exist.

(2.1) In the former case (suspension), for how long would the agreement be suspended (again case law, law)?

See response to Q2.

(2.2) Does the right to suspend also automatically lead to the right to terminate if the force majeure event continues?

See response to Q2.

(3) If the concept of force majeure is unknown in your jurisdiction, are there any other valid arguments to justify the non-performance of a party's obligations in your jurisdiction?

This is not applicable in Luxembourg. Please refer to response to Q1 and Q2.

(1) Can a contracting party use the concept of force majeure in the context of Covid-19 in your jurisdiction to justify not performing its obligations under an agreement? If not defined in an agreement, how difficult is it to prove that a pandemic/epidemic is a force majeure event in your jurisdiction?

The Macedonia Law on Obligation Relations (LOR) stipulates the following:

If fulfillment of one party's obligation in a two-way contract has become impossible due to an extraordinary event, which occurred after the conclusion of the contract, and prior to the moment of fulfilling of the obligation, which at the time of concluding the contract could not have been foreseen, nor it could have been prevented, avoided or removed by either party and for which neither party is responsible (force majeure), the obligation of the other party is extinguished, and if this party has fully or partially fulfilled its obligation, it may request restitution based on the groundless acquisition rules.

Having in mind the above, the argumentation should be focused on:

- (1) the non-performance was due to an obstacle that was beyond control of both contracting parties;
- (2) the obstacle could not be foreseen

at the time of concluding the contract;

- (3) the contracting party could not prevent, avoid, remove or repair the obstacle or its consequences;
- (4) the overcoming of such obstacle and its consequences was impossible for the contracting party from an objective point of view.

There is no specific current court practice in terms of contagious disease in context of force majeure. There are frequent influenza periods or seasons in Macedonia but that has not been used as argument for force majeure. On one hand, there is a common expectation that companies need to have business continuity plans (action of diligent businessmen) which will overcome such periods. On the other hand, if in combination of officially declared epidemic/or pandemic case, there is a restriction of movement of people and goods (which needs to be assessed in line with law that regulates public

health/health protection or declared emergency situations) and there are objective restrictions (including work force restriction), we may expect claim for force majeure.

In any event, this will be difficult to argue in practice from current view point (especially whether the preventive actions of the state can be accepted in terms of force majeure) and always needs to be compared with objectivity - was the contracting party objectively prevented to fulfil contract and has it done everything to overcome the situation within its power.

(1.1) Does pandemic/epidemic need to be defined in an agreement as a force majeure event in order to be valid in your jurisdiction?

The LOR defines the force major event in a very general way. Nevertheless the parties may try to additionally define such cases. However the impact of the other laws regulating the public health / health protection/ emergency situation may have impact as well especially if the epidemic/emergency is officially declared, what measures were imposed and whether all that together had impact in objective way to prevent the contracting party to be unable to perform the contract.

(1.2) Is a pandemic/an epidemic a force majeure event stipulated by law, case law or regulation in your jurisdiction?

The LOR does not stipulate strictly the events that may fall under the definition of force majeure, nor are we aware of a particular case (court practice) where a pandemic/ an epidemic has been considered as force majeure event stipulated by law. However, other laws regulating public health may regulate it to some extent.

(2) Does the force majeure trigger the right of suspension or termination of the agreement or are there other criteria to consider?

Based on the definition presented above, the LOR stipulates that the obligations prevented by force majeure event, cease to exist. Therefore, we may conclude that the force majeure event triggers termination of the obligation and indirectly the agreement.

In addition to this, LOR provides that in the event of partial inability to fulfil an obligation from a contract due to an event for which neither party is responsible (force majeure), the other party may terminate the contract if the partial fulfilment does not meet its needs, otherwise the contract remains in force and the other party has the right to seek a proportionate reduction in its obligations.

(2.1) In the former case (suspension), for how long would the agreement be suspended (again case law, law)?

See response to Q2.

(2.2) Does the right to suspend also automatically lead to the right to terminate if the force majeure event continues?

See response to Q2.

(3) If the concept of force majeure is unknown in your jurisdiction, are there any other valid arguments to justify the non-performance of a party's obligations in your jurisdiction?

Please refer to Q1 and Q2.

(1) Can a contracting party use the concept of force majeure in the context of Covid-19 in your jurisdiction to justify not performing its obligations under an agreement? If not defined in an agreement, how difficult is it to prove that a pandemic/epidemic is a force majeure event in your jurisdiction?

When Dutch law applies, the definition of 'force majeure' in the agreements corresponds with the meaning of 'force majeure' under Dutch national legislation (Article 6:75 of the Dutch Civil Code). In principle, under Dutch law contractual parties are not required to include in the agreement an explicit clause on the occurrence of force majeure situations in the agreement, because this is governed under Dutch national legislation. Force majeure applies where a party's failure to meet its (contractual) obligations was not caused by its own fault and where they cannot be held accountable on the basis of the law, legal act or the common opinion. It requires careful analysis to determine if force majeure or unforeseen circumstances can be relied upon.

If there is no specific clause on force majeure with respect to pandemic/epidemic included in the agreement, parties can rely on the rules of force majeure as defined under Dutch national legislation. Whether there is force majeure will depend on the specific situation.

(1.1) Does pandemic/epidemic need to be defined in an agreement as a force majeure event in order to be valid in your jurisdiction?

See response to Q1.

(1.2) Is a pandemic/an epidemic a force majeure event stipulated by law, case law or regulation in your jurisdiction?

Yes, see response to Q1.

(2) Does the force majeure trigger the right of suspension or termination of the agreement or are there other criteria to consider?

If a suspension of the contractual obligations is possible, this must be agreed upon between the parties. Suspension will only be allowed if reasonable and if it is still possible for the parties to meet their (contractual) obligations. Even if the parties are no longer able to meet their (contractual) obligations, termination of the agreement will still depend on the circumstances at hand. This should be determined on the basis of reasonableness and fairness. Thus, force majeure might trigger the right to suspend or terminate the agreement, but also other circumstances should be taken into account.

(2.1) In the former case (suspension), for how long would the agreement be suspended (again case law, law)?

See response to Q2.

(2.2) Does the right to suspend also automatically lead to the right to terminate if the force majeure event continues?

See response to Q2.

(3) If the concept of force majeure is unknown in your jurisdiction, are there any other valid arguments to justify the non-performance of a party's obligations in your jurisdiction?

Not applicable.

(1) Can a contracting party use the concept of force majeure in the context of Covid-19 in your jurisdiction to justify not performing its obligations under an agreement? If not defined in an agreement, how difficult is it to prove that a pandemic/epidemic is a force majeure event in your jurisdiction?

Force majeure can be a cause to suspend or terminate an agreement. If force majeure includes an example of such circumstances, such as compliance with applicable governmental orders, rules, regulations, state of health emergency for pandemic or epidemic (and in the actual situation specifically, affect both parties), they can cause the suspension of the agreement.

If there is no force majeure clause in the agreement, but considering a fact as notorious as a global pandemic / epidemic and its inevitable consequences, the parties can suspend an agreement by mutual agreement during the period and to the extent that they are prevented or hindered from complying with such obligations.

Business contracts typically include a force majeure clause intended to regulate how the parties should behave if a force majeure event occurs. As a general rule, the parties agree that a force majeure event shall temporarily free a party from the duty to fulfil its contractual obligations until the occurred event of force majeure cease or it is stopped.

There is no specific term in the law for the suspension of the contracts, but in the commercial practice is normally for 60 days. The parties should meet and decide if suspending their obligations (this being the implied effect of invoking the force majeure event) is a better option than adapting the contract to the situation caused by the Covid-19 pandemic or its termination. So, must be addressed, case by case.

(1.1) Does pandemic/epidemic need to be defined in an agreement as a force majeure event in order to be valid in your jurisdiction?

See response to Q1.

(1.2) Is a pandemic/an epidemic a force majeure event stipulated by law, case law or regulation in your jurisdiction?

See response to Q1.

(2) Does the force majeure trigger the right of suspension or termination of the agreement or are there other criteria to consider?

See response to Q1.

(2.1) In the former case (suspension), for how long would the agreement be suspended (again case law, law)?

See response to Q1.

(2.2) Does the right to suspend also automatically lead to the right to terminate if the force majeure event continues?

See response to Q1.

(3) If the concept of force majeure is unknown in your jurisdiction, are there any other valid arguments to justify the non-performance of a party's obligations in your jurisdiction?

See response to Q1.

(1) Can a contracting party use the concept of force majeure in the context of Covid-19 in your jurisdiction to justify not performing its obligations under an agreement? If not defined in an agreement, how difficult is it to prove that a pandemic/epidemic is a force majeure event in your jurisdiction?

Force majeure is not defined by the Polish regulations. However, based on general rules of liability described in the Polish Civil Code, an entity is not liable for not performing or improper performing obligation if it is a result of the circumstances for which the entity is not liable.

Among such circumstances jurisprudence, legal doctrine indicates wars, natural disasters and epidemics. Therefore, from our perspective Covid-19 outbreak as a rule could be qualified as such force majeure. The entity referring to such force majeure should prove that it occurred and in which manner it implied the legal relationship. It does not have to be directly described in the agreement, however, it is common practice to do so (in agreements/general conditions the parties may freely describe or exclude force majeure). Force majeure also does not automatically allow to suspend the agreement but have the legal effect as described above - where litigation / court proceeding is needed.

The other concepts in Polish civil law that may allow to waive the negative effects of the current situation for entrepreneurs from the perspective of the Polish law are clauses concerning extraordinary change of relations (*rebus sic stantibus*) and inability to perform after the obligation arose.

(1.1) Does pandemic/epidemic need to be defined in an agreement as a force majeure event in order to be valid in your jurisdiction?

See response to Q1.

(1.2) Is a pandemic/an epidemic a force majeure event stipulated by law, case law or regulation in your jurisdiction?

See response to Q1.

(2) Does the force majeure trigger the right of suspension or termination of the agreement or are there other criteria to consider?

See response to Q1.

(2.1) In the former case (suspension), for how long would the agreement be suspended (again case law, law)?

See response to Q1.

(2.2) Does the right to suspend also automatically lead to the right to terminate if the force majeure event continues?

See response to Q1.

(3) If the concept of force majeure is unknown in your jurisdiction, are there any other valid arguments to justify the non-performance of a party's obligations in your jurisdiction?

See response to Q1.

(1) Can a contracting party use the concept of force majeure in the context of Covid-19 in your jurisdiction to justify not performing its obligations under an agreement? If not defined in an agreement, how difficult is it to prove that a pandemic/epidemic is a force majeure event in your jurisdiction?

The current version of the Portuguese Civil Code does not make any reference to force majeure - as it did in the previous version - in respect of situations where one of the parties cannot perform its obligations, on a definitive or temporary basis, for reasons not attributable to it.

In the present version, the Portuguese Civil Code sets out, among other, that:

1. An obligation extinguishes when it becomes impossible to be complied with for reasons not attributable to the debtor (objective and definitive impossibility to comply with the obligation).
2. If a debtor cannot temporarily comply with its obligation, it will not be liable vis-à-vis the creditor for the delay in performing such obligation (temporary impossibility to comply with the obligation). In these cases, the obligation will only be considered temporary if the creditor keeps its interest in the performance of such obligation (this interest needs to take into consideration the goal of the obligation).

3. If an obligation becomes impossible to be performed in a bilateral agreement (for reasons not ascribed to any of the parties), the creditor of such obligation will not be under the obligation to perform the corresponding obligation. If it has already performed its corresponding obligation, it may claim its reimbursement or an equivalent compensation.

4. If the circumstances under which the parties have agreed to contract have "abnormally" or unexpectedly changed, the aggrieved party may request the termination or the adjustment (applying a principle of equity, *ex aequo et bono*) of the agreement, provided that the obligations due by it affects in a serious manner the good faith principles and is not covered by the agreement inherent risks.

There is no reference in the Portuguese Civil Code to pandemic or epidemic events as there is no reference to natural disasters or any of the cases that would typically qualify as force majeure events in a contractual clause.

However, the clauses referred to above are likely to be applicable in the event of pandemic/epidemic in Portugal. There is even one scholar that recently wrote about this in the context of Covid-19.

The idea behind the above-mentioned clauses no. 1 to 3 is to release a debtor from its obligation(s) – or from the obligation to pay any compensation to the creditor for non-performance or delay in the performance - if it is not in a position, for a reason that cannot objectively be attributable to it, to comply with the underlying obligation(s).

The clause no. 4 statutorily recognizes the concept of hardship and the underlying goal is a bit different (vs clauses nos. 1-3). In cases where this clause is potentially applicable, performance of the underlying obligation is possible but is extremely burdensome for the aggrieved party since the circumstances under which the parties have agreed to contract have fundamentally changed. For these reasons, we believe that this provision may be relevant for consideration purposes but does not directly address the concerns and issues specifically raised in your e-mail.

(1.1) Does pandemic/epidemic need to be defined in an agreement as a force majeure event in order to be valid in your jurisdiction?

See response to Q1.

(1.2) Is a pandemic/an epidemic a force majeure event stipulated by law, case law or regulation in your jurisdiction?

See response to Q1.

(2) Does the force majeure trigger the right of suspension or termination of the agreement or are there other criteria to consider?

As referred to in the answer to Q1, if a debtor cannot temporarily comply with its obligation, it will not be liable vis-à-vis the creditor for the delay in performing such obligation (temporary impossibility to comply with the obligation). In other words, the performance of the obligation is suspended and no liabilities will, in principle, arise therefrom to the debtor.

The obligation will be considered temporary if the creditor keeps its interest in the performance of such obligation. For this purpose, the interest will have to be assessed taking into consideration the goal of the obligation.

The obligation will also cease to be temporary if it was subject to a key term, i.e. it had to be imperatively complied until a certain day/time, if not complied on or before such day/time, the impossibility becomes definitive and the obligation is extinguished.

Additionally, the impossibility to perform the obligation will cease to be temporary if (i) in practice, is highly improbable that such impossibility ceases to be temporary (i.e., in practice is a definitive impossibility) or (ii) it will only be possible to perform the suspended obligation in a moment in the future where such obligation will not longer be of any interest to the creditor and therefore the goal of the obligation is frustrated.

(2.1) In the former case (suspension), for how long would the agreement be suspended (again case law, law)?

See response to Q2.

(2.2) Does the right to suspend also automatically lead to the right to terminate if the force majeure event continues?

See response to Q2.

(3) If the concept of force majeure is unknown in your jurisdiction, are there any other valid arguments to justify the non-performance of a party's obligations in your jurisdiction?

The concept of force majeure is not strange in our jurisdiction even though it is no longer mentioned in the Contracts section of the actual version of the Portuguese Civil Code. The current version has adopted a broader approach of "impossibility to perform certain obligations for reasons not attributable to the debtor", which includes reasons that can go from force majeure events to others exclusively attributed to third parties.

Also refer to response to Q2.

(1) Can a contracting party use the concept of force majeure in the context of Covid-19 in your jurisdiction to justify not performing its obligations under an agreement? If not defined in an agreement, how difficult is it to prove that a pandemic/epidemic is a force majeure event in your jurisdiction?

In Russia this concept (event of force majeure) is established in the Civil Code. However, this concept does not allow a party to the contract to not perform obligations. This concept releases the non-performing party from its obligation to compensate damages. At the same time, the non-performing party will not be released from the performance of the core obligation. If the event of force majeure is not defined in the agreement, it will not be more difficult to prove that pandemic/epidemic cases are events of force majeure compared to other events of force majeure.

(1.1) Does pandemic/epidemic need to be defined in an agreement as a force majeure event in order to be valid in your jurisdiction?

It is advisable to define in an agreement what the events of force majeure are, as precisely as possible. However, if the agreement contains only a general reference to events of force majeure or does not contain any reference at all, such fact does not prevent any party to the agreement to rely on a real force majeure event if it takes place.

(1.2) Is a pandemic/an epidemic a force majeure event stipulated by law, case law or regulation in your jurisdiction?

Russian law contains only general description of events which can be considered as events of force majeure. Court practice supports force majeure as a concept but does not define any specific events as such. Still, based on the concept of the force majeure stipulated in the law, a pandemic/epidemic can be considered as an event of force majeure.

(2) Does the force majeure trigger the right of suspension or termination of the agreement or are there other criteria to consider?

According to Russian law and court practice, an event of force majeure allows a contracting party to suspend the performance of obligations under the contract for as long as the event of force majeure lasts. However, as soon as the event of force majeure disappears, the performance of obligations under the agreement shall continue. In the meantime, according to Russian law, after elimination of the event of force majeure, the creditor has the right to reject accepting performance of obligations under the agreement by the debtor if the creditor has no longer interest in accepting the performance thereof. In this case, the creditor can request the termination of the agreement. In other cases, an event of force majeure does not trigger termination of the agreement.

(2.1) In the former case (suspension), for how long would the agreement be suspended (again case law, law)?

The agreement will be suspended for the period of force majeure.

(2.2) Does the right to suspend also automatically lead to the right to terminate if the force majeure event continues?

No.

(3) If the concept of force majeure is unknown in your jurisdiction, are there any other valid arguments to justify the non-performance of a party's obligations in your jurisdiction?

Not applicable.

(1) Can a contracting party use the concept of force majeure in the context of Covid-19 in your jurisdiction to justify not performing its obligations under an agreement? If not defined in an agreement, how difficult is it to prove that a pandemic/epidemic is a force majeure event in your jurisdiction?

In order for a pandemic/epidemic to be recognized as a force majeure event between contractual parties in Serbia, impossibility of fulfilment for one or both parties needs to happen. Namely, Article 354 of the Serbian Law on Contracts and Torts stipulates that:

- (1) An obligation shall come to an end should its fulfilment be impossible due to circumstances for which the debtor is not to blame.
- (2) A debtor shall be expected to prove the existence of the circumstances exempting him from liability.

To summarize, pandemic/epidemic must be directly correlated to the impossibility of fulfilment of the obligation(s) of one or both parties, and an affected party needs to be able to prove it.

(1.1) Does pandemic/epidemic need to be defined in an agreement as a force majeure event in order to be valid in your jurisdiction?

Although there is no obstacle to define it in an agreement, it will, ex lege, lead to termination of the agreement, or part of the agreement, if impossibility of fulfilment occurs.

Also refer to response to Q1.

(1.2) Is a pandemic/an epidemic a force majeure event stipulated by law, case law or regulation in your jurisdiction?

See response to Q1.

(2) Does the force majeure trigger the right of suspension or termination of the agreement or are there other criteria to consider?

There is a possibility to only suspend the agreement until the epidemic/pandemic is over, or until fulfilment is again possible, but that is entirely in the area of the Autonomy of Choice of the contractual parties, i.e. if the delayed fulfilment still meets their contractual goals. It does not necessarily leads to the termination, but it could, if fulfilment becomes impossible or futile.

(2.1) In the former case (suspension), for how long would the agreement be suspended (again case law, law)?

See response to Q2.

(2.2) Does the right to suspend also automatically lead to the right to terminate if the force majeure event continues?

See response to Q2.

(3) If the concept of force majeure is unknown in your jurisdiction, are there any other valid arguments to justify the non-performance of a party's obligations in your jurisdiction?

Not applicable.

Please see responses to Q1 and Q2.

(1) Can a contracting party use the concept of force majeure in the context of Covid-19 in your jurisdiction to justify not performing its obligations under an agreement? If not defined in an agreement, how difficult is it to prove that a pandemic/epidemic is a force majeure event in your jurisdiction?

Please see responses to Q1.1 and Q1.2.

(1.1) Does pandemic/epidemic need to be defined in an agreement as a force majeure event in order to be valid in your jurisdiction?

The Singapore courts have held that in construing the ambit of a force majeure clause, the key principle is to look at the specific wording of the clause and to consider whether, upon proper construction, the parties intended that the supervening event should fall within the scope of the clause.

For example, in the Court of Appeal case of *Holcim (Singapore) Pte. Ltd. v Precise Development Pte. Ltd.* [2011] 2 SLR 106 (*Holcim*), the relevant force majeure clause provided that the supplier would not be obligated to supply concrete to the purchaser if the supply of concrete was disrupted by virtue of specified situations, including the shortage of material and any other factors arising through circumstances beyond the control of the supplier. The court held that upon construction of the language of the clause, the Indonesian government's ban on the export of sand, which is a key component of concrete, would fall under the definition of a force majeure event above.

The specific wording of the force majeure clause may also affect how severe the impact of supervening event on the parties' abilities to carry out their obligations must be in order for a party to invoke the force majeure clause. For example, the court's finding in *Holcim* that the supplier could invoke the force majeure clause was due, in part, to the fact that the clause had been worded such that events that "disrupted" the supply of concrete would be sufficient to invoke the force majeure clause. The court held that the use of the word "disrupt" implied a lower threshold than clauses which stated that the supervening event must prevent parties from discharging their obligations. In analyzing whether an event has disrupted parties' ability to carry out their obligations, the court should be informed by considerations of commercial impracticability.

(1.2) Is a pandemic/an epidemic a force majeure event stipulated by law, case law or regulation in your jurisdiction?

No, a pandemic/epidemic is not a force majeure event stipulated by law, case law or regulation in Singapore as the ambit of what constitutes a force majeure event will depend on the construction of the language of the clause.

(2) Does the force majeure trigger the right of suspension or termination of the agreement or are there other criteria to consider?

There is no fixed mechanism provided at law for the remedies available upon a force majeure event. Whether or not the parties have the right to suspend or terminate the agreement will depend on the specific wording of the force majeure clause.

(2.1) In the former case (suspension), for how long would the agreement be suspended (again case law, law)?

See response to Q2.

(2.2) Does the right to suspend also automatically lead to the right to terminate if the force majeure event continues?

See response to Q2.

(3) If the concept of force majeure is unknown in your jurisdiction, are there any other valid arguments to justify the non-performance of a party's obligations in your jurisdiction?

If an agreement does not contain a force majeure clause, or if it is clear that a supervening event does not fall under the ambit of the force majeure clause, parties may be able to rely on the doctrine of frustration in order to justify non-performance.

At common law, a contract may be said to be frustrated when, "without the default of either party, a supervening event that occurred after the formation of the contract rendered a contractual obligation radically or fundamentally different from what had been agreed in the contract" [Alliance Concrete Singapore Pte. Ltd. v Sato Kogyo (S) Pte. Ltd. [2014] 3 SLR 857] (Alliance Concrete). The doctrine of frustration may only be relied on in exceptional circumstances and it is often insufficient to show that the supervening event has merely resulted in higher expenses or onerousness. In assessing whether a contract has been frustrated, the courts will take a multi-factorial approach in its evaluation and factors such as the nature of the event, its impact on the parties' obligations under the contract, as well as the parties' reasonable expectations should be considered.

For example, in Alliance Concrete, the Court of Appeal held that the Indonesian government's ban on the export of sand could constitute a frustrating event because both parties to the contract had contemplated that Indonesian sand would be used by the supplier in order to prepare the concrete to be supplied. The unavailability of Indonesian sand for use in the concrete would therefore fulfill the requirement that the supervening event would render a contractual obligation radically or fundamentally different from what had been agreed in the contract.

If a contract is deemed to have been frustrated, the obligations of the parties will cease immediately upon the occurrence of the frustrating event and the allocation of loss will be subject to the rules set out in the Frustrated Contracts Act (Cap. 115) (the "Act") unless otherwise provided for in the contract or if excluded under section 3 of the Act.

(1) Can a contracting party use the concept of force majeure in the context of Covid-19 in your jurisdiction to justify not performing its obligations under an agreement? If not defined in an agreement, how difficult is it to prove that a pandemic/epidemic is a force majeure event in your jurisdiction?

According to the Slovak Commercial Code, force majeure event (FM) is an objective event which is:

- (1) Unforeseeable (at the time of entering into the contract),
- (2) Impossible to overcome and
- (3) Has occurred independently from the parties' will preventing the party to temporarily perform its contractual obligations. FM clause would not however apply if the pandemic/epidemic occurs after the affected party already delayed its performance.

Based on the above, pandemic/epidemic could be generally classified as a FM event, however it is necessary to examine whether all the above cases (1,2,3) were causally linked to the pandemic/epidemic in a way that could not be foreseen or overcome. Also, the provision relieving a party of its responsibility (in the case of FM event occurrence) would rather be interpreted restrictively by the court, since such relieve would be considered as an exception to pacta sunt servanda. Indeed, no contractual obligation should take precedence over people's health, but in the present case, the court would also examine if pandemic/epidemic does not merely serve as an excuse to get rid of contractual obligations.

Also, for instance, if party ceases its operations for the sole fear that the epidemic might spread rapidly in the factory and there are no quarantine measures from government authorities, the court might less likely relieve party of its responsibility for non-compliance. Based on the above, it will be thus necessary for the court to examine all the circumstances of the case to determine whether the pandemic/epidemic meets the above mentioned definition of FM event.

(1.1) Does pandemic/epidemic need to be defined in an agreement as a force majeure event in order to be valid in your jurisdiction?

Slovak Commercial Code is "open" in the sense that the pandemic/epidemic does not need to be specifically listed as a FM event, provided it meets the requirements of the objective test mentioned in question above.

Organizations should consider including contractual FM provisions as well as a list of specific FM events in their contracts. It will be easier for parties to bring a claim if the pandemic/epidemic is listed as FM (although typically the other requirements of the objective test must still be met). While epidemics are rather uncommon in the FM provisions, an argument may be made for clients to specifically include "epidemic" or "pandemic" as listed FM events or argue that they may be subsumed within more general terms such as "disease" or "illness".

(1.2) Is a pandemic/an epidemic a force majeure event stipulated by law, case law or regulation in your jurisdiction?

Pandemic/epidemic is neither a FM event by law nor FM event by case law.

(2) Does the force majeure trigger the right of suspension or termination of the agreement or are there other criteria to consider?

Under the Commercial Code, the exclusion from liability (due to epidemic/pandemic event) is limited to the duration of the FM event and thus is of temporary nature. FM event would not automatically trigger right to terminate the contract. In other words, suspension of the obligation to perform shall apply as long as FM event prevents the performance. Since the provisions regarding exclusion of liability are non-mandatory, we recommend the parties to include into the contract the right to withdraw from the contract if FM event would last longer period (such period to be defined in the relevant contract).

Also, while a suspension should not automatically trigger termination, certain kinds of contractual performance affected by FM event may eventually cause frustration of the contract (for instance if the essential purpose of the contract cannot be realized as a result of the FM event). Certain kinds of performance, which are dependent on circumstances may be rendered needless (i.e. impossibility of performance of the contract) and therefore a termination would be possible.

In order to alleviate any negative economic impact of the Covid-19 restrictive measures, the Slovak government introduced legislation effective as of 12 May 2020, which created "temporary protection of entrepreneurs" where the entrepreneur records significant increase in the number of overdue receivables or a significant decrease in turnover. At the entrepreneurs' request, a court may grant "temporary protection" status, and will publish this information in the Official Gazette. Temporarily protected entrepreneurs will be thus exempt from several obligations, inter alia, their creditors cannot unilaterally terminate their contracts due to delay in performance, which occurred (a) in connection with Covid-19 restrictive measure, (b) in the period from 12 March 2020 until 12 May 2020, and (c) the creditors' ability to maintain their businesses would not be in imminent danger.

(2.1) In the former case (suspension), for how long would the agreement be suspended (again case law, law)?

See response to Q2.

(2.2) Does the right to suspend also automatically lead to the right to terminate if the force majeure event continues?

See response to Q2.

(3) If the concept of force majeure is unknown in your jurisdiction, are there any other valid arguments to justify the non-performance of a party's obligations in your jurisdiction?

Not applicable.

(1) Can a contracting party use the concept of force majeure in the context of Covid-19 in your jurisdiction to justify not performing its obligations under an agreement? If not defined in an agreement, how difficult is it to prove that a pandemic/epidemic is a force majeure event in your jurisdiction?

No, the term does not need to be defined as force majeure in an agreement to be valid. Despite it not being defined, if the event occurred both contractual parties might be able to agree on the termination or suspension of the agreement (depending on whether it is not possible to execute the agreement indefinitely or temporarily). Where one party decided to terminate or suspend the agreement and the other party didn't agree, a competent judge would have to determine, when considering the dispute on a case-by-case basis and taking into consideration the requirements mentioned above, if the situation could indeed fall under the scope of the force majeure term.

In this sense, it should be noted that, Spanish contracts have normally a clause which states that either the Spanish Civil and/or Commercial Codes will apply to what has not been agreed through the contract, and both of them incorporate provisions regarding the lack of liability in cases of force majeure.

(1.1) Does pandemic/epidemic need to be defined in an agreement as a force majeure event in order to be valid in your jurisdiction?

See response to Q1.

(1.2) Is a pandemic/an epidemic a force majeure event stipulated by law, case law or regulation in your jurisdiction?

No, in the Spanish jurisdiction neither the law nor the case-law have established whether an epidemic should be generally considered as a force majeure event. As indicated in the previous question, in the case of a dispute, it would be determined by a judge on a case-by case basis and taking into consideration the legal ad doctrinal requirements already indicated.

(2) Does the force majeure trigger the right of suspension or termination of the agreement or are there other criteria to consider?

Spanish case law has declared that force majeure, with regards to obligations thereby affected, can operate either

(i) definitely, extinguishing the debtor's obligation completely or

(ii) provisionally, suspending the agreement and delaying the fulfilment of the obligation, which generally will revive when the effects of force majeure cease.

In order for a force majeure event to cause the complete exoneration of a debtor's liability and obligations (therefore, terminating the agreement), it is required:

a) That the causal event is unforeseeable, because it exceeds the normal course of life, or that it is inevitable, insurmountable or irresistible.

b) That the event is not due to the will of the alleged debtor.

c) That the event in question makes it impossible to comply with the obligation previously contracted or prevents the birth of the one that may occur;

d) That between the result of non-compliance with the obligation and the event that produced it there is an efficient causal link or an intimate connection between the fact of origin of the force majeure and the obligation, which is an obstacle to its compliance.

Moreover, there are other articles in the Spanish Civil Code (art. 1182CC and 1184CC) which release the debtor from his/her obligations when performance has become legally or physically impossible and provided that they are not yet in default.

Either way – if suspended or terminated – article 1105 CC would apply and, under no circumstances the creditor could require liability damages

from the debtor.

Having said this, if the contract could be just suspended because the force majeure doesn't make impossible in a full and permanent way its execution (and, therefore, doesn't involve necessarily the termination of the contract), but the creditor wished to terminate anyway the contract, then liquidity damages could be due, but in this case, from the creditor to the debtor.

In the case of an agreement being suspended, this suspension should last until the effects of the force majeure ceases, unless the agreement has lost its value (e.g., When a fixed term for inexcusable execution has been established) and it becomes impossible to achieve what both parties aimed when entering into the agreement.

(2.1) In the former case (suspension), for how long would the agreement be suspended (again case law, law)?

See response to Q2.

(2.2) Does the right to suspend also automatically lead to the right to terminate if the force majeure event continues?

See response to Q2.

(3) If the concept of force majeure is unknown in your jurisdiction, are there any other valid arguments to justify the non-performance of a party's obligations in your jurisdiction?

See response for Q1 and Q2.

(1) Can a contracting party use the concept of force majeure in the context of Covid-19 in your jurisdiction to justify not performing its obligations under an agreement? If not defined in an agreement, how difficult is it to prove that a pandemic/epidemic is a force majeure event in your jurisdiction?

When determining the right to invoke force majeure, it is vital to analyze the agreement, applicable law and factual circumstances in each case. It should be noted that under Swedish law, the concept of force majeure is not easily defined, and the applicability is subject to difficulties. Therefore, the presence of a force majeure clause in agreements can in many cases facilitate the assessment of whether a force majeure situation is at hand.

Under Swedish law, in the absence of an explicit contractual regulation of force majeure, it may be possible to apply the principle that a party can be excused for non-performance etc. if unforeseeable events outside the party's control are at hand. It is however yet to be clarified whether this principle should be regarded as generally applicable and the assessment depends on the circumstances in the individual case. Thus, the absence of a contractual regulation relating to force majeure events leaves the possibility to claim relief uncertain. Depending on the severity of the consequences in the specific case, it is also feasible that a party who is unable to fulfil their performance requests an adjustment of the contract with reference to the "general clause" in Section 36 of the Swedish Contracts Act (1915:218), which requires unconscionability with regard to inter alia the contents of the agreement, the circumstances prevailing at the time the agreement was entered into and subsequent circumstances.

(1.1) Does pandemic/epidemic need to be defined in an agreement as a force majeure event in order to be valid in your jurisdiction?

Whether the spread of the Covid-19 virus and the resulting consequences are grounds for force majeure or not depends on several different circumstances and must be assessed on a case-by-case basis. The circumstances to include in the assessment are, for instance,

- 1) The wording of the force majeure clause, e.g. whether events such as epidemics, pandemics or quarantines are mentioned and if the clause has wide and including language,
- 2) The concrete underlying cause of a disruption, e.g. direct illness among personnel, governmental or authority decisions due to the virus, shortfall of deliveries from suppliers, transportation shortages etc.,
- 3) Whether there is an actual disruption, noting that merely increased costs and difficulties to perform are not always sufficient in and of themselves, and
- 4) The invoking party's possibilities to mitigate the effects, e.g. by using other suppliers, alternate means of performing etc.

Based on the above, defining, or at least including pandemic/epidemic in the force majeure clause of an agreement makes out one of several factors when determining whether the spread of the Covid-19 virus constitutes a relevant event for force majeure.

(1.2) Is a pandemic/an epidemic a force majeure event stipulated by law, case law or regulation in your jurisdiction?

Under Swedish law, there is no cohesive definition of which events may constitute force majeure. Instead, the question of whether the spread of an epidemic and the resulting consequences are grounds for force majeure or not must be assessed based on the circumstances given above. Generally, Swedish contract law is considered to contain a general contractual principle implying that liability for damages due to breach of contract desists if the breach was caused by an event out of either party's control (force majeure). However, as described above, the applicability of this principle is yet to be clarified with respect to pandemics/epidemics.

(2) Does the force majeure trigger the right of suspension or termination of the agreement or are there other criteria to consider?

Depending on any applicable mandatory legislation and the wording of the specific force majeure clause, a party may have a right to delay performance, be partially excused or entirely relieved from performances under the agreement. If the situation persists, a party could also be entitled to terminate the agreement. The parties may also agree on renegotiation to create a solution. Further, some agreements contain “hardship clauses”, which allow for renegotiation under certain circumstances.

If the force majeure event, and with it the party’s inability to perform according to the agreement, is only temporary, the breach of contract is only excusable as long as it is reasonable given the consequences of the force majeure event for the party’s ability to perform contractually. If the event/obstacle is permanent, the parties are relieved of their obligations to perform.

As described above, the assessment of whether a force majeure event is at hand along with potential contractual consequences it may have is assessed on a case-by-case basis. This means that a pandemic/an epidemic might not entitle a party to relief of contractual obligations. For example, it is not certain that the issuing of “force majeure certificates” by the China Council for the Promotion of International Trade will imply that force majeure is always enforceable. Further, as regards agreements concluded after the SARS outbreak in 2003, it could be argued that it has been possible for the contractual parties to predict or assume that a similar virus outbreak could occur again.

(2.1) In the former case (suspension), for how long would the agreement be suspended (again case law, law)?

See response to Q2.

(2.2) Does the right to suspend also automatically lead to the right to terminate if the force majeure event continues?

See response to Q2.

(3) If the concept of force majeure is unknown in your jurisdiction, are there any other valid arguments to justify the non-performance of a party’s obligations in your jurisdiction?

Not applicable.

(1) Can a contracting party use the concept of force majeure in the context of Covid-19 in your jurisdiction to justify not performing its obligations under an agreement? If not defined in an agreement, how difficult is it to prove that a pandemic/epidemic is a force majeure event in your jurisdiction?

Please refer to the answers under Q1.1 and Q1.2.

(1.1) Does pandemic/epidemic need to be defined in an agreement as a force majeure event in order to be valid in your jurisdiction?

No, not necessarily. A party may invoke a force majeure event as per Swiss law considering that it is generally qualified as an unforeseeable, unavoidable and insurmountable event.

(1.2) Is a pandemic/an epidemic a force majeure event stipulated by law, case law or regulation in your jurisdiction?

As mentioned above, a force majeure event is qualified as an unforeseeable, unavoidable and insurmountable event. Following this definition we can consider that a pandemic/epidemic is to be considered as such.

(2) Does the force majeure trigger the right of suspension or termination of the agreement or are there other criteria to consider?

Swiss law does not contain specific provisions on consequences of the force majeure on the contract; the effect has to be provided for in the force majeure clause in the contract. If the contract does not have any explicit force majeure clause, under Swiss law, the parties can rely on Art. 119 of the Swiss code of obligations ("CO") which stipulates that "An obligation is deemed extinguished where its performance is made impossible by circumstances not attributable to the obligor". The consequences of a force majeure event on the contract will depend on the type of contract and obligations of the parties, and, where the obligation is impossible to perform, if the contract has lost its purpose. But in any case, if the an obligation is impossible to perform by circumstances not attributable to the obligor, the latter will be released from performing its obligation. The law or case law however does not specify if the contract has to be suspended or terminated, it will really depend on the possibility to performance the obligation and its impact on the contract although the contract is not de facto terminated.

(2.1) In the former case (suspension), for how long would the agreement be suspended (again case law, law)?

See response to Q2.

(2.2) Does the right to suspend also automatically lead to the right to terminate if the force majeure event continues?

See response to Q2.

(3) If the concept of force majeure is unknown in your jurisdiction, are there any other valid arguments to justify the non-performance of a party's obligations in your jurisdiction?

Not applicable.

(1) Can a contracting party use the concept of force majeure in the context of Covid-19 in your jurisdiction to justify not performing its obligations under an agreement? If not defined in an agreement, how difficult is it to prove that a pandemic/epidemic is a force majeure event in your jurisdiction?

Under Ukrainian law, there is the concept of “insurmountable force” which is understood to be extraordinary and unavoidable circumstances under the current conditions of running business. There is also a notion of impossibility to perform an obligation. The law also allows the parties to agree on specific circumstances that release from contractual liability.

This means that if pandemic/epidemic is not expressly mentioned in a contract a party would need to prove that it qualifies as a “insurmountable force” and/or leads to impossibility to perform an obligation. If however these events are explicitly mentioned in the force majeure clause of the agreement, it would be easier to invoke them. At the same time, the party in default will still need to prove that pandemic/epidemic has taken place and affected the performance of the contract by this party. If the pandemic/epidemic is officially declared by the authorities and they impose certain restrictive measures, such authorities decision can in fact serve as a force majeure circumstance. Similarly to the above, in practice it is better that it is specifically stipulated in a contract.

(1.1) Does pandemic/epidemic need to be defined in an agreement as a force majeure event in order to be valid in your jurisdiction?

See response to Q1.

(1.2) Is a pandemic/an epidemic a force majeure event stipulated by law, case law or regulation in your jurisdiction?

See response to Q1.

(2) Does the force majeure trigger the right of suspension or termination of the agreement or are there other criteria to consider?

By law, force majeure (as described above) can serve as a ground to release from liability for breach of contract. If a party can claim the impossibility to perform a contract it could serve by law as a ground to terminate the contract. However, the parties may agree contractually that these events also lead to suspension/termination of the contract - the term of suspension and cases of termination should better be specifically stipulated in the contract. As above, these matters should better be regulated contractually. Normally, the suspension should last for as long as the events prevent the ability to perform a contract.

(2.1) In the former case (suspension), for how long would the agreement be suspended (again case law, law)?

See response to Q2.

(2.2) Does the right to suspend also automatically lead to the right to terminate if the force majeure event continues?

See response to Q2.

(3) If the concept of force majeure is unknown in your jurisdiction, are there any other valid arguments to justify the non-performance of a party's obligations in your jurisdiction?

Refer to responses for Q1 and Q2.

(1) Can a contracting party use the concept of force majeure in the context of Covid-19 in your jurisdiction to justify not performing its obligations under an agreement? If not defined in an agreement, how difficult is it to prove that a pandemic/epidemic is a force majeure event in your jurisdiction?

The Civil Code of the UAE recognizes the concept of force majeure. To rely on Covid-19 as a force majeure, one would have to prove that the prejudice (i.e. the inability to perform our contractual obligations) arose as a result of the virus.

(1.1) Does pandemic/epidemic need to be defined in an agreement as a force majeure event in order to be valid in your jurisdiction?

As the UAE Government has been extremely robust in its approach to Covid-19 (school closures, travel bans, cancellation of events, etc.), it may be argued that a broadly drafted force majeure clause may be deemed to capture the Covid-19 scenario.

(1.2) Is a pandemic/an epidemic a force majeure event stipulated by law, case law or regulation in your jurisdiction?

Not specifically, please see response to Q1.1.

(2) Does the force majeure trigger the right of suspension or termination of the agreement or are there other criteria to consider?

Article 273 UAE Civil Code:

- (1) In contracts binding on both parties, if force majeure supervenes which makes the performance of the contract impossible, the corresponding obligation shall cease, and the contract shall be automatically cancelled.
- (2) In the case of partial impossibility, that part of the contract which is impossible shall be extinguished, and the same shall apply to temporary impossibility in continuing contracts, and in those two cases it shall be permissible for the obligor to cancel the contract provided that the obligee is so aware.

Article 287 of the UAE Civil Code provides a codified provision for force majeure (see below):
“In the absence of a provision in the law or an agreement to the contrary, a person is not liable for the reparation if he proves that the prejudice resulted from a cause beyond his control such as heavenly blight, unforeseen circumstances, force majeure, the fault of others or of the victim.”

(2.1) In the former case (suspension), for how long would the agreement be suspended (again case law, law)?

See response to Q2.

(2.2) Does the right to suspend also automatically lead to the right to terminate if the force majeure event continues?

See response to Q2.

(3) If the concept of force majeure is unknown in your jurisdiction, are there any other valid arguments to justify the non-performance of a party's obligations in your jurisdiction?

Not applicable.

(1) Can a contracting party use the concept of force majeure in the context of Covid-19 in your jurisdiction to justify not performing its obligations under an agreement? If not defined in an agreement, how difficult is it to prove that a pandemic/epidemic is a force majeure event in your jurisdiction?

Possibly - if drafted into the contract. There is no implied or statutory concept of force majeure under English Law. There is the common law concept of frustration but it is notoriously difficult to argue and results in the contract being discharged, rather than suspended. Frustration would really only be a potential argument where contract performance was impossible, illegal or radically different for the parties' original contemplation - it isn't intended to cover performance becoming more costly or onerous.

There isn't any agreed definition of force majeure in English Law, so, without any contractual definition, it would be difficult. A clause stating the "usual 'force majeure' clauses shall apply" was held void for uncertainty (*British Electrical and Associated Industries (Cardiff) Ltd v Patley Pressings Ltd* [1953] 1 WLR. 280). Ideally, there would be a definition which would include a list of events, one of which is a pandemic/epidemic - or it may be possible to fall under other examples (such as government controls). Usually there will also be a catch all provision of 'other events beyond the reasonable control of the parties.' If this catch all is preceded by a specific list of events, then English Law (ejusdem generis rule) would seek to interpret those 'other events' as being in the same category as those listed. If there is no catch all, English Law contract interpretation assumes an exhaustive list is just that - other events have been intentionally excluded and a Court would respect that.

There are also other factors that may be relevant depending on the contractual wording, such as foreseeability, causation (usually the event would have to be the sole cause of the performance issues), outcome (for example, does performance have to be prevented/impossible for the FM clause to bite - or just be more difficult/costly), mitigation (parties will usually have to show attempts to mitigate the effects of the FM) and notice (clauses may require certain notice to be given - failure to do that could render them void).

(1.1) Does pandemic/epidemic need to be defined in an agreement as a force majeure event in order to be valid in your jurisdiction?

No, as above, it may be possible for pandemic to fall under other elements of a definition, but specific wording would be more helpful.

(1.2) Is a pandemic/an epidemic a force majeure event stipulated by law, case law or regulation in your jurisdiction?

See response to Q1.

(2) Does the force majeure trigger the right of suspension or termination of the agreement or are there other criteria to consider?

There is no specific definition in the law about the duration of the suspension or the termination of the contract.

(2.1) In the former case (suspension), for how long would the agreement be suspended (again case law, law)?

See response to Q2.

(2.2) Does the right to suspend also automatically lead to the right to terminate if the force majeure event continues?

See response to Q2.

(3) If the concept of force majeure is unknown in your jurisdiction, are there any other valid arguments to justify the non-performance of a party's obligations in your jurisdiction?

See response to Q1.

(1) Can a contracting party use the concept of force majeure in the context of Covid-19 in your jurisdiction to justify not performing its obligations under an agreement? If not defined in an agreement, how difficult is it to prove that a pandemic/epidemic is a force majeure event in your jurisdiction?

In theory, it could, but parties may find it difficult to use this circumstance as exculpatory in practice (at least in most of the cases). Each case should be analyzed for its particular circumstances, as exculpatory circumstances such as “force majeure” require many different important elements to be present that we will describe – in general terms – in Q1.1. Some of these elements are included expressly in our legal system (Civil and Commercial Codes), while others derive from doctrine interpretation and non-binding case law.

(1.1) Does pandemic/epidemic need to be defined in an agreement as a force majeure event in order to be valid in your jurisdiction?

Not necessarily. The Civil and Commercial Code provide, in general, that the “force majeure” is an exculpatory circumstance for civil responsibility but does not provide a definition nor examples in particular or an enumeration of the circumstances that would trigger the force majeure. After non-compliance, the debtor will be sentenced to pay compensation for damages, whether in reason of failure to comply with the main obligation or for the delay in its execution - even if there is no bad faith on its part - as long as it is not possible to justify that the non-compliance is due to a non-imputable “strange cause”.

No damages (i.e. civil responsibility for non-compliance) will be due when the debtor has not been able to give or do the thing to which it was required to, or has done what was forbidden to do, yielding to force majeure or by fortuitous case. Except when: a) any of the parties has taken on itself (i.e. assumed at its own risk) the fortuitous cases or force majeure; b) if the fortuitous case has been preceded by any fault or misconduct from the debtor; c) If the debtor had fallen into

default before the case was made fortuitous.

Before analyzing any case and the applicability of exculpatory circumstances, we should understand the nature of the obligations that are into play and which potentially could trigger a non-compliance scenario. For example, if they are obligations to deliver/give something (i.e. “result” obligations) or obligations of “means” (not results, but to follow certain diligent conduct).

Force majeure is an unusual cause, as stated by Uruguayan doctrine and case law. A summary of its elements:

- ▶ Exteriority: the cause should be “strange” or unknown to the debtor.
- ▶ Non-attributable to the debtor: For example, if all the reasonable health measures were to be undertaken, it still would have happened.
- ▶ Unpredictable: at least relative unpredictability is required and this should be verified on a case-by-case

basis.

- ▶ Irresistible: this element should also be measured depending on the circumstances.

Additionally:

It should result in an absolute and objective impossibility of compliance: absolute in the sense that is not merely more “burdensome” for the debtor to comply, but absolutely impossible (e.g., during economic crisis/disasters is more difficult to pay due sums but it is not impossible). While the required “objectivity” means that the circumstance should apply potentially to everyone and not only to the debtor and its circle.

In conclusion, a Pandemic/Epidemic, such as the Covid-19, meets many of these requirements but it is suggested that there are specific scenarios in which it could be argued that such circumstance could be exculpatory. A party would need to first understand the nature of the obligations involved in order to assess its viability.

(1.2) Is a pandemic/an epidemic a force majeure event stipulated by law, case law or regulation in your jurisdiction?

In Law, not expressly as such. Nevertheless, as stated in Q1.1, theoretically it could be invoked (considering the general definitions included in the Codes).

There is little or no case law in which similar circumstances such as this have been used/accepted as exculpatory of civil responsibility in the past.

(2) Does the force majeure trigger the right of suspension or termination of the agreement or are there other criteria to consider?

The possibility of suspending or terminating the agreement in such circumstances is not established by Law but it is our opinion that any clause that includes this possibility could be regarded as valid. According to the Law, only non-compliance will trigger termination. If the obligation is already enforceable, and the debtor defaulted - according to the Law - it may trigger the termination of the contract and the creditor may seek damages accordingly.

(2.1) In the former case (suspension), for how long would the agreement be suspended (again case law, law)?

See response to Q2.

(2.2) Does the right to suspend also automatically lead to the right to terminate if the force majeure event continues?

See response to Q2.

(3) If the concept of force majeure is unknown in your jurisdiction, are there any other valid arguments to justify the non-performance of a party's obligations in your jurisdiction?

Not applicable.

(1) Can a contracting party use the concept of force majeure in the context of Covid-19 in your jurisdiction to justify not performing its obligations under an agreement? If not defined in an agreement, how difficult is it to prove that a pandemic/epidemic is a force majeure event in your jurisdiction?

Uzbekistan legislation allows the parties to define what is a force majeure event and what it is not. If in doubt, or if provided for by the agreement, the party claiming force majeure may apply to the Ministry of Investments and Foreign Trade of the Republic of Uzbekistan (MIFT) for a certificate confirming existence of a force majeure event that impedes or affects the applying party's performance under respective contract. Therefore, we believe that, in practice, it is possible to prove that epidemic/pandemic is a force majeure event if one of the parties will be able to prove that the event in fact served as the basis for non-fulfillment or improper fulfillment of obligations and, especially, if the MIFT confirms this.

(1.1) Does pandemic/epidemic need to be defined in an agreement as a force majeure event in order to be valid in your jurisdiction?

The Uzbekistani law does not obligate the parties of the agreement to specifically establish each potential force-majeure event in the agreement. However, we believe that indication of pandemic/epidemic will be practically desirable, since as per basic principles of Uzbekistan civil law, parties to the agreement are primarily guided by the terms of their agreement.

(1.2) Is a pandemic/an epidemic a force majeure event stipulated by law, case law or regulation in your jurisdiction?

In accordance with the Regulation On the Procedure for Confirming Force Majeure Circumstances, force majeure is an emergency, unavoidable and unforeseen circumstances caused by natural phenomena (earthquakes, landslides, hurricanes, droughts, etc.) or socio-economic circumstances (state of war, blockades, bans on imports and exports in the public interest, etc.) 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 state whether a pandemic/an epidemic is a force majeure circumstance. Further, in accordance with the Tax Code of the Republic of Uzbekistan, 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.

It is also important to note that on 30 August 1996, the Republic of Uzbekistan acceded to the United Nations Convention on Contracts for the International Sale of Goods (the "Convention"). In accordance with the Convention a party is not liable for a failure to perform any of his obligations if they prove that the failure was due to an impediment beyond their control and that they 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.

Further, please note that case/precedent law does not exist in Uzbekistan.

(2) Does the force majeure trigger the right of suspension or termination of the agreement or are there other criteria to consider?

Uzbekistan legislation does not clearly provide for termination or suspension of the agreement due to force majeure event. Generally, the occurrence of force majeure does not lead to termination of the contract, but releases affected party from liability for its late execution.

However, a strong argument can be made that force majeure event triggers, in practice, the right to suspend the agreement. The law does not envisage a period for which the contract can be suspended in the case of force majeure. The term for notifying the other party of the occurrence of force majeure, the maximum term of force majeure (in practice, a three-month period is specified), and the actions of the parties after the expiration of the term of force majeure (e.g. termination of the contract) are usually set by the agreement. If not provided by the agreement, the term of suspension/release from liability is the term of force majeure effect.

(2.1) In the former case (suspension), for how long would the agreement be suspended (again case law, law)?

See response to Q2.

(2.2) Does the right to suspend also automatically lead to the right to terminate if the force majeure event continues?

See response to Q2.

(3) If the concept of force majeure is unknown in your jurisdiction, are there any other valid arguments to justify the non-performance of a party's obligations in your jurisdiction?

Uzbekistan law does contain concept of force majeure.

(1) Can a contracting party use the concept of force majeure in the context of Covid-19 in your jurisdiction to justify not performing its obligations under an agreement? If not defined in an agreement, how difficult is it to prove that a pandemic/epidemic is a force majeure event in your jurisdiction?

Where there are no definitions in an agreement, “epidemic” is valid as a force majeure event only if it satisfies three following conditions:

- ▶ Be unforeseeable; and
- ▶ Not able to be remedied after all possible necessary and admissible measures have been applied.

Epidemic is only regulated in detail as a force majeure event in a few cases under Vietnamese law (e.g. in labor law). In a commercial contract relationship, Vietnamese law does not state clearly whether an epidemic is a case of force majeure. The related parties desiring to apply epidemic as a force majeure event must prove such epidemic meets the abovementioned conditions.

(1.1) Does pandemic/epidemic need to be defined in an agreement as a force majeure event in order to be valid in your jurisdiction?

See response to Q1.

(1.2) Is a pandemic/an epidemic a force majeure event stipulated by law, case law or regulation in your jurisdiction?

See response to Q1.

(2) Does the force majeure trigger the right of suspension or termination of the agreement or are there other criteria to consider?

Yes, if there is a force majeure clause in the contract, either party can unilaterally invoke it to suspend or terminate the contract.

(2.1) In the former case (suspension), for how long would the agreement be suspended (again case law, law)?

Vietnamese law does not specify the suspension duration. The suspension can last until the end of the force majeure event.

(2.2) Does the right to suspend also automatically lead to the right to terminate if the force majeure event continues?

Yes, the right to suspend may automatically lead to the right to terminate if there is a force majeure clause in the contract and a prior notification on this termination is issued by the suspending party.

(3) If the concept of force majeure is unknown in your jurisdiction, are there any other valid arguments to justify the non-performance of a party's obligations in your jurisdiction?

Force majeure is a legal term acknowledged under Vietnamese law. However, aside from invoking force majeure, the party violating contractual obligations can be exempted from the liabilities for its breach if:

- ▶ Liability exemption is agreed upon by all parties;
- ▶ It is entirely attributable to the other party's fault;
- ▶ It is committed by one party as a result of the execution of a decision of a competent state management agency which the related parties cannot know at the time the contract is executed.

If the violating party would like to be exempted for the liabilities due to breach of contract, the above-mentioned exemptions must be proved with specific evidence.

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