

# COVID-19 vs construction contracts

## SO WHAT HAPPENS NOW?

Undoubtedly and unquestionably, the current situation around the world, caused by the spread of the COVID-19 virus, has created and spread with it many complications in almost all business sectors.

In order to limit the transmission of COVID-19 and to protect the citizens and residents of our island, the Government of the Republic of Cyprus has imposed very strict prohibitive and restrictive measures. Among these measures is the ban on all construction work and the suspension of work on all construction sites in the country.

Inevitably, the above measure has had a huge impact on the timely fulfilment of contractual obligations regarding the purchase and sale of real estate and the execution of construction and contracting work. This measure directly affects real estate buyers and/or sellers and/or contractors of such properties. Furthermore, all companies related to the construction sector are also fully affected, whether they are in the commercial construction sector or otherwise or companies related to the real estate sector in any way.

There is no doubt that the spread of COVID-19, as well as the imposition of very strict prohibitive and restrictive measures by the state, fall into such cases, which can be defined as "force majeure or superior force".

In general, force majeure or superior force is a common clause in contracts that may limit the liability of a Contracting Party when an emergen-

cy or situation other than the control of the Contracting Party prevents or impedes, this party, to fulfil its obligations under the contract. The force majeure or superior force clause allows one (or all) parties to terminate the contract and/or be relieved of certain or all of their obligations for a certain period of time, in case of the occurrence of some extraordinary events. The purpose is to allow the parties to conventionally distribute their risk, in relation to the occurrence of future events under conditions specified by the clause.

### Determining whether an incident is a matter of force majeure or not.

Traditionally, force majeure clauses were intended to deal with disasters, such as hurricanes, floods, and volcanic eruptions. More recently, force majeure clauses have been drafted to cover a wider range of events, such as cyber attacks or market collapse. In addition, it is now common for force majeure clauses to include, not only events that make execution of such contracts impossible, but also events that make execution impossible or not commercially viable.

Determining whether an incident is a matter of force majeure or not, it is simply a matter of proper drafting and will depend on the specific wording and scope of the clause. When the



contract justifies a party to a delay due to unavoidable reasons, it is outside the protection of that provision, if it fails, before the terms of the contract are carried on and concluded, to investigate whether there are such unavoidable reasons and to inform the other party to that effect. The contracting party may not be protected when a force majeure event does not actually make the execution impossible.

Therefore, the proliferation of COVID-19, as well as the prohibition of any construction work and the suspension of work on all construction sites in the country, are cases of force majeure as they constitute facts that make it impossible to execute the contract, but also facts that make execution of the contract impossible or non-commercially viable. However, when parties enter into a contract for the purchase/sale/construction of a property, for them to be able to conventionally distribute their risk, in relation to the consequences of the state of emergency in Cyprus, conditions such as "epidemic", "pandemic" or more general terms such as "illness" and "governmental acts" or "national or regional emergencies", shall explicitly be referred to in these contracts as acts of force majeure.

It is clear that the proper study and forecasting of events of force majeure and their clear and correct wording in the body of a contract for the purchase and/or construction of a house, will prevent any unpleasant future consequences and obligations for the parties, which will be caused by the impos-

sibility of execution of the contract or by the fact that the contract has become impossible or not commercially viable.

In the case of existing contracts whereas, and for whatever reason, proper and clear wording has not been explicitly included as to what force majeure includes and covers, then a legally possible right move would be for the contracting parties to agree to amend or redraft the terms of the contract between them, so as to make the appropriate explicit references and relevant wording in the contract. Given the timing of the spread of COVID-19 and the consequences, it is easy to see why such a redrafting and adjustment is likely to have very positive effects on both the execution of the contract and the non-breach of the contractual relationship between the parties.

**All of the above is generic information and in no way constitutes legal advice. In case of any further and specific information feel free to contact us.**