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BUDAPEST, MARCH 16, 2020
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SUMMARY OF THE LEGAL EFFECTS OF THE CORONAVIRUS EPIDEMIC

The pneumonia epidemic, which originally broke out in the Chinese city of Vuhan in the end of 2019, reached the borders of Europe by early 2020. The following summary provides a general overview of the potential legal effects of the virus outbreak, with particular reference to the public authority measures applicable by the Hungarian state, as well as to labour, corporate and contractual legal regulations.

MEASURES APPLICABLE BY THE STATE

As a general obligation, pursuant to Section 62 (1) of Act CLIV of 1997 on Health Care (“Health Care Act), anyone who becomes aware of or suspects an infectious disease affecting himself or a person under his care is obliged to initiate a medical examination.

Furthermore, under the Health Care Act, any person who has been in contact with another person suffering from a specific infectious disease and is likely to be in the incubation period of the disease will be placed under epidemiological surveillance or epidemiological limitations by the competent health and safety authority. Epidemiological surveillance shall be discontinued within 48 hours of the end of the average incubation period of an infectious disease if the risk of infection can be excluded based on the result of the medical examination.

The Government of Hungary declared the state of danger in Governmental Decree No. 40/2020. (III. 11.), legal ground of which is Article 53 of the Fundamental Law, which contains additional rules on the special legal order. Pursuant to this, the Government may issue a decree authorized by provisions of cardinal laws by which it may suspend the application of certain laws, deviate from the provisions of the law and take other extraordinary measures. As a general rule, decrees enacted in this manner shall be effective for 15 days, which may be extended by the Government, subject to the authorization of the Parliament. Such decrees, however, cease to be effective once the state of danger has ceased. To the decrees enacted in this manner the usual rules of promulgation shall be applicable, but the provisions of Act CXXVIII of 2011 on Disaster Management and Amendments to Related Laws (hereinafter: Disaster Management Act) provide the possibility of extraordinary promulgation, when the decree is published by public service broadcasting, communicated word by word (publication in the Official Journal of Hungary is also required in this case).

Pursuant to Section 48 of the Disaster Management Act, in the event of an imminent danger of the escalation of the state of danger, the Hungarian State may supervise the operation of an enterprise. The detailed description of this this regulation is in the Corporate law section.

The general obligations of the employer and the employee

Under Section 2 (3) of Act XCIII of 1993 on Occupational Safety, the employer is responsible for ensuring the safe and healthy labour conditions. This also includes the appropriate measures to be taken by the employer to protect the employees' health in the event of an epidemic.

The employee cannot, solely as a precaution, refuse to perform its obligation to work, but if the employer obliges the employee to work after the increased risk of infection present in the workplace, the employer must also consider that the illness of an employee originating from such conditions may be classified as a workplace accident. The employee may refuse to carry out the instructions of the employer in case it would result in direct and grave risk to the life, physical integrity or health of the employee. It should be noted that in the event of such refusal to carry out an instruction issued by the employer, the employee shall be available for work nonetheless.

During an epidemic, the employer may request information from the employee regarding his non-workplace activity, especially information regarding traveling abroad. For example, the employer may request the employee to report the date of the employee's trip to or date of return from a region affected by the epidemic. The employee is obliged to answer these questions on the basis of his general legal obligation to cooperate with the employer. Such information obtained by the employer is considered personal data and shall be handled in accordance with the relevant data protection rules.

Labour measures applicable by the employer

If the employer orders, for the sole purpose of prevention that certain employees shall „stay at home" without the employees being unfit for work, the employer is obliged to pay the wages which the employees should normally receive for their work (basic salary, bonuses, cafeteria etc.).

The employer may also unilaterally grant leave, since under Section 122 (1) of Act I of 2012 on the Labour Code ("Labour Code") the employer is entitled to grant leave after the employee has been heard. The date of leave must be communicated to the employee no later than fifteen days before the start of the leave-period. As a limit to this - except for the first three months of the employment relationship - the employer is required to grant up to seven working days a year, in a maximum of two instalments, at a time in accordance with the employee's request. The leave shall be granted in such a way that the worker is exempted from his duty to work and to be available for work, at least for fourteen consecutive days per calendar year.

It is also possible for an employee to be released from his work obligation with the consent of the employer. In this case, the employee shall be entitled to remuneration for the lost work-time as agreed by the parties.

In addition, the employer may enter into an agreement with the employee whereby the employee, with the consent of the employer, will later make up for his unemployed period so that the wages paid for the time spent at home will be calculated for actual work performed by the employee at a later point in time. The employer may also order 'home-office' if the

employee has a job that can also be performed at home. Please note that when the employer orders a “home-office”, the employer is still obliged to provide the conditions for safe working and to bear and reimburse the costs associated with the work in accordance with applicable law.

If the employee becomes ill or is subject to an epidemiological measure, he will be considered unfit for work and will be entitled to sickness benefit for the period of time concerned. In the light of the social security regulations, if an employee is prevented from appearing in his workplace due to an epidemiological measure and cannot be employed at another workplace or job, the employee is considered to be unfit for work, even without showing any symptoms of the infection, and is entitled to sickness benefit. If the employee is unfit for work due to illness, he is entitled to sick leave for the first fifteen working days of each calendar year, during which time the employee receives seventy percent of absence fee from the employer under Section 146 (5) of the Labour Code. There is no sick leave during the time period during which the employee is unfit for work due to an epidemiological measure, thus the seventy percent of the absence fee is not paid by the employer either.

Pursuant to Section 146 (1) of the Labour Code, the employee is paid basic salary if the employer does not fulfil its obligation to provide work, except if this is a result of unavoidable external circumstances. Thus, if the employer (the employer's headquarters, premises, office, plant) is affected by epidemiological measures and therefore cannot fulfil its obligation to provide work, the employer is not obliged to pay wages to the employee, nonetheless the employee is considered to be unfit for work and is entitled to sick benefit.

Please note that Hungarian labour law does not recognize voluntary work free of charge; so, if the employee performs the work and the employer takes note of it and “accepts” it, the employee will be remunerated for the work performed.

Finally, we would like to draw the attention to the information provided by the Hungarian National Authority for Data Protection and Freedom of Information on March 10, 2020, regarding data processing related to the coronavirus epidemic, which contains, among other things, guidelines on data management for employers. The prospectus is available on the following website: https://naih.hu/files/NAIH_2020_2586.pdf

CORPORATE LAW

Provisions regarding the operation of the supreme body

In order to prevent the spreading of the virus, the Hungarian Government advises to avoid big crowds and to avoid participating at events hosting a large number of people. From 11 March 2020 any indoor event hosting more than one hundred people and any outdoor event hosting more than five hundred people are banned for an indefinite period of time. The restriction is currently not applicable to the operation of factories and workplaces. The mentioned bans and recommendations might affect the operation of supreme bodies of companies. Therefore, participating at the meetings of the supreme body of a company - if the company has a significant number of members – may be advised by way of a representative or by means of

electronic communications or as another alternative, resolutions may be adopted out of sessions. The rules of these special means of participation are established by Act V of 2013 on the Civil Code.

Participation through a representative

Generally, one representative shall be allowed to represent more than one member of the company, therefore the number of participants can be reduced. The power of attorney for representation shall be fixed in an authentic instrument or in a private document with full probative force. In case of limited companies, special rules apply regarding the proxies, since the names of proxies shall be entered into the register of shareholders before the general meeting. The latest date of registration is different for private limited companies and for private limited companies. In private limited companies, if the articles of association contains provisions to specify the time by which the proxies shall be registered, it may not be earlier than the second working day before the general meeting. However, if the articles of association does not contain any special timing for registration, the proxies may be registered at any time until the beginning of the general meeting. In public limited companies, the names of proxies wishing to participate in the general meeting shall be entered into the register of shareholders at the latest by the second working day preceding the beginning of the general meeting.

Participation by means of electronic communications

Members of companies may exercise their rights in meetings by means of electronic communications, if the articles of association defines the type of such electronic communications equipment that can be used and the condition for their use to contain facilities for the identification of members and for mutual and unrestricted communication between the members. If the articles of association does not regulate the participation via electronic communications, the members shall attend at general meeting in person or they shall appoint a proxy.

For private limited-liability companies, if the general meeting is held by means of electronic communications, the discussions and adopted resolutions shall be recorded so they can be retrieved at any time in the future.

For limited companies, the shareholders are free to decide whether they wish to participate in person or via electronic means at the shareholders' meeting. The articles of association, or a resolution adopted by the general meeting, shall define the procedure for checking the identification of shareholders participating through a telecommunications connection, along with the voting procedure and the authentic conclusion of the results, furthermore, define the procedure for the election of general meeting officers, and the requirements for shareholders to make their opinions known and to make proposals. Similar to private limited-liability companies, the discussions and the adopted resolutions shall be recorder properly, to they can be retrieved at any time in the future. The costs arising from using means of electronic communications shall be borne by the company and not its shareholders.

Adopting resolutions without holding a supreme body meeting

If the articles of association establishes it, resolutions may be adopted out of general meeting sessions. In this case, the management of the company shall send the draft of the resolution to the members and the members shall send their votes to the management. The members shall have at least eight days after the time of receipt to do so.

Measures to be taken in relation to companies after the declaration of the state of danger

After declaring a state of danger, special measures might be taken concerning business associations, according to Section 48 of the Disaster Management Act. In the event of an imminent danger of aggravation of the state of danger, the operation of a business organization to prevent such aggravation might be subject to regulation by the Hungarian State. On behalf of the State, the Minister responsible for public finances or a government commissioner proceeds and it reviews the financial state of the entity and approves and countersigns the financial commitments of the entity and makes the most significant decisions to directly address or mitigate the consequences of imposing an emergency measure in matters within its powers acting instead of the supreme body of the legal entity. It shall immediately inform the executive officers and the members of the supervisory board of those decisions.

CONTRACT LAW

Effects of the coronavirus on the economy

The rapid spread of the coronavirus in Europe and around the world has a serious impact on economic life at both global and national level. As a result of the outbreak, factories closed down or suspended their operations (either on official orders or as a precautionary decision by management), banned events, introduced travel bans, quarantine in some places, etc. Market participants are under significant pressure to keep their contractual obligations. If this fails, it is necessary to consider the law of which state is applicable to their contract, how broad is the definition of force majeure and what are the rights and obligations of the party invoking it, since the parties' position is governed primarily by the agreement of the parties. Thereafter, the relevant provisions of Act V of 2013 on Civil Code (hereinafter: Civil Code) shall be examined. Please note, that the provisions of the Civil Code are applicable only to contracts concluded after March 15, 2014.

Many businesses may be in a situation where either them or their contractual partner will be unable to fulfill their obligations (whether late or partial performance), leading to breach of contract. The question arises as who shall bear the responsibility for non-contractual performance and who shall be liable for the resulting damages.

Invoking force majeure

The Civil Code places the liability for damages for breach of contract on an objective basis, as opposed to tort, where the culpability of a party has significant influence on the allocation of liability. The act defines three conjunctive conditions for the breaching party to be exempted from the consequences of non-performance or default. Firstly, there must be a cause for the breach of contract which was beyond its control, secondly, this cause was not foreseeable at the time of the conclusion of the contract and, thirdly, it could not be expected to avoid the cause or to prevent the damage. (Section 6:142 of the Civil Code).

Of the causes that are typically viewed as causes outside the control of the contracting party,

we now highlight only those that could potentially be considered in relation to the coronavirus: the epidemic itself and events affecting certain political communities (such as roadblocks, potential border control, etc.). State measures can also have a restrictive effect on economic life, which is generally beyond the control of the contracting parties: import-export bans, foreign exchange restrictions, embargoes, boycotts and so on.

The coronavirus, which was officially recognized by the World Health Organization (WHO) as a pandemic on 11 March 2020, can be considered with certainty to be outside the control of the party, since it has little influence on the spread, severity, and other aspects of the epidemic. The parties should assess, at the time of the conclusion of the contract, the risk factors that may hinder their performance. If the actual cause that leads to the breach of contract could not have been foreseen at that time, the second condition for exoneration is fulfilled. In assessing this, one shall consider the extent to which the breach of contract resulting from the coronavirus can be considered unpredictable in contracts that were concluded in the beginning of 2020, where several news portals and press agencies published articles on the spread of the coronavirus.

The last condition is that the breaching party should not be expected to avoid the circumstance or to prevent the damage. In contrast to the above, this factor becomes relevant at the time of the breach of contract. It must be considered, taking into account all the circumstances of the case, for example, in case of a roadblock whether the supplier could have been able to deliver the goods to the buyer on another route or if he could have obtained the goods from another supplier. In the event that an alternative solution was available, the invocation of force majeure could fail.

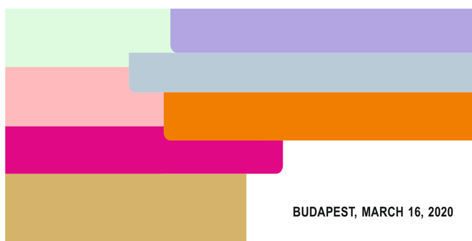
Breach of contract due to impossibility

A potential consequence of force majeure may be the impossibility of performance. Obviously, this goes beyond late or partial performance, as it becomes fundamentally impossible to fulfill the obligation undertaken. In such cases, the role of the parties in the impossibility must be examined, and the liability for damages will depend on this. There are three options, depending on whether the parties can exempt themselves based on the criteria outlined above (Section 6:180 of the Civil Code). If both parties are exempted, it is called objective impossibility, and the parties shall settle their claims based on the services performed so far. If only one party is unable to exempt itself, the other party may claim compensation for the damage caused. Lastly, if both parties are responsible for the impossibility, they must bear the damage in proportion to their contribution. It is also important to mention the obligation of the party who is aware of the impossibility to inform the other party without delay, otherwise it will be liable for the damage caused by the omission (Section 6:179 of the Civil Code).

Changing circumstances in long-term legal relations

Another legal institution, which takes changing circumstances into account, and may be relevant in the context of the epidemic, is the clausula rebus sic stantibus principle. The doctrine allows the court to modify a long-term legal relation if the party requests it due to significant changes in its circumstances following the conclusion of the contract. The court examines the following conditions: (i) the unmodified performance would adversely affect the legal interest of the party requesting the modification (ii) the possibility of the change in the circumstances was not foreseeable at the time when the contract was concluded; (iii) the change in circumstances was not caused by it and (iv) the change in circumstances falls outside his normal business risk (Section 6:192 of the Civil Code).

The above summary is for general information purposes only.
Its content is not fully comprehensive, it does not constitute and shall not be interpreted as legal advice. The above summary is not a substitute for seeking legal counsel.



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