ANDERSEN

REBUS SIC STANTIBUS AND FORCE MAJEURE CLAUSE

LITIGATION AND ARBITRATION - newsletter

October 2022

Extraordinary change in economic relations. Litigation solutions.

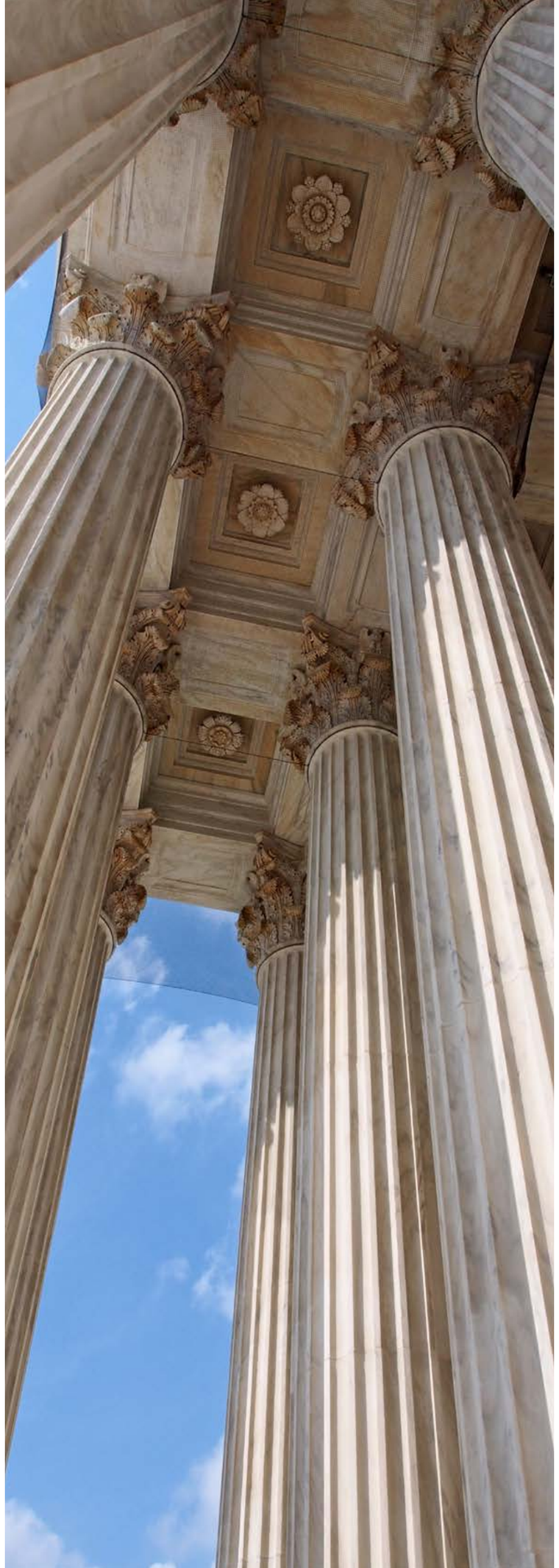
The current uncertain global situation in connection with the coronavirus pandemic, the Russia-Ukraine war and the Taiwan crisis also impacts existing contracts and the resulting obligations. In particular, the fulfilment of contracts that contain delivery obligations in an international context can pose problems for suppliers due to tense supply chains.

Over the past two and half years, we have faced an extraordinary market situation. We still have to cope with the pandemic situation and inflation, and since the beginning of March there has been a new major factor affecting the economy in the form of the Russia-Ukraine war. All of the above have contributed to extraordinary changes in economic relations. In addition, the existing circumstances are causing a great deal of uncertainty.

How can we handle extraordinary changes in economic relations on the legal ground? Over the course of existence of legal systems, solutions have emerged to respond to extraordinary changes in relations. It would be unfair if a party could not take care of its own situation in the case of such special circumstances. Below, we describe two constructions that will be the most common bases for legal claims used by lawyers: the rebus sic stantibus clause and the force majeure clause.

The rebus sic stantibus clause refers to the impact of a change of circumstances on a contractual obligation. Rebus sic stantibus complements another principle: pacta sunt servanda (contracts must be honoured). Rebus sic stantibus, however, only applies in extraordinary situations. The purpose of the clause is to modify the obligation in such a way that it could lead to the execution of the obligation. Where this is not possible, the obligation may be cancelled. Under Polish law, if due to an extraordinary change of relations the fulfilment of the obligation was connected with excessive difficulties or threatened one of the parties with a significant loss, which the parties did not predict when concluding the agreement, the court may, after considering the interests of the parties, determine the way of fulfilment of the obligation, the amount of the payment, or even rule on termination of the agreement.

There is no clear definition of force majeure in the legislation. In various types of contracts, mainly those concluded between entrepreneurs, force majeure is indicated as a circumstance that excludes the liability of the parties for non-performance or improper performance of obligations. Force majeure is a circumstance that cannot be prevented even by the exercise of reasonable care. The parties to a contract often enumerate in the contract the situations that will be equivalent



to force majeure. However, such identified examples are rarely a closed catalogue. The most common examples of force majeure are: fire, drought, flood, earthquake, other natural disasters, epidemics and war. Currently, the Covid-19 crisis is often not indicated in contracts as a force majeure. As already mentioned before, force majeure excludes the parties' liability for non-performance of obligations. Importantly, in case of non-performance or improper performance of an obligation, there must be a causal relationship between the obligation and the force majeure event. In principle, the scope of possible force majeure actions depends on the construction of the contractual clause. The contract may provide for termination rules in the event of force majeure. Without contractual provisions in this regard, parties will be obliged to perform the contract after the force majeure event has ended.

Litigation

In connection with the extraordinary changes in economic relations, the rebus sic stantibus and force majeure clauses are and will continue to be of great importance in litigation. In many cases, the use of these clauses may prove to be the only solution. With the right argumentation, the rebus sic stantibus clause and the force majeure clause can save the entrepreneurs' situation.

In the extraordinary period of the past two and half years, the length of court proceedings has increased. Unfortunately, at this moment, a lot of claims are not yet resolved. A large number of plaintiffs are still waiting for a judgement in their case.

Nevertheless, on the following pages we present descriptions of several cases and offer our thoughts on the judgements made recently.

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Contents

Belgium

Currently, only the concept of force majeure exists under Belgian law. The provisions regarding force majeure can be found in Articles 1147 and 1148 of the Belgian Civil Code. Please note that the concept of force majeure is not strictly defined by the Civil Code. A situation in which the performance of an obligation by one of the parties has become not more difficult or almost impossible but rather completely impossible due to circumstances not related to that party (e.g. insolvency of a party does not constitute force majeure, as it is related to that party) is considered 'force majeure.'

On 1 January 2023, Book V of the new Belgian Civil Code will come into force. The new article 5.74 on 'change of circumstances' will introduce the 'imprevision' doctrine (also called the 'hardship doctrine') in Belgian law. Thus, at the time of the Covid-19 measures, the hardship doctrine was not in force yet. The concept of rebus sic stantibus does not exist, nor is it applied in Belgian law.

Research shows that there is no published case law on force majeure and the Russia-Ukraine war yet. Belgian case law regarding Covid-19 mostly concerned commercial leases.

Recent case law regarding Covid-19:

The Justice of the Peace Court of Bruges (4th Ch.) ruled on 28 May 2020 that a commercial lease is temporarily and partially legally forfeited where the government imposes measures that compel the closure of a commercial business. These prevent the landlord from fulfilling their duty to allow the quiet enjoyment of the property, and the court granted the tenant a reduction in rent for a number of months. There are similar decisions of other Justice of the Peace Courts which are the lowest courts in Belgium but are competent in the first instance for all lease matters. However, this case law is generally considered to be incorrect. Since the contract is binding upon the parties, it is not for the court to amend or terminate the contract between such parties when unforeseeable and unaccountable circumstances arise after the conclusion of the contract. Such circumstances disturb the balance of the contract to such an extent that the debtor's performance is unreasonably burdened, without it becoming impossible. Furthermore, the landlord is not accountable for the acts of a third party (the Covid-19 government measure).

Several of these decisions of the Justice of the Peace Court have been overturned in appeal, but with the appeal courts sometimes deciding that the good faith performance of a contract implies that the effects of the government measures must be borne by both parties, and still granting some rent reduction.

The Court of Enterprises in Hainaut, Charleroi Division, stated on 23 February 2021 that in order to invoke force majeure resulting from the containment measures taken by the government, the construction company must show that the performance of its obligations was made impossible – i.e. that a distance of 1.5 m between each person could not be kept on the worksite where the façade of a residence was being insulated.

The Court of Enterprises of Ghent has ruled that the collection by a company of unpaid invoices does not constitute an abuse of rights (despite the negative consequences caused in this case by the Covid-19 pandemic).

With its judgement of 16 June 2021, the labour court ruled that travelling to a "red" zone was the employee's free choice, but the quarantine resulting from such a trip to a "red" zone did not meet the conditions for being temporarily unemployed for reasons of force majeure. The quarantine resulting from a change in the colour code during the worker's stay in that zone, which was unforeseeable at the time of departure, does meet the conditions for being temporarily unemployed for reasons of force majeure.

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Germany

Covid-19 has significantly disrupted supply chains and contractual relationships over the last two and a half years. Recently Russia-Ukraine war has a similar effect. Extraordinary events like a pandemic or a war are addressed by the legal principle rebus sic stantibus and may constitute a force majeure event.

In Germany the principle of rebus sic stantibus is codified in Sec. 313 of the German Civil Code (BGB). According to Sec. 313 (1) BGB, a party to a contract may claim adjustment of the contract if (i) circumstances which formed the basis of the contract changed significantly after the conclusion of the contract, (ii) the parties would not have concluded the contract at all or would have concluded it on different terms if they had foreseen this change, and (iii) the party claiming the adjustment cannot reasonably be expected to uphold the contract without such an adjustment, taking into account all the circumstances of the specific case, in particular the contractual or statutory distribution of risk. If an adjustment of the contract is not possible or not sufficient to compensate for the change, the disadvantaged party may terminate the contract according to Sec. 313 (3) BGB.

The term force majeure is not defined in the German BGB. The German Federal Court (BGH), however, defines force majeure as "*an extraordinary event which cannot be avoided even by exercising the utmost reasonable care and which cannot be attributed to the sphere of either party.*" Most force majeure clauses in contracts under German law are based on this definition. If a supposed force majeure event does not fit under the force majeure clause, or the contract does not contain a force majeure clause at all, the legal consequences of the supposed force majeure event must be determined by German statutory law. In some cases the force majeure event may justify an adjustment or termination of the contract based on Sec. 313 BGB. In other cases, the force majeure event may render the performance of the contract (temporarily) impossible within the meaning of Sec. 275 BGB. In those cases the parties are released from their contractual obligations as long as the performance remains impossible. Damage claims against the party who cannot perform due to the force majeure event are typically excluded as damage claims under German law require fault, which usually does not occur in case of a force majeure event.

Even though Covid-19 and the Russia-Ukraine war have undoubtedly led to many disputes, publicly available case law addressing Sec. 313 BGB or force majeure in connection with those two events is rather scarce. As regards the Russia-Ukraine war this may be because it is a relatively recent event.

The Covid-19 pandemic has concerned German courts especially in connection with **commercial lease agreements**. The decisive question in these cases is whether an officially imposed shutdown justifies an adjustment of the contract pursuant to Sec. 313 BGB. Meanwhile, in three separate decisions, the BGH has ruled that, this may in fact be the case and established certain guidelines. In its first decision dated 12 January 2022 (file No XII ZR 8/21), the BGH decided that a publicly imposed shutdown of a retail store due to Covid-19 does not make it impossible for the landlord to fulfill its contractual obligation vis-à-vis the tenant to rent the store, as the shutdown was not based on specific structural conditions of the rented property but rather on an official measure to combat Covid-19, which applied in the whole state of Hessen. The tenant may, however, claim an adjustment of the rent based on Sec. 313 (1) BGB. In this regard, the BGH emphasises that all circumstances of the particular case must be considered. Therefore, financial advantages that the tenant has obtained from state benefits to compensate for the disadvantages caused by the Covid-19 pandemic must also be taken into account. The BGH has confirmed this view in two further decisions dated 16 February 2022 (file emphasiseo. No. XII ZR 17/21) and dated 2 March 2022 (file No XII ZR 36/21).

In a recent decision dated 04 May 2022 (file No XII ZR 64/21) concerning a **fitness studio contract**, the BGH decided that a shutdown based on an official measure to combat Covid-19 made it impossible for the operator of the fitness studio to fulfill its contractual obligations vis-à-vis its members to use the fitness studio in accordance with their respective contracts. Consequently, the BGH held that both parties were relieved from their contractual obligations for the time of the shutdown. The BGH rejected an extension of the term of the contract by the duration of the shutdown based on Sec. 313 BGB, stating that the statutory provisions on impossibility took precedence.

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Hungary

As a preliminary note, these cases mostly have not yet reached the Curia (Supreme Court of Hungary), so we can provide relevant case law mostly on the basis of procedures that have not yet reached the Curia and on the basis of prior relevant court practice.

Force majeure in contractual relations

In general (before 2020)

In contractual relations, force majeure usually comes up as the impossibility of performance and liability for damages caused by non-performance.

In Hungary, force majeure definition is not defined by law. However, case law defines force majeure as follows: "*an irresistible, unforeseen force of absolute nature of natural or human origin that cannot be avoided by any means within the people's power.*" It is always a matter of judicial discretion to determine whether a particular event is considered as a force majeure event. Courts examine whether the following conditions are met: (i) foreseeability; (ii) whether the event could be attributed to either party; (iii) whether the event could have been avoided with due care.

These conditions must be assessed individually for each contract.

Typical examples in court practice include natural disasters, pandemics, certain specific state measures such as import-export bans, embargoes, currency restrictions, and certain politico-social events such as war. However, the mere assertion of these grounds (i.e., lately pandemics, war) does not relieve a party of its contractual obligations. It is also subject to the condition that the non-performance of the contractual obligation and force majeure are causally linked.

Since 2020

Business difficulties caused by Covid-19 or the war most often resulted in breaches of contracts, such as delayed or partial performance, or non-performance. To decide whether a party could have been exempt from liability for damage, particular attention was paid to foreseeability, to whether the event could be avoided with due care, and to whether immediate notice was made to the other party as to the above defaults or non-performance.

As to contracts concluded before the Covid-19 outbreak or the war, the defaulting party had a better chance of being exempted from liability because these events could be considered as unforeseeable and outside the parties' control. However, it was still necessary to assess whether the party had done everything possible to avoid the circumstance and prevent damage. Nevertheless, in the case of contracts concluded after the Covid-19 outbreak or the war, this became more difficult, because the consequences of such events could be expected, and therefore, the circumstances became foreseeable.

The above arose most commonly in connection with lease contracts, shipping and carriage contracts and construction contracts

Force majeure could not be invoked as grounds for termination of a lease contract with extraordinary notice, or for non-payment or late payment of rent, unless legislation and measures taken in the light of the above events made it impossible to use the leased property. Loss of revenue alone was considered as the tenant's business risk by the courts (if parties had not made the payment of rent conditional on the achievement of a certain revenue).

As for shipping and carriage contracts and construction contracts, the most important element of definition to be examined by the courts was whether immediate notice was made to the other party as to any default or non-performance. If no immediate notice was made, the invocation of force majeure was usually not accepted.

Clausula rebus sic stantibus

Clausula rebus sic stantibus allows for some flexibility in contractual relationships. Namely, if the following conditions are met, the Civil Code allows the contract to be amended (the amount of service and remuneration may be adjusted to the changed circumstances) by the court: (i) an existing long-term contractual relationship between the parties, (ii) in consequence of a circumstance that has occurred after the conclusion of the contract, the performance under the same terms is likely to jeopardise the party's substantial legal interest, (iii) the possibility of that change of circumstances could not have been foreseen at the time of conclusion of the contract; (iv) the party did not cause that change of circumstances; and (v) such change in circumstances cannot be regarded as a normal business risk.

It is important to stress that the above may only be applied in the context of a long-term legal relationship between the parties.

Since 2020

Case law on clausula rebus sic stantibus is still limited. At the moment, it appears to be justified in sectors particularly hit hard by the pandemic or the war. Nonetheless, whether the aforementioned conditions are met should be determined on a case-by-case basis.

In most cases, disputes arise because prices have risen very sharply, especially as a result of the war, and market conditions have changed in unexpected ways. However, the mere fact that a contractual provision later proves to be inaccurate as a result of a change in market and financial conditions that differ from what was expected cannot serve as justification for the court to modify the contract,

all the above-mentioned conditions should be met in respect of the particular contract. Therefore, the rebus sic stantibus clause is usually not applied in practice by reason of extreme changes in the market concerned by a contract. It rather considers this mere fact itself as the business risk of the parties.

Point (iii) above is essential in the context of Covid-19 and war; that is, whether Covid-19 and/or war, and their potential effects on contracting parties, could have been anticipated by the contracting parties, and if so, to what extent, must be considered.

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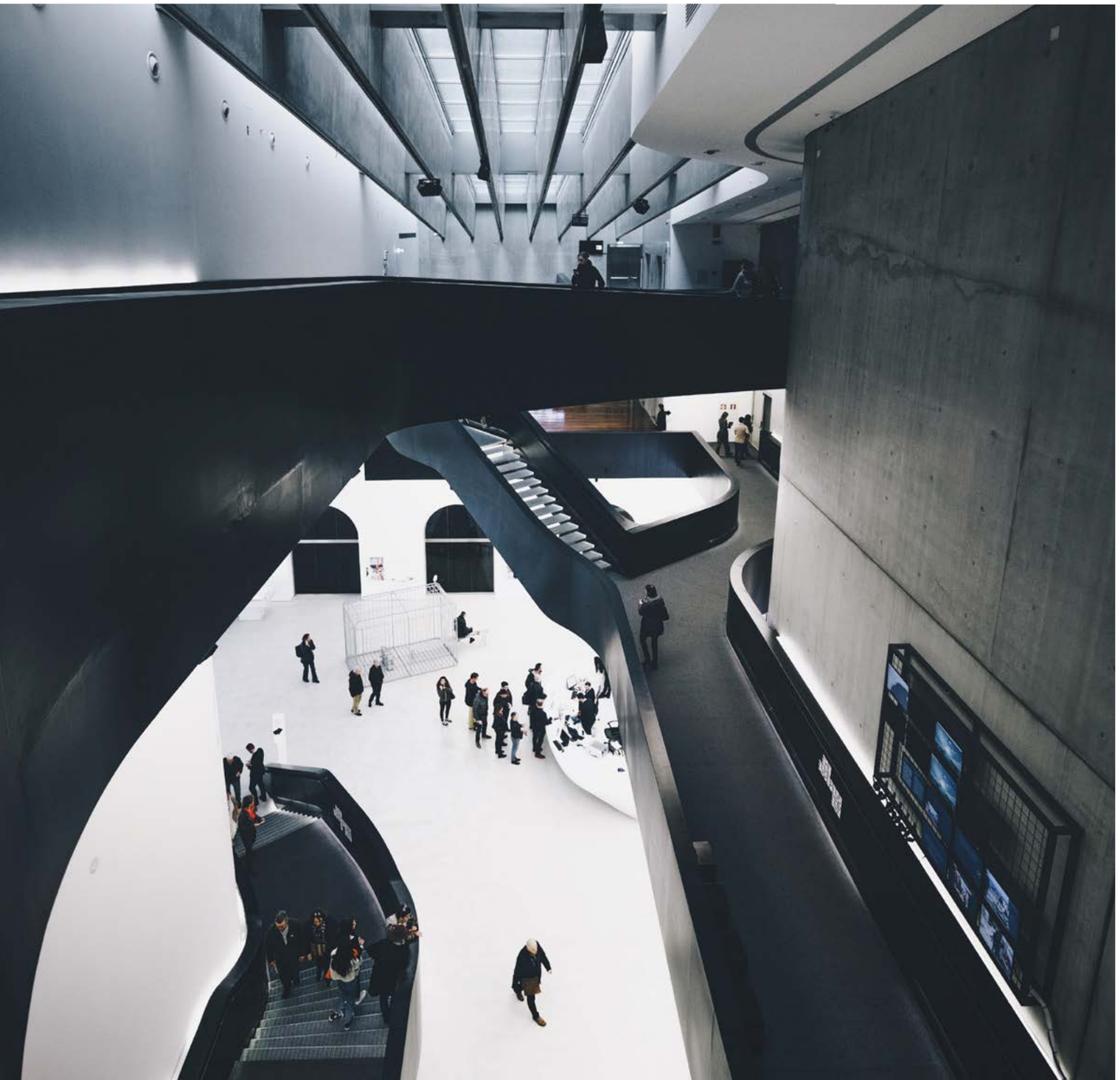

Italy

The health emergency related to the spread of Covid-19, energy crisis, Russia-Ukraine war and subsequent international sanctions have profoundly changed the world economic balance, leading to stoppages, delays and suspensions of numerous production and commercial activities.

These events, in addition to economic damage, give rise to legal issues that may jeopardise national and transnational trade and/or contractual agreements. In particular, the aforementioned circumstances, together with the measures adopted by the Government to cope with the extraordinary events, can be legally framed as force majeure, which exonerates from liability those companies which are unable to fulfil their contractual obligations.

The Italian Civil Code does not offer a notion of force majeure, which has instead been elaborated by case law, which qualifies it as an extraordinary, unforeseen and unforeseeable event, extraneous to the debtor's legal sphere and not avoidable by the use of ordinary diligence.

That being said, the concept of force majeure is identified in broad terms in Art. 1467 of the Civil Code, under the heading "contracts for consideration," which grants the debtor the right to request termination of the contract when the performance owed by it has become excessively onerous due to extraordinary and unforeseeable facts, extraneous to its sphere of action.

In practice, natural disasters, civil wars and epidemics are counted as force majeure. Also included among the causes that can be invoked are orders or prohibitions of the authorities – *so called factum principis* - such as, for example, in the Covid-19 topic, those provided for by Italian Decree-Law No 18 of 17 March 2020, which act as an exemption of the debtor's liability outside the existing contractual provisions, if relative evidence of such is provided.

As for the companies whose activity is not prevented by the Authority, in order to benefit from the exemption of liability dictated by the special legislation, it is believed that they are burdened with proving a direct and absorbing causal link deriving from operating in a market that is directly affected by the containment measures dictated, precisely, to cope with an event attributable to force majeure, which was unforeseeable at the time the contracts were signed.

In particular, the jurisprudence has also expressed itself on this point, at the moment, given the novelty of the issue, only at first instance, with numerous rulings. For the most part, these are judgments concerning leases, which have ruled that the defaulting tenant who intends to oppose an eviction for delinquency on the ground that it has been unable to pay the rent regularly as a result of compliance with

the rules for the containment of the pandemic, has the burden of providing circumstantial evidence of the aetiological connection between the cause of the impossibility and the default. Indeed, compliance with the containment rules constitutes only an abstract cause of force majeure, the impact of which in the particular case must be proven by the tenant.

However, the instrument of termination, producing *ex tunc* an effect of termination of the contractual obligations, does not always appear to be the most appropriate means of protecting the parties' interests.

An alternative to termination is the obligation to renegotiate, even if not expressly provided for in the Italian Civil Code. Among the provisions of the Italian Civil Code that refer to the renegotiation of the contract is Article 1467 of the Italian Civil Code, already cited, which in contracts with continuous or deferred performance allows for the occurrence of "extraordinary and unforeseeable events" to offer the effected party, in accordance with the rebus sic stantibus principle and the principles of good faith, the alternative between termination and the restoration of the contractual terms and conditions to equity.

Also in this case, several judgments on the merits have been pronounced. Among others, particularly relevant is the Court of Rome, Section VI, Ordinance, 27 August 2020, according to which the economic crisis caused by the pandemic and the forced interruption of business activities must be qualified as a contingency in the factual and legal substratum that constitutes the assumption of the negotiated agreement. More precisely, even in the absence of renegotiation clauses, long-term contracts, in application of the rebus sic stantibus principle, must continue to be respected and applied by the contracting parties as long as the conditions and assumptions they took into account at the time of creation of the agreement remain intact.

On the contrary, in the event of a contingency in the factual and legal substratum that constitutes a prerequisite of a negotiated agreement, such as the one brought about by the pandemic, the party that would experience a disadvantage resulting from the prolongation of the execution of the contract under the same conditions agreed upon initially must be able to renegotiate it, based on the general duty of good faith in the execution phase of the contract.

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Macedonia

Guided by the recommendations of the World Health Organisation, a 30-day state of emergency was declared on the territory of the Republic of North Macedonia, which was later extended for another 30 days in April. Additionally, in order to protect the health of the citizens, but also in order to mitigate the harmful consequences for the economy and the financial system and to prevent a potential economic and financial crisis, the Government of the Republic of North Macedonia adopted a number of measures and several decisions on preventive recommendations, interim measures, and ordered measures, purposeful protocols, plans and algorithms for action to protect the health of the population against the contagious disease of Covid-19.

The emergence of such an epidemic raises many questions for both legal entities and individuals, on how to act in a particular case. It is frequently asked whether the outbreak caused by Covid-19 is a force majeure, i.e. whether the contracting parties are responsible for a delay or non fulfilment of their obligations due to the Covid-19 pandemic.

The institution of force majeure should be examined from the aspect of the Law on Obligations, as well as its interpretation in the case law. Regarding the institution of force majeure – the first question is whether there is a provision in the agreement which provides for the institution of force majeure.

In the Law on Obligations, in the part relating to termination of the contract due to impossibility to fulfil the contractual obligations, the institution of force majeure is not defined explicitly; neither does it prescribe a unified way of regulating the legal status of a specific legal relationship in case of force majeure. Hence, force majeure can be defined as an extraordinary event which occurred after the conclusion of the agreement and at that time could not have been foreseen, nor could the contracting party have prevented, avoided or removed it and for which neither party is responsible.

In line with the above and in accordance with the case law in the Republic of North Macedonia, we can consider the following case:
Judgement PL1-P-358/20 passed by the Basic Civil Court Skopje on 28 December 2020. Namely, this case concerned a monetary claim brought on the basis of a lease agreement for business premises, where the plaintiff submitted a proposal for issuing a decision for a notary payment order in order to settle the debt. The notary adopted the proposal for issuing a notary payment order and issued a decision obliging the defendant to settle the overdue debt and the costs of the procedure. Dissatisfied with this decision, the defendant

filed an objection through their attorney and the case was assigned for resolution to the Basic Civil Court Skopje. The lease agreement concerned a supermarket where food items, industrial products and consumer goods were sold.

Pursuant to the decision on declaring a state of emergency on the territory of the entire country in order to prevent the introduction, spread and handling of Covid-19, and the decisions on prohibition and special regime of movement on the entire territory of the country, including the City of Skopje, the defendant respecting the decisions was not able to use the business space freely in May and June of 2020.

The lease agreement concluded between the plaintiff and the defendant contains provisions where the defendant is not obliged to pay rent for the period of inability to work, if they had to stop working for some reason beyond their control, such as force majeure.

Additionally, in accordance with Article 126(1), in such conditions, the Law allows for a proportionate reduction of the obligation of the contracting party. Having in mind the provision, the defendant duly requested a reduction of the rent from the plaintiff for the disputed period, justifiably refused to accept the invoices, and informed the plaintiff several times that due to movement restrictions they were not able to work within the registered working hours, and therefore suffered very significant losses in turnover.

The court has found that under the provisions of the lease agreement, the parties agreed that if the tenant was forced to terminate work for any reason beyond their control (such as force majeure or untimely fulfilment of some of the landlord's repair obligations, when the repair depends exclusively on the landlord or the landlord has caused a defect affecting the tenant), the tenant will not pay rent for the period in which they do not work.

After the analysis, the court has accepted the objection of the defendant and concluded that the defendant is not obliged to pay the rent in full under force majeure conditions, in this case – the Covid-19 pandemic, due to which a state of emergency was declared by the President of the country.

In addition to force majeure, the Law on Obligations provides for the rebus sic stantibus institution which is closely related to the occurrence of extraordinary circumstances and refers to the amendment or termination of the agreement due to changed circumstances.

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Malta

The concept of force majeure is recognised by Maltese law, specifically under Article 1134 of the Civil Code of Malta, which – although it does not mention the term 'force majeure,' speaks of 'irresistible force' or 'fortuitous event.' This article states that:

"The debtor shall not be liable for damages if he was prevented from giving or doing the thing he undertook to give or to do, or if he did the thing he was forbidden to do, in consequence of an irresistible force or a fortuitous event."

Despite exonerating a party from their obligations in case of an irresistible force or a fortuitous event, Maltese law does not define what constitutes an irresistible force or a fortuitous event. Therefore, an analysis of Maltese jurisprudence is required to better understand what constitutes force majeure under Maltese law and whether the pandemic brought about by Covid-19 falls under this definition.

Malta's judgements regarding force majeure

Case law in Malta has established that for a party to a contract to successfully prove 'force majeure,' the following elements must be present:

1. The event must be irresistible in such a way that the party is put in a situation whereby it is impossible for him/her to honour his/her obligations. Therefore, the fact that the event simply renders the performance more difficult is not enough.
2. The event must be unforeseeable.
3. The event must be external.
4. The person claiming force majeure must not have contributed to the happening of the event. This means that the event must be one which the person could not have avoided and must be totally beyond the control of the party claiming force majeure. Therefore, if the event could have been avoided by using the diligence of a bonus paterfamilias, then the law excludes such an event as a fortuitous one.

In such instances, Maltese judgements also make reference to the principle of rebus sic stantibus, as opposed to the legal maxim of pacta sunt servanda. In the case of Falzon proprio et nomine vs Darmanin proprio et nomine, the defendant claimed that he could not honour his obligations due to the war. In that case, the Court of Appeal held that it was a case where the principle of rebus sic stantibus applied and in such circumstances, a force majeure event was present. In light of this, the defendant was exonerated from the obligation to perform in accordance with the contract.

Force majeure clause included in a contract
Despite this, technically, unless the clause included in the contract specifically mentions non-performance by either party by reason of force majeure, and specifically mentions a pandemic as one of the events which constitute force majeure, Covid-19 may not constitute a force majeure event according to the interpretation of the Maltese cases.

This also applies to contracts which include a force majeure clause, but which do not specify that the pandemic constitutes a force majeure event. In light of this, it is always advisable that when drafting a force majeure clause, the events which the parties wish to name as force majeure should be listed.

Legislative measures, Covid-19 and force majeure
This means that Covid-19 in and of itself may not constitute a force majeure event which renders the parties unable to fulfil their obligations. However, when governments promulgate laws as a way of intervention to control the effects of the pandemic, the situation changes.

During the pandemic brought about by Covid-19, the Maltese government introduced various legal notices to control the situation caused by the pandemic. These legal notices rendered several parties unable to fulfil their obligations. One example was the legal notice which prohibited restaurants and bars from opening and catering to guests for a certain period of time.

Following the Covid-19 pandemic, several cases have been instituted in Malta whereby defendants claim force majeure as the reason for their non-performance of obligations resulting from contracts. However, no judgement has yet been given by the Maltese courts, and thus whether Covid-19 and/or the legislative interventions made by the Maltese state constitute force majeure, remains to be seen.

An important judgement of the Maltese courts in this regard was passed in 2002. Although at that time the Covid-19 pandemic was not yet existent, this case revolved around a legal notice issued by the government with instructions as to the colour of buses in Malta. Referring to such legal notice, the First Hall of the Civil Court of Malta stated that an act of a governing authority was a fortuitous event which constituted an excuse for the party that failed to perform their obligations. The Court stated that in order for there to be a fortuitous event, there had to be an unpredictable and inevitable event which did not depend on the person who failed to honour their obligations due to such an event, and that such a legal notice fell under such definition. This may imply that the legal notices issued by the state of Malta in light of the pandemic brought about by Covid-19 may constitute force majeure; however, since no judgement has been given in Malta to this effect, this is not certain.

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Poland

Undoubtedly, the pandemic constitutes a condition of the so-called force majeure (vis maior) for which it is impossible to attribute responsibility, including financial responsibility, to the Court of Appeal. The proceedings before the Supreme Court in case I NSP 76/20 were instituted as a result of a complaint about excessive length of proceedings before the Court of Appeal, the subject matter of which was violation of the right of a party to have a case examined without undue delay. On 4 December 2019, it was established that the Court of Appeal issued a judgement in case I AGa which amended the judgement of the first-instance Court (not disputed). On 5 December 2019 the Claimant sent a request for an enforcement clause. The mail was delivered to the Court on 9 December 2019. On 30 April 2020 the Claimant filed a complaint for violation of the right to trial without undue delay. On 12 May 2020, an order was issued dismissing the application. After the application was resubmitted (received by the Court of Appeal on 21 May 2020), the order for payment issued by the District Court in G. dated 12 January 2018 was finally made enforceable on 18 June 2020. Given the foregoing, the case cannot be considered to have been protracted.

There are three main arguments which support the Supreme Court's assessment:
Firstly, given the overall circumstances, the fact that the application of 5 December 2019 was heard on 12 May 2020 cannot be regarded as a breach of the right to have a case heard without undue delay. In the order of 8 May 2020 (I NSP 41/18), the Supreme Court presented the reasoning that per analogiam the lapse of four months in "enforcement-clause proceedings" does not yet imply an unequivocal conclusion that the proceedings were excessively lengthy. Importantly, the facts of the case did not involve extraordinary difficulties, and in this case, the waiting time for the court order, which was slightly longer than 5 months (the case was examined on 12 May 2020) fell during a period of pandemic and, in principle, suspension of courts' operations. In other words, in this particular case, the fact that the merits of the application filed on 5 December 2019 were examined on 12 May 2020 did not violate the party's right to expeditious proceedings.

Secondly, a specific sum of money paid by the State Treasury (ranging from PLN 2,000 to PLN 20,000) constitutes a sanction imposed on the State for defective organisation of the administration of justice and compensation to the applicant for the moral harm caused by the lengthiness of proceedings (the Supreme Court's decision of 24 January 2019, I NSP 78/18). However, such "compensation" is subsidiary to the fundamental purpose of a complaint for protraction - a kind of "urging" of a court to intensify its efforts to efficiently examine the case. This purpose was undoubtedly fulfilled in these proceedings, since the complaint was sent to the Court of Appeal on 30 April 2020 (received on 7 May 2020), and the order dismissing the application for a writ of execution was issued on 12 May 2020. Thus, several days

elapsed between the receipt of the complaint of protractedness and examination of the application. In other words, the complaint fulfilled its essential purpose - it led to examination of the case (application) in less than a week from the day of its receipt. It undoubtedly "mobilised" the Court to act and safeguard the party's right to have the case examined without undue delay.

Thirdly, in this particular case, the objective events occurring in the country in connection with the coronavirus pandemic (Covid-19) cannot be disregarded. In his response to the application, the President of the Court of Appeal referred to numerous acts of common law as well as his own orders by virtue of which, inter alia, the sending of court correspondence was stopped and the work of the secretariats was "extinguished." What is of particular importance is the aforesaid Article 15zzs sec. 11 of the Act of 2 March 2020 on special solutions related to preventing, counteracting and combating Covid-19, other infectious diseases and crisis situations caused by them, which excludes the responsibility of the courts for inaction, protraction or violation of the right of a party to hear a case without undue delay during the pandemic. Although during the period in question (December 2019-May 2020) extraordinary circumstances can only be invoked from the beginning of March, it is impossible to say that they did not have an impact on the overall time frame for handling the case. The pandemic undoubtedly constitutes a condition of force majeure, the responsibility for which, including financial responsibility, cannot be attributed to the Court of Appeal.

In the judgment of 9 June 2021, in case No: II SA/Go 345/21, the Province Administrative Court in Gorzów Wielkopolski concluded that the state of pandemic caused by Covid–19 had the nature of a state of emergency within the meaning of Article 92c(1)(1) of the Road Transport Act.

The owner of a vehicle lodged a complaint disagreeing with the decision of the Provincial Road Transport Inspector imposing a fine of PLN 2,000 on him for breaching the provisions of the Road Transport Act because his truck did not have a valid technical inspection certificate.

The subject matter of the dispute in the case at hand was to establish the possibility of excluding the vehicle owner's liability for the breach. Pursuant to the provision of Article 92c (1) of the Act on Road Transport, the proceedings on imposing a fine on an entity performing road transport or other activities connected with such transport shall not be initiated, and if initiated in such a case - shall be discontinued, if:

1. the circumstances of the case and the evidence indicate that the entity performing transport or other activities related to transport did not have any influence on the occurrence of the infringement, and the infringement was caused by events and circumstances that the entity could not have foreseen, or
2. a penalty has been imposed on the transport operator by another competent authority for the infringement established, or
3. a period of more than 2 years has elapsed from the date of discovery of the infringement.

The vehicle owner argued that the proceedings to impose a fine on him should be discontinued due to the lack of adequate information on the introduction of the applicable provisions of Regulation EU 2020/698 of the European Parliament and of the Council of 25 May 2020 laying down specific and temporary measures in view of the Covid-19 outbreak concerning the renewal or extension of certain certificates, licences and authorisations and the postponement of certain periodic checks and periodic training in certain areas of transport legislation.

In the opinion of the Court, the circumstances of the case did not exhaust the provision of Article 92c(1)(1) of the Road Transport Act, as they did not apply to unforeseeable circumstances and, moreover, there were no grounds for concluding that the applicant had no influence on the occurrence of the infringement. The provision of Article 92c (1) of the Road Transport Act, which is an exception to the principle of entrepreneur's liability, refers to exceptional situations which an experienced and professional road transport operator, exercising the utmost care and prudence, could not foresee. The exonerating circumstance is force majeure, understood as an event of external origin, the consequences of which could not have been prevented, despite the exercise of due diligence. In their rulings, courts points out that events and circumstances that cannot be foreseen, as referred to in Article 92c (1) (1) of the Road Transport Act, may only include such phenomena that occur infrequently, abruptly, unexpectedly (i.e. exceptional and extraordinary situations) and their occurrence is impossible to plan and avoid. In the case under consideration, due to the state of pandemic caused by Covid-19, which has the nature of an emergency within the meaning of Article 92c(1)(1) of the Road Transport Act, relevant legal regulations were introduced, with which the professional operator could have been familiar. Given the facts established above, the complaint was dismissed.

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Romania

The obligation of the debtor in force majeure defence concerns generic goods (a category mostly overlapping with “fungible goods”). The most salient examples of generic goods include money and commodities, so the discussion could be relevant for a significant majority of business contracts. The onset of the Covid-19 pandemic force majeure was no longer a clause of secondary importance, yet suddenly it became regarded as a solution enabling contractors to renegotiate unprofitable deals or escape their obligations without liability. Even more uncertainty will come from such events as old-style war in Eastern Europe, severe inflation and extreme weather events.

This segment is informed by provisions of the Romanian civil law, but the principles and ideas discussed here should be of relevance to many other jurisdictions, primarily in countries belonging to a civil code tradition.

As a rule, obligations to deliver generic goods are not excused by force majeure and while it generally becomes an excuse for a failure to perform contractual obligations, no excuse is applicable in case of failure to deliver generic goods (including the failure to pay an amount of money).This idea is reflected in both the Vienna Convention for the International Sale of Goods (CISG) and under the Civil Code of Romania. Sometimes the effects of such exceptions could be unexpected and particularly harsh for certain businesses. For example, an agricultural business which loses its crop due to extreme weather may still be required to perform its obligation to deliver and will need to purchase replacement products from third party providers (or take a form of appropriate insurance), failing which it will be liable to the purchaser. A similar rule applies in respect of obligations to pay money. For such obligations, the only protection generally available for the debtor who is unable to pay is the insolvency legislation.

In Romania, an important exception is represented by Article 78 of the Tax Procedure Code, which states that time limits laid down for the fulfilment of tax obligations must not start to run or be suspended if it was impossible to fulfill due to the occurrence of force majeure or unforeseeable circumstances. It further states that tax obligations should be deemed to have been fulfilled on time, without any interest, penalties or surcharge, if they are fulfilled within 60 days as of the termination of the force majeure event. Therefore the occurrence of a force majeure event does not exempt the debtor from its obligation to pay, but only from the payment of penalties or interest.

Additionally, there are instances in which certain goods, while appearing to be generic, are however defined by the contract in a more limited way. In the example above, if a seller promises to deliver crop from a clearly defined agricultural operation, but the crop is lost or diminished by factors beyond the seller’s reasonable control

(e.g. drought, other forms of severe weather, etc.) then the seller might be exempt from liability on grounds of force majeure. Under Romanian law, these types of assets are defined as goods of “limited kind” (bunuri de gen limitat).

Unambiguous contractual wording is clearly desirable (but, as we know, rarely achieved). The seller will be interested in having the contractstate clearly that its obligation is not to deliver generic goods in general, but to identify precisely the source of the goods, as well as the place, time and method of delivery which would make sense for its business operations. The same suggestion should apply in connection with monetary obligations: if the debtor identifies precisely its source of future funds, but such funds do not become available, then the debtor might at least be exempted from the payment of penalty interest, or have other contractual remedies applicable - termination of contract, return of the assets received, etc.

Nevertheless, the principle remains that a force majeure event does not shield the debtor from liability for failure to deliver generic goods or pay money. Romanian public law allows for an exception in connection with the payment of taxes. In addition, in matters of civil law (including business contracts), force majeure could be a valid defence if the source of the generic goods is precisely identified in the contract and they may be qualified as goods of a “limited kind.”

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Slovenia

Under Slovenian law, in the Obligations Code, the concepts of force majeure and rebus sic stantibus are recognised as one of the fundamental general institutions. Whereas the institution of rebus sic stantibus can be used as an argument of contracting parties to change or terminate the contract, the conceptof force majeure serves mainly as debtors' argument to be released from liability for damage.

According to Article 112 of the Obligations Code, rebus sic stantibus can be used as an argument by a party, whose obligations have been rendered more difficult to perform or the party that owing to the changed circumstances cannot realise the purpose of the contract incircumstances:

- that render the performance of obligations by one party more difficult or
- owing to which the purpose of the contract cannot be achieved and which arise after the conclusion of the contract.

In both cases, the relevant circumstances must be so substantial that the contract clearly no longer complies with the expectations of at least one contracting party and that in general opinion it would be unjust to retain it in force as it is.

Rebus sic stantibus, however, cannot be used if the party making reference to the changed circumstances should have taken such circumstances into consideration when the contract was concluded, could have avoided them or could have averted the consequences thereof.

The parties can always change or terminate the individual contract amicably outside of court if they reach a consensus. In cases, where such consensus cannot be reached, the doctrine of rebus sic stantibus gives the possibility of each contracting party to change or terminate the contract in court.

Another general principle, which is not explicitly mentioned but is implied in the Obligations Code, is force majeure. This institution is recognised under Article 240, stipulating that the debtor shall be released from liability for damage, if the debtor was unable to perform the obligation or was late in performing the obligation owing to circumstances arising after the conclusion of the contract, that could not have been prevented, eliminated or avoided.

According to Slovenian case law, force majeure is invoked only by a party that cannot fulfil its obligations for reasons beyond its control, which could not be prevented and which do not originate from the party's sphere, and are at the same time a consequence of an unexpected and sudden (natural) event. In cases where a party asserts force majeure, the contract is not terminated and the party is only temporarily released from the fulfilment of its obligation.

However, in commercial contracts, where contracting parties are considered to be more diligent, the contracting parties often foresee or even list the events that can be considered force majeure, and also foresee the consequences of such events, to avoid potential disputes in advance.

Rebus sic stantibus, force majeure and Covid-19

In Slovenia, Covid-19 epidemic was declared on 12 March 2020. In order to prevent harmful consequences for the health of the citizens, the economy and the financial system, the Slovenian government adopted many regulations that in addition to other areas of life affected many contractual relationships that were concluded before the declaration of the epidemic. As an example, due to the ban on the sale of goods and services, many providers were forced to completely close shops, restaurants, hotels, fitness centres, hair and beauty salons, etc. for two months or more, making it difficult for them to fulfil their contractual obligations.

On the other hand, the government also adopted regulations mitigating the consequences of the epidemic. However, the regulations did not interfere with the general provisions of Obligations Code regarding the impossibility of fulfilling contractual obligations. Therefore, the parties which, due to the consequences of Covid-19, faced problems regarding the fulfilment of contractual obligations, often used rebus sic stantibus as an argument to change the obligations or to terminate the contract, and force majeure to be released from the damage caused.

Even though there have been a few court cases, where parties have claimed rebus sic stantibus or force majeure as a reason to terminate the contract or not perform the contract, there are only a few judgements already adopted on that topic, mostly due to the fact that during the Covid-19 epidemic Slovenian courts ruled only in urgent matters.

Nonetheless, Higher Court in Ljubljana held in its recent judgement that the declaration of an epidemic due to the Covid-19 epidemic cannot in itself mean changed circumstances according to Article 112 of the Obligations Code (regarding rebus sic stantibus). The Court ruled that there must be a causal connection between the circumstances that have changed and the difficulty of fulfilling the obligations of one party and that there is a certain intensity of influence of the changed circumstances. The Higher court also pointed out the decision of the Supreme Court, held before the epidemic, in which the Supreme Court explained that the price change must be of such intensity that it affects the party to such an extent that it has the nature of an obvious disproportion, non-equivalence of mutual contractual duties.

Bearing in mind the abovementioned issues, at this moment there is no uniform position stating whether the Covid-19 epidemic constitutes force majeure or rebus sic stantibus in contractual obligations as viewed by the Slovenian courts. There are strong arguments supporting such a decision, especially if the plaintiff is able to prove that such a situation could not have been foreseen and that there is a causal connection between such a situation and the changed circumstances or the effect on fulfilling its obligation.

Such case law, adopted by the courts regarding rebus sic stantibus and force majeure as arguments to terminate the contract or to be released from an obligation, as well as the existing case law, will surely provide the basis also in current challenges that contracting parties face due to the increase in prices as as a consequence of the Russia-Ukraine war, as well as in future conflicts in the world, that will affect the expectations of the contractual parties.

Judgement nr. II Cp 196/2022 of 01 April 2022.
Judgement III Ips 154/2015 of 24 January 2017.

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Spain

A story currently making the news in Spanish legal circles is the upholding by Barcelona Court of Appeal, in its Judgement of 30 May 2022, of one of the first of the decisions handed down in Spain in application of the rebus sic stantibus clause, due to the Covid-19 crisis. This refers to the Judgement handed down on 8 January 2021 by Barcelona Court of First Instance No 20, which allowed a rent reduction of 50% on the lease of 26 residential properties and one business unit used for tourist accommodation, as a consequence of the change in circumstances arising from the coronavirus pandemic. This business was suspended by the Spanish authorities in Royal Decree 463 of 14 March 2020, and could not be resumed until 9 May, with many restrictions. The claimant was using the defendant's properties and set out in its complaint that this crisis had caused serious losses for its business. They therefore asked the court to declare that there had been an unforeseeable alteration in circumstances and to fix a new amount of rent for the relevant agreements. The first instance court granted this request, ordering that the rent be reduced by half from 1 April 2020 to 31 March 2021 and awarding the costs of the case against the defendant. The Barcelona Court of Appeal upheld this decision, except as regards the costs, from which it released the defendant, given the novel nature of the case in the context of the unforeseeable coronavirus pandemic.

Prior to this second instance ruling, other courts had already applied the rebus sic stantibus clause in relation to the coronavirus crisis, particularly as regards lease agreements, as was the case with the Judgement handed down on 30 December 2021 by Badajoz Court of Appeal[1], in which the court also agreed to temporarily reduce the rent on an establishment housing a clothing store for sixty-nine days from 14 March to 21 May 2020, during which the business could not be operated due to the pandemic, though costs were not awarded against either of the parties.

This solution, consisting of a temporary reduction of rent by fifty per cent, is the one that is most commonly applied by the Spanish courts. It is based on the idea of sharing the negative consequences of the coronavirus crisis between the parties, given that neither of them can be blamed for the extraordinary change in circumstances that resulted from the pandemic and upset the balance of the agreement.

Prior to the judgements that have now settled these actions and are beginning to be upheld by the courts of appeal, the courts of first instance had already been applying similar solutions almost from the time that the effects of the crisis first emerged, through the adoption of interim injunctions. Examples of this can be found in Ruling 155/2020 of 30 April 2020 handed down by Madrid Court of First Instance No 60, Ruling 141/2020 of 8 May 2020 handed down by Madrid Court of First Instance No 14, and Ruling 162/2020 of

1 https://www.poderjudicial.es/stfls/TRIBUNALES%20SUPERIORES%20DE%20JUSTICIA/TSJ%20Extremadura/DOCUMENTOS%20DE%20INTERES/AP%20Badajoz%2030%20dic%202021.pdf

7 July 2020 handed down by Benidorm Court of First Instance No 2, all of which date from relatively early in the pandemic and were handed down for reasons of urgency. All of these rulings, and others that immediately followed (August 2020 was declared a working month for the courts and claims continued to be filed), applied a variety of temporary solutions to these situations. Thus, for example, in the last of these three rulings, handed down by the Court in Benidorm, a coastal city that relies heavily on tourism, the emergency order that was obtained without the defendant being heard was an interim injunction for suspension of the obligation to pay a percentage of the rent on the lease of business premises, amounting to 25% for March 2020, 50% for April to June 2020 and 35% from July to December 2020. These interim injunctions also regularly included an order banning the defendant from bringing actions for eviction or demanding rent while the legal proceedings were pending, in order to avoid any irreparable damage being caused by these situations while they were being examined by the courts, given that such proceedings inevitably last for a considerable amount of time in Spain.

It cannot be denied that at a global level, we are still suffering the consequences of the serious coronavirus pandemic to varying degrees. This has now been further exacerbated by other serious and unexpected problems, such as the crisis affecting the supply lines and raw materials, rising levels of inflation in many countries of our region and, since February 2022, nothing less than a war along the boundaries of the European Union and a number of NATO member states, a situation that is raising tensions in a way that has not been seen since the end of the Cold War. This is causing further financial problems in an already difficult global situation, such as the worsening energy crisis, the blocking of Russian businesses and capital flows, the freezing or breaking off of international agreements and other serious consequences, the effects of which are still difficult to predict.

Nevertheless, and perhaps because Spain is less dependent on the Russian economy than some other European states, this latest situation is not, for the moment, translating into a noticeably greater level of application of the rebus sic stantibus clause, as occurred in earlier global crises, such as the oil crisis of the 1970s or the more recent financial crisis of 2008, which was particularly severely felt in Spain as it came on top of a serious crisis in both the real estate and banking sectors that resulted in the insolvency of a large number of construction companies and developers and even led to a European bail-out of several Spanish financial institutions and the restructuring of the entire banking sector.

Under Spanish law, the rebus sic stantibus clause lacks any specific regulation. The Spanish Civil Code only provides for the concept of "force majeure" as a mechanism by which parties may be entirely exempted from the obligations by which they are bound under agreements. However, it does not provide for the adaptation of these agreements to extraordinary circumstances through a temporary rebalancing of services.

It has therefore been the courts that have established the requirements for its application. It was particularly during the financial crisis of 2008 that this clause most clearly re-emerged, and the applicable case law can be found in a number of Judgements by the Spanish Supreme Court. These judgements[2] establish the requirements for applying the rebus sic stantibus clause in terms that are similar to the way in which it has been regulated and also applied in practice in other European countries: a serious and unforeseeable situation causing an alteration in the circumstances in which the agreement was signed must involve a breakdown in the financial basis for the agreement, with the resulting excessive burden for the party affected. As we have already mentioned, the specific solution to such situations, once it has been shown that the parties are unable to arrive at a negotiated solution, is established by the judge in each individual case, in line with the specific circumstances of that case and based on criteria of balance and fairness at all times.

It cannot be foreseen at present whether these same criteria are also going to be generally applied by the Spanish courts to situations arising out of the current Russia-Ukraine war, even though this is a conflict whose consequences are already being felt by many Spanish companies, especially with regard to compliance with contractual terms, the delivery of supplies and commercial operations in general, both in Spain and in the international markets.

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2. Judgements handed down by Division One of the Spanish Supreme Court on 17 (RJ 2013, 1819) and 18 January 2013 (RJ 2013, 1604) (Nos 820 and 822/2012 respectively), which ruled that the financial crisis of 2008 "... with the effect of a deep and prolonged financial recession, could clearly be regarded as an economic phenomenon that is capable of generating a serious disturbance or change of circumstances. It is also in line with the new way in which this concept is structured in the main bills for the harmonisation and updating of the interpretation and efficacy of agreements (the Unidroit Principles, the Principles of European Contract Law and the Draft Bill on the Modernisation of the Law on Obligations and Contracts under the Spanish Civil Code)."; and the Judgements of 30 April 2014 (No 333/2014) and 30 June 2014 (No 333/2014 (RJ\2014\3526) in this same connection.

Switzerland

Both institutions are known in Swiss law. With the exception of Article 79 of CISG, the two institutes are not explicitly codified. Swiss law is based on the principle of pacta sunt servanda, which originated in Roman law. This obligates the contracting parties to fulfil a contract exactly as it was concluded. Accordingly, any changes to the contract require a consensus between the contracting parties, with unilateral adjustment of the contract being generally excluded.

Another factor that shall be discussed is rebus sic stantibus clause that constitutes an iinstrument allowing for an adjustment of an existing contract. However, it is assumed that the performance of the contract can no longer be expected of one party due to the change in circumstances that has occurred in the meantime. In this respect, according to the Swiss understanding, it is derived from the prohibition of abuse of rights. An invocation of the rebus sic stantibus clause requires the following: the circumstances must have changed since the conclusion of the contract; the development was not foreseeable; and a serious disruption of equivalence must have occurred (i.e. this led to a gross disproportion between performance and consideration). If these conditions are met, the contract can be adjusted on the basis of the rebus sic stantibus clause.This is done either on the basis of adjustment rules provided for in the contract itself or based on statutory adjustment rules, such as those provided for in Article 373 para. 2 of the Swiss Code of Obligations on Contracts for Work and Services (subsequent adjustment of the remuneration for work and services in the event of extraordinary circumstances), or on the basis of a judicial adjustment of the contract.

Force majeure is closely related to the rebus sic stantibus clause. Force majeure events commonly include war, natural disasters and pandemics, whereby these events must have a direct effect on a party's obligation to perform. The legal consequences and effects of force majeure events on the contractual obligations of the parties are regulated in Article 119 of the Swiss Code of Obligations which stipulates the impossibility of performance in the event of circumstances for which the debtor is not responsible. As a legal consequence, the debtor is completely released from their obligation to perform. However, only the debtor whose performance has become impossible is released, provided that they are not responsible for this impossibility. The contracting party not affected by the force majeure event, on the other hand, remains obliged to perform. In order for the effects of a force majeure event to lead to the impossibility of performance by a contracting party, it is necessary that the event leads to the objective impossibility of performance or at least to the fact that the debtor is no longer able to perform, and results in an impossibility for which the debtor is not responsible, which means that it is not attributable to the debtor's sphere of risk. Consequently, the hurdles are set high.

When applied to the current global situation and the related difficulties in connection with the performance of contracts, both the rebus sic stantibus and force majeure clauses under Swiss law constitute concepts which, under given conditions, release a contracting party from its contractual obligation or grant it the possibility to adjust the contract. However, it should be noted that the conditions of the rebus sic stantibus and even less of the force majeure cannot be assumed lightly. Preferably, the affected contracting party must make every effort to comply with the pacta sunt servanda principle

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This newsletter provides the possible solutions aimed at coping with the challenges posed by the extraordinary situation on the world market, resulting from the pandemic situation, inflation and the Russia-Ukraine war.

We herein provide a brief description of the possible legal claims that can be formulated on the basis of the rebus sic stantibus and the force majeure clauses. This newsletter includes information pertaining to the abovementioned legal constructions, in specific countries as provided by the member and collaborating firms of Andersen Global. The opinions and analyses contained herein are based on the national regulations and jurisprudence of the various types of national Courts updated as of the time of publication. The information however does not take into account an individual's or entity's specific circumstances. The Member Firms and collaborating firms of Andersen Global have used their best efforts to compile this information from reliable sources. However, information and the applicable regulatory environment is evolving at a fast pace as governments and national courts respond. Recipients should consult their professional advisors prior to acting on the information set forth herein.