

CEELM Covid-19 Comparative Legal Guide: Contracts in Croatia

19 MARCH 2020 / LAST UPDATED: 19 MARCH 2020



Contributed by Cipcic-Bragadin Mesic & Associates

How might businesses in your jurisdiction be impacted by the Covid-19 pandemic?

In Croatian jurisdiction there are numerous ways how businesses can be affected by the Covid-19 pandemic. Some of the problems which arise in the economy are lower production or even termination of production, postponement or cancellation of the projects which are planned and paid in advance, and cancellation of flights, transport, events, accommodation, and travel arrangements, as well as delays in the delivery of ordered goods and the inability to deliver goods.

Many companies are finding it impossible to perform their contractual obligations or impossible to perform them completely and adequately.

In your jurisdiction, if it becomes impossible for a party to perform its contractual obligations because of an external event beyond its control (such as the Covid-19 pandemic), can that party cancel its contract?

Croatian law on obligations prescribes the obligation of a party to pay damages caused by its failure to perform its contractual obligations or its failure to perform it within the specified time. That is the general rule. The damage which should be compensated is both actual damages and lost profit.

However, a party can be exempt from the obligation to pay damages if it proves it was unable to perform its obligation because of risks outside its reasonable control (i.e., force majeure). Examples of such risks include flood, earthquake, fire, explosion, etc. It appears the Covid-19 pandemic would be a “force majeure” too.

Furthermore the Croatian law on obligations prescribes that the parties are released from their contractual obligations and liability for damages if the inability to perform contractual obligation arises from force majeure. This rule also applies when only one party is unable to perform its contractual obligations because of risks outside its reasonable control, in which case the other party is entitled to take back everything already given in connection to its contractual obligation.

Subsequently, in Croatian jurisdiction, if it becomes impossible for a party to perform its contractual obligations because of an external event beyond its control (such as the Covid-19 pandemic) that party can cancel its contract without being obliged to pay damages to the other party. It is however important that the external event (Covid-19 pandemic) happened after the formation of the contract but before the prescribed timeline for its realization (for the party who cancels the contract), could not have been predicted when the contract was formed, could not have been avoided, and there is no responsibility of the parties for that event.

In your jurisdiction, if a party's performance of its contractual obligations is adversely affected by an external event beyond its control (an “FM Event”) but does not become completely impossible, can that party typically seek relief from compliance with its obligations?

When a party's performance of its contractual obligations is adversely affected by an external event beyond its control but that performance does not become completely impossible, the other party can insist that the obligation be partially performed (to the extent that it is possible to perform it) or it can cancel the contract. The decision depends on whether a partially performed obligation satisfies the other party. If the partially performed contractual obligation is not acceptable to the other party then the contract is cancelled.

If yes, what considerations should be borne in mind by such parties, in particular in relation to:

Any notification obligations (Is the affected party typically required to notify any counterparties of the FM Event within a specific time period?)

The affected party should notify other parties about all the facts which have impact on their mutual obligations, so the consequences and circumstances of an FM Event would certainly qualify. Otherwise the party becomes liable for the damages caused by the lack of notification. It is required to notify other party immediately to avoid any damages.

Any causation requirements (Is the affected party typically required to demonstrate that it would have performed its contractual obligations but for the FM Event?)

It is not required for a party to demonstrate that it would have performed its contractual obligations if the FM Event had not happened.

Any mitigation obligations (Is he affected party typically required to demonstrate that it took specific steps to avoid the impact of the FM Event as far as possible?)

It is necessary to take all steps possible to avoid or minimize the impact of the FM Event.