

A background image of a modern glass skyscraper with a grid-like facade, featuring blue-tinted windows and dark structural elements.

# COVID-19 outbreak

Legal insights

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# 1

## Introduction



# The outbreak

## What it is Coronavirus disease (COVID-19)?

COVID-19 is infectious disease caused by a new virus that has close genetic similarity to bat coronaviruses, from which it likely originated

It started with cluster of pneumonia cases in Wuhan (China) in the December of 2019 which is why it is dubbed Wuhan coronavirus

The disease is caused by Severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2)

The virus is the cause of ongoing pandemic and the outbreak has been declared public health emergency of global concern by the WHO

It is transmitted through droplets created when infected person coughs or sneezes within 180cm range and perhaps via contaminated surfaces

Time between exposure and symptom onset is typically five days but may range from two to fourteen days

Symptoms are most often fever, dry cough, and shortness of breath while complications may include pneumonia and acute respiratory distress

Pandemic affects all aspects of life and has serious political, social, cultural, economic and other impacts with vastly adverse consequences

Pandemic triggers certain legal implications, especially in the domain of contracts, employment and data protection

# The impacts

How does Coronavirus disease (COVID-19) affect businesses

COVID-19 impacts all aspects of life and economy is not an exception

It is a fast-evolving threat affecting businesses, governments and communities world-wide

Aiming to flatten the epidemic curve, local governments will take (more or less compulsory) measures which will lead to self-isolation and self-quarantine of infected persons, suspending sports and other events and (partially or completely) shutting down business

Governments will also encourage companies to have their employees work from home

On the other hand, in some industries a panic buying and consequent shortages of items trigger higher demand on which producers are not able to respond

Due to this many businesses are confronted with serious commercial concerns, such as delays in the delivery of goods and services, and may look for ways to mitigate the impact on contractual performance

In this situation, they may be faced with difficult legal questions about whether and to what extent force majeure may be implied

Besides, as outbreak is causing major disruption across industries, employers must adjust their business continuity plans and that makes labor topics relevant

Employers also have to ensure health protection of their employees and solving of this issue can be challenging from data protection point of view



# 2

## How COVID-19 outbreak impacts employment relations?



# Employment issues

- Due to introducing state of emergency, Decree on Organization of Work of Employers During State of Emergency providing general guidelines to the employers on the measures they should take in their work environments has been issued by state authorities.
- Although it is clear from the Decree that employers, as well as employees, are obliged to comply with regulations in the field of occupational safety and health and to act in accordance with Law on the Protection of the Population from Infectious Diseases, Decree does not go into the details and does not provide answers to specific day-to day questions employers are facing.
- Questions such as *What is considered to be sufficient occupational safety measures at workplace?* or *Are the employees entitled to refuse to appear in the workplace if they are not satisfied with the protection measures implemented by the employer?* remain open.
- The closure of schools and kindergartens, entail the consequence that certain number of employees will have to stay home to care of their children and will not be able to perform their work. *How the employers treat such leave? Whether the employees will be entitled to compensation during such leave?*

# Employment issues

- Further, given the closure of international borders, many businesses whose activities relies on imports of raw materials and goods, will be restricted or disabled i.e. the volume of work will be reduced or staff will be suspended
- While it is indisputable that employers in the private sector have the right to terminate the work process if the conditions for uninterrupted business conduct are not fulfilled, the question is *what are the rights and obligations of employers and employees in the event of a reduction in workload or work stoppage?*
- As a matter of consequence many additional questions arise – *can employer issue a decision and send employees on a collective vacation as a measure? Can an employer send employees on forced leave or unpaid leave while work is interrupted? Is the employer entitled to make employees redundant in case of inevitable financial losses due to the state of emergency?*
- When deciding on further steps employers are obliged to take into consideration all imperative provisions of employment regulations, as well as the decrees following decision on state of emergency, in order not to bear misdemeanor or criminal liability.



# 3

## Coronavirus and force majeure



## Outbreak affects the supply chain...

- Outbreak has strong impact on manufacturing and supply chain and that has resulted in difficulties for businesses in fulfilling their contractual obligations
- One's business may be affected either by being unable to deliver to its customers due to work suspension/slow-down or by being let-down by its suppliers who are unable to deliver for the same reasons
- In first case you'd ask for a relief while in the second case you'd want to deny/allow a relief, if asked – all on the basis of force majeure

## ....but is it a force majeure event?

- However, the fact that you have force majeure agreed in your contract would not necessarily mean that you are entitled to a relief so the interpretation of the force majeure clause is a paramount
- Force majeure sections in agreements are usually drafted in a way to include specified events so the question for your legal advisor is whether this pandemic constitutes a force majeure event
- If it does, then you are entitled to a relief for certain period of time but be aware – your contract might allow suffering party to terminate it if the event lasts more than prescribed

## ***This means that you might need the action plan***

- ✓ *Identify key provisions which are affected (force majeure but also reps & warranties, covenants, termination rights, MAC, CPs etc.)*
- ✓ *Check whether you are entitled to ask for a relief and/or is your supplier entitled to ask it (is this even a force majeure event)*
- ✓ *Check whether you can prove (or can your supplier prove to you) that this outbreak really prevented you to fulfil your liabilities (note that it is not enough that event occurred – it must affect you)*
- ✓ *Check how much the relief could last and whether its sheer duration jeopardizes the contract itself (maybe you would allow the relief to your supplier but for how long)*
  - ✓ *Identify notice requirements (those are not boilerplate provisions!!) as you would have to know how to serve legally-binding notice*

## Other relevant remarks

- Also, it is always advisable in these situations to manage communications with counterparties in a smart way and strategically
- The alternative means to perform contractual obligations or proactive steps that can be taken anticipating the potential future effects of the outbreak might also be considered
- In case of financial contracts or debt instruments you might want to check whether such contracts may accelerate payment obligations and/or declare an event of default
- Finally, you could have your insurance policy also reviewed as it might offer you some consolation in this desperate times



# 4

## Data protection issues triggered by the pandemics



# Data protection issues

- Pandemic has presented employers with the issue on how to ensure health protection of their employees and secure business operations continuity
- This can be challenging from data protection point of view considering that health data falls into special category of personal data
- This merits higher protection and may be processed only on the grounds prescribed by data protection regulation i.e. GDPR and Serbian Personal Data Protection Law, as applicable
- To respond to the threat, numerous employers are considering monitoring their employee's state of health, their travel plans in and outside of work and their possible contacts with infected individuals outside the workplace
- In general, data protection regulation is by no means a barrier to public health, but employers should not systematically monitor and collect health data of their employees outside official requests and measures of public health authorities

# Data protection issues

- Several data protection regulators in the EU have issued guidance on COVID-19 related monitoring of employees' health data (supervisory authorities in both France and Italy have stated that employers should not actively, e.g. by asking employees to regularly fill in health questionnaires, collect information about their employee's state of health)
- It is still to be seen if the Serbian Commissioner for Protection of Personal Data will issue a similar guidance
- Nevertheless, if an employer decides to collect information about symptoms from visitors and employees, it will need to ensure that the processing relies on a valid condition under Article 9 of the GDPR, or Article 17 of the Serbian Personal Data Protection Law
- The best practice for the employer would be: (i) not to compel employees to provide any personal information, (ii) not to collect any personal information that is not relevant to the prevention and control of the COVID-19, (iii) not to collect or use any such personal information for other purposes, (iv) not to disclose any personal information to third parties other than the institutions authorized to collect such information and (v) to use secured technology to store the personal information.



# 5

## COVID-19 numbers



# Top 10 Countries by Total Cases

From the first case reported in China to the present day the number of patients is rapidly increasing. The coronavirus COVID-19 is affecting 149 countries and territories around the world. On the 11th of March 2020 World Health Organization characterized COVID – 19 as a pandemic. Currently, there are 148,923 registered cases in the world and 73,710 patients have been recovered.

Country	Total Cases	Total Deaths	Total Recovered	Active Cases
China	80,824	3,189	65,569	12,066
Italy	17,660	1,266	1,439	14,955
Iran	12,729	611	4,339	7,779
S. Korea	8,086	72	714	7,300
Spain	5,753	136	517	5,100
Germany	3,953	8	46	3,899
France	3,661	79	12	3,570
USA	2,340	50	41	2,249
Switzerland	1,375	13	4	1,358
Norway	1,032	1	1	1,030

# 6

## Contact details





# Experts on your disposal

If this Newsletter was helpful and interesting but you want to discuss about additional specifics please contact us using following contact details:



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# Thank you!

