INTERNATIONAL DISTRIBUTION INSTITUTE (IDI)
Q&A on legal questions arising during the COVID 19 pandemic in international distribution, sales and franchising

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INTRODUCTION

Hardly any other event can be remembered that has hit the national and global sales, distribution and franchise economy as hard as the current COVID 19 pandemic in recent decades. It is not only the spread of the virus itself that forces companies to take rapid and consistent internal measures. All over the world, countries are taking official measures that are disrupting production, purchasing, trade and distribution in many industries and sectors, and in some cases even bringing them to a standstill, in order to at least slow down the spread of the pandemic and prevent a collapse of health care systems that are not prepared for it.

The large majority of the industries represented in sales, distribution and franchising are increasingly feeling the effects. Some market segments, such as hospitality and parts of

the stationary retail trade, were hit particularly hard by official closure orders and customer restraint in the wake of the pandemic. Around the clock, news of delivery bottlenecks, production stops and short-time work, and even the first announcements of insolvency, particularly in the foodservice and travel industries, are accumulating.

As of the beginning of April, there is unfortunately no sign of a significant short-term alleviation of this situation, although there are positive signals, such as the financial support and subsidies offered by many federal and state governments around the globe. In addition, it can be observed in many distribution and franchise systems that the network members are currently working together more closely and in a spirit of partnership than ever before, and are jointly looking for sustainable solutions to overcome the situation in the best possible way.

For almost all distribution, sales and franchise headquarters, their distributors, agents and franchisees and other system partners, numerous legal questions arise in this context, which will be presented in the following in the form of a Q&A. It can perhaps guide or at least stimulate the discussion and strategic coordination in concrete international situations.

The main questions arise with respect to **force majeure:** which situations may amount to force majeure and which are the consequences? The answer depends on the wording of the force majeure clause (if any) or – in the absence of such clause - on the applicable law. Thus, answers may substantially differ from case to case. In this paper we will try first to give a general answer on the basis of the prevailing principles applied within international trade, and thereafter mention possible further principles resulting from domestic laws.

There are several situations where a party faces situations which affect the performance of their obligations without amounting to force majeure, for instance, when a party wishes to cancel an order for goods which it cannot resell due to the closure of shops (since in this case, buyer is not prevented to take the ordered goods and pay them). In such situations the recourse to **hardship** (where applicable), in order to reinstate a reasonable balance between the obligations of the parties, may be advisable.

This document does not represent a legal advice, but only an evaluation of the most frequently asked questions, from an international perspective, mainly focused on supply agreements (possibly concluded in the framework of distributorship and/or franchise agreements), but also concerning more specifically franchise and commercial agency contracts. It can perhaps guide or at least stimulate the discussion and strategic coordination in concrete international situations. The uniqueness of the COVID-19 pandemic’s impact on the modern world is without equal in many jurisdictions. Therefore, it is impossible to predict the concrete occurrence of the legal views represented here. In individual cases, it is likely that the courts dealing with these and comparable questions in the future will come to different results than those presented here.

1. SUPPLY CONTRACTS CONCLUDED IN THE FRAMEWORK OF DISTRIBUTION AND/OR FRANCHISE AGREEMENTS.

1.1 Are the COVID-19 pandemic and all consequences deriving from it "force majeure" in the view of the agreement and/or statutory law?

The pandemic as such should be considered as a force majeure event independently of the applicable law or FM clause. However, it will exonerate a party from performance **only if it actually renders performance impossible** or objectively unacceptable. This means that one must look at the **actual circumstances** which prevent performance (e.g., government lockdown, lack of necessary personnel, suspension of supply of components) and verify **if they actually prevent performance** and if no reasonable alternative means for effecting performance are available.

International supply and sales contracts may be governed by the CISG Convention on international sales (namely, Article 79), where applicable. However, applying Art. 79 CISG the supplier is only exempted if the impediment causing non-performance is beyond his control and could not have been taken into account when the contract was concluded. Furthermore, the supplier will not be exempted if he can prevent the occurrence of the impediment or overcome its effects, e.g. by procuring products elsewhere. As a general rule, the seller bears the procurement risk even if this entails higher costs for him. Whether the supplier con invoke hardship when the CISG applies is disputed.

ARGENTINA

Force majeure and fortuitous events (fm/fe) are together considered in section 1730 as an event that could not be foreseen or if it was foreseen could not been avoided. The fm/fe exempts the person that claimed any such event from liability, excepts as otherwise provided. It may be waived or assumed by one party.
Assuming that the party that invokes fm/fe has not waived its claim on force majeure by agreement section 955 covers the question of impossibility defining such concept as the fm/fe event that brings about the impossibility to perform an obligation that takes place after the agreement was concluded, objectively and absolutely which extinguishes the obligation of the claimant without liability, but if the impossibility took place for causes attributable to the debtor, the object of his obligation is changed and he has to redeem it by paying an indemnity for damages. Section 1732 provides that the existance of such impossibility shall have to be evaluated taking into account the requirements of the good faith and the prohibition of the abusive exercise or its rights.

AUSTRIA

In Austria, "force majeure" is understood to be an event "coming from outside", "unavoidable" and "unforeseeable". The event is therefore outside the sphere of influence of the contracting parties and cannot be avoided by reasonable means under the given circumstances. The definition has developed from case law and the general law on disruptions to performance; there is no legal definition.

In its decision 1 Ob 93/00h the Supreme Court defined "force majeure" as follows:

"Force majeure is to be assumed if an extraordinary event occurs from outside, which does not occur or cannot be expected to occur with a certain regularity and cannot be averted or its consequences rendered harmless even by exercising the utmost

reasonable care. However, every non-exceptional event is also unavoidable which cannot be averted despite all conceivable expertise and caution."

➔ For further details please see also question 1.4

Attention: In each individual case, it must therefore be carefully examined whether the occurrence of the coronavirus actually prevented or delayed the performance of the service in the specific case and whether the debtor could not have prevented the occurrence of the event. Especially the second aspect can be a basis for the argument that a prudent businessman must also take measures (with the utmost reasonable care) for contractual reasons to prevent the occurrence of this event.

Thus, it must be examined in each individual case whether a concrete effect or official measure has actually prevented a contractual partner from fulfilling its obligations or whether the contractual partner could no longer reasonably be expected to fulfil them. It will also depend on whether alternatives would have been available. Such an alternative may not only play a role in the selection of sources of supply, but also in the event of subsequent fulfilment, i.e. a postponement of performance. The official measures have recently been relaxed.

The branch will also be relevant, since in some industries operations were not interrupted, at least not by an official order. It is very doubtful to what extent the fact that customers simply stay away due to the Corona crisis can be considered force majeure (and not as a business risk), especially since it is an indirect effect of Corona.

The more directly an official measure has an impact on the concrete contractual obligation without realistic alternatives being available, the more likely it is that it will be a case of force majeure.

According to general principles of contractual interpretation, it is necessary to examine the scope of the concept of force majeure, the concrete legal consequences of the contractual clause (suspension of contractual obligations, right of withdrawal), and whether certain warning and notification obligations are provided for.

Even if the agreed concept of force majeure does not explicitly include epidemics, it could at best be argued in the sense of a supplementary interpretation of the contract that the list of circumstances is not exhaustive in cases of doubt and that the drastic corona crisis should also be included (see also the decision of the Austrian Supreme Court on the SARS crisis, which qualified SARS as a force majeure event, OGH 14.6.2005, 4 Ob 103/05h).

➔ For further details please see also question 1.4

Furthermore, provisions for cases of force majeure are usually contained in general terms and conditions. In this case, it is important to note whether these conditions have been effectively agreed in the individual case. In addition, they must be checked for immorality, especially because they are pre-formulated contracts. A deviation from the dispositive law contained therein is invalid if it is not objectively justified (art 879 par 3 Civil Code).

BELGIUM

Pursuant to articles 1147 and 1148 of the Belgian Civil Code, the party to an agreement will be exempted from liability and hence he shall not be liable to pay damages if he

cannot properly fulfil his contractual obligations due to an extraneous event, such as a force majeure event. Traditionally the so-called “acts of God” (natural occurrences without the interference of human agency), such as earthquakes, lightning, hurricanes, epidemics, exceptional drought, etc., acts provoked by humans such as strikes, war, and government decisions (“le fait du Prince”) can constitute force majeure depending on the circumstances.

The concept of “force majeure” is not defined by law. Force majeure will be verified in circumstances amounting to an insurmountable (and according to some, unpredictable) obstacle which prevents the performance of the obligation. It also is argued by some that force majeure requires that the event is not attributable to the defaulting party or its representatives: in other words, the event would need to be unpredictable and unavoidable. Most authors currently consider that, when assessing whether or not there is force majeure, reference must be made to the substance of the obligation at stake. Both COVID-19, that might be considered to be an act of God, and the measures currently taken by governments to contain the spread of the pandemic, that can be considered as a “fait du Prince”, can thus be qualified as events of force majeure, provided that their impact on the performance of a particular contract can be proven. Whether or not Covid-19 constitutes a force majeure event, however, will be accepted provided the performance is ‘reasonably’ impossible and the co-contracting is not accountable for that impossibility. There are precedents where the courts have accepted health reasons and even a local epidemic as amounting to force majeure. It will be up to the party claiming the benefit of circumstances of force majeure to prove that the conditions thereto are met.

The fact for performance to be more expensive or more difficult is irrelevant. In other words, in principle, financial or other difficulties which render the performance of an agreement more onerous – but not impossible – will not be accepted as a case of force majeure. However, although all courts do not concur, it is generally admitted that that there needs to be a degree of reasonableness in assessing the impossibility. A contractual provision that includes an epidemic or a pandemic as a circumstance excusing or delaying performance is valid under Belgian law provided it does not infringe the restrictions set to the validity of such a provision (eg a clause exempting a party from his own fraud (*dol - bedrog*) or annihilating a material obligation and hence emptying the substance of the agreement is null and void).

Belgian law does not encompass the theory of hardship. Various roads have been used in court over the years to circumvent this difficulty. For instance, it is argued that insisting on performance in situations where an unpredictable turn of event makes it excessively hard on the other party and could even ruin him is abusive and therefore is a breach of the general principle of good faith. Recent case law also hints at a gradual acceptance of hardship in Belgian law. The Belgian legislator has taken these developments into account in the planned reform of the Civil Code. In the meantime, parties are well advised to include appropriate hardship provisions in their contract.

It is important to note that performance in good faith and the duty to mitigate the damage of the other party require the victim of force majeure to inform his co-contracting party of the situation.

CANADA

There is no common law right to invoke force majeure. It is a matter of contract, and whether COVID-19 or its consequences qualify as a force majeure event turn on the wording of the force majeure clause itself, the agreement taken as a whole and the factual matrix behind the agreement.

Where a contract includes a force majeure provision, it typically lists events that would qualify as a force majeure event, which may be determinative or an inclusive list of specific examples of events "beyond the reasonable control" of the party. The content of the list and whether it is an open or closed list can be significant. The driving issue, however, is whether performance of the contractual obligation is actually prevented by the event in question.

If the COVID-19 pandemic qualifies as a force majeure event, the analysis then turns to what is required to to invoke the force majeure provision. This depends on the specific wording of the contract. The invoking party would typically have to demonstrate that the force majeure event caused a sufficient impact to an actual contractual obligation. Force majeure provisions will often specify the level of impact on a party's ability to perform its contractual duties that is required – a difficult business environment will typically not be enough. Additionally, the invoking party will usually have to provide notice to the other party (contracts typically require parties to give written notice when the provision is invoked). Finally, parties are generally required to mitigate the impact of the force majeure event.

The province of Quebec has a civil-law regime, as opposed to the common-law regime in the other provinces, and it has a unique approach to force majeure. In Quebec, the concept of force majeure is set out in various laws and regulations, including the Civil Code of Quebec governing all private relations. In summary, the legal effect of an event qualified as a force majeure by Quebec courts is that the debtor is released from having to perform its contractual obligations. That being said, the application of force majeure varies according to the intensity of the obligation. In addition, and importantly, force majeure is not of public order (or imperatively imposed by the legislator) in Quebec and, as such, contractual provisions can modify the default provisions provided by law. Consequently, a case by case analysis must be conducted to assess, for example, whether a party may have assumed the risk of a force majeure event. [Current to April 30, 2020.]

CHINA

In principle, the COVID-19 pandemic and the government policies related to COVID-19 may constitute force majeure.

- Statutory Law

Force majeure is provided in the *General Rules of the Civil Law of the People's Republic of China* (《中华人民共和国民法总则》) and the *Contract Law of People's Republic of China* (《中华人民共和国合同法》, the "**Contract Law**"). Pursuant to Article 117 of the Contract Law, force majeure is defined as objective circumstances that are "unforeseeable, unavoidable and insurmountable".

The PRC law's approach to the scope of force majeure is setting a broad definition to the term rather than enumerating a list of circumstances. This approach affords a certain degree of flexibility with respect to what incidents may qualify. As such, even though pandemic is not listed in the law, it may nevertheless be interpreted as force majeure, depending on the severity of the pandemic.

On February 10, 2020, a spokesperson of the Legislative Affairs Commission of the Standing Committee of the National People's Congress, which represents the legislature of the People's Republic of China (the "**PRC**"), declared that the COVID-19 pandemic is force majeure for parties who cannot perform the contract, subject to other provisions prescribed by law.

- Agreement

In practice, parties usually would include a force majeure clause in their contract, which may or may not conform with the provisions in the Contract Law. Generally, there are two types of variations in private contracts.

The first one is excluding certain circumstances from the application of force majeure provisions. In this way, if the excluded circumstances occur, parties are barred from claiming force majeure.

The second approach is including certain circumstances that do not fall in the definition of force majeure under the Contract Law. Under this approach, even though the included circumstances do not meet the legal requirements for force majeure, parties may still claim force majeure.

In China, force majeure is a statutory defense. As such, parties' intention to contract out force majeure under the first approach may not be recognized by the court. However, courts generally would respect the parties' decision to expand the scope of force majeure under the second approach and regard it as liability exemptions.

COLOMBIA

In Colombia, for the COVID-19 pandemic and all consequences deriving from it, to be considered force majeure but not necessarily all of them, it depends on several factors.

Three elements must coexist for a party to excuse itself to perform its obligations arguing the occurrence of FM: (i) the occurrence of an extraordinary, unpredictable event that could not have been avoided, not even applying all possible diligence; (ii) no fault or intentional activity is attributable to the party invoking it as an exception and (iii) the event in question must make impossible the fulfillment of the obligation.

However, the use of coronavirus as a force majeure factor, in cases of non-compliance with the contract's obligations depends on the area to which the agreement belongs, thus, the affected part must prove how the pandemic and/or the acts of the government affected its capacity to honor its obligation.

In the case of the international distribution, sales and franchise agreements, the movement of goods and essential components will be severely impaired by the lockdown, here and there, of factories and warehouses, grounding of transport, closure of borders and layoffs, which will have an immediate impact on the commercial chain with the consequent affecting distribution, agency and franchise contracts, logistics and supply chain, in general.

Consequently, FM can serve as a palliative, to these situations caused by Covid 19. Here, our Commercial Code integrates very well with the Vienna Convention on the International Sale of Goods of 1980, whose art. 79 expressly gives space to said exemption, mentioning it expressly in the standard contracts concluded under its protection.

CROATIA

Croatian Obligations Act (OG 35/2005, 41/2008, 125/2011, 78/2015, 29/2018, hereinafter: "COA") does not mention FM explicitly. Nevertheless, this legal institute is substantially implemented in the COA through provisions of various Articles. For instance Article 343 regulates that a debtor is not liable for damage if it can prove that it could not perform its obligation or that it is late with the performance due to:

> "(…) external, extraordinary and unforeseeable circumstances arising after entering into the contract, which circumstances it could not have prevented, eliminated or avoided."

Article 373 of COA states that

> "Where performance of an obligation of one contractual party becomes impossible due to extraordinary external events that occurred after entering into a contract and before the performance is due and which could not have been foreseen or prevented, avoided or eliminated by the party and for which neither party is liable, the obligation of the other party is also ceased, and if the other party has performed its obligation partially, it has the right to restitution according to the provisions relating to restitution in case of unjust enrichment."

In light of the above provisions, the COVID-19 pandemic and the consequences of the pandemic could amount to FM under Croatian law, but it is important to look at circumstances of every particular case and verify the actual (im)possibility of the parties to perform their obligations.

CZECH REPUBLIC

In principle the COVID-19 pandemic and consequences deriving from it can be in most cases treated as event corresponding to events relieving the damaging party from his liability to pay damages under the Czech law, i.e. impediments extraordinary, unforeseeable, beyond control and which could not be overcome. The relief from liability to pay damages in such cases are regulated in Art. 2913 of the Czech Civil Code. Despite the Czech law does not explicitly mention it, such events are understood as "Force Majeure". In practice the pandemic's actual impact on the supply obligation will be considered and obviously not all situation shall meet legal characteristics of this provision, especially if such impact could have been foreseen at the time of conclusion of the contract, if it was avoidable or where the only impact was to render an obligation more expensive to perform etc. Some situations deriving from COVID-19 pandemic may also fall under the applications of the general rules on impossibility of performance (Article 2006 of the Czech Civil Code) and of hardship (Article 1765 of the Czech Civil Code), depending on the specific circumstances of the case. Whether or not the COVID-19 pandemic is treated as "force majeure" depends also on the wording of respective Force majeure clause (if any). FM situations as well as FM clauses will likely be interpreted rather narrowly by the courts unless the clause identifies epidemic event as event of FM. If there is no FM clause in international sale contracts, Vienna Convention

(CISG) shall apply. In case the application of the CISG has been excluded in the contract by contractual parties, the Czech law shall apply.

Art. 2913 of the Czech Civil Code:

> A (damaging) party is released from the duty to provide compensation if he proves that he was temporarily or permanently prevented from fulfilling his contractual duty due to an extraordinary and unforeseeable impediment beyond his control which could not be overcome. However, an impediment arising from the damaging party´s personal circumstances or arising when the damaging party was in default of performing its contractual duty, or an impediment which the damaging party was contractually required to overcome shall not release it from the duty to provide compensation.

DENMARK

The pandemic as such should be considered as a force majeure event independently of the applicable law or FM clause. However, it will only suspend a party's performance/obligations and **only if it actually renders performance impossible**. This means that one must look at the **actual circumstances** which prevent performance (e.g., government lockdown) and verify **if they actually prevent performance** and if no reasonable alternative means for effecting performance are available.

International supply and sales contracts may be governed by the CISG Convention on international sales (namely, Article 79), where applicable.

EGYPT

1. Introduction:

By now it is clear that there are probably no jurisdictions that are not affected by COVID-19 or the international measures that have been put in place to try and contain and control it. The COVID-19 crisis has evolved rapidly over the past few weeks, forcing the Egyptian government to take increasingly disruptive measures to mitigate its impact on public health and the economy — and businesses to take their own precautions to look after staff and customers.

The closure of businesses and the introduction of a nationwide curfew only ramps up the likelihood that businesses could find it challenging to meet contractual obligations in the weeks and months to come.

Many industrial sectors are encountering instability; people and businesses are faced with high uncertainty about their next steps. In this context, the legal implications for businesses and individuals are becoming more and more important, and a widespread understanding of legal rights and obligations is required across society as a whole.

2. COVID-19 pandemic; Force Majeure or Hardship?

Force Majeure clauses are common contract feature. In fact, contracts often contain clauses that enable parties to suspend/terminate contractual agreements in the event of force majeure (or as it is also known as “Act of God”).

For this to happen, the event must of a magnitude that makes delivery of an agreement, or parts of it, impossible. So long as such an event persists, obligations can effectively be paused without incurring penalties.

Some force majeure clauses directly reference pandemics or epidemics, while others refer broadly to events with impact, or natural disasters. There’s also the question of

regulatory decisions. Businesses relying on materials from high-risk areas, including much of Europe and Asia where factories have shut down, can more easily claim force majeure and renegotiate contracts or suspend parts of their agreements.

However, even if a contract doesn't include a force majeure clause, according to the Egyptian Civil Code some situations deriving from COVID-19 pandemic may fall under the applications of the general rules on "impossibility of performance" (Article 373 Civil Code) and the occurrence of "exceptional and unpredictable events" (Article 147/2 Civil Code), depending on the specific circumstances of the case.

The doctrine of unpredictable events is based on the theory of "imprévision" in French law, and roughly coincides with the hardship doctrine in common law. A hardship situation doesn't rule out the possibility of invoking force majeure if it can be proven that performance was impossible.

Article 373 Civil Code

> An obligation is extinguished if the debtor establishes that its performance has become impossible by reason of causes beyond his control.

Article 147 Civil Code

> The contract makes the law of the parties. It can be revoked or altered only by mutual consent of the parties or for reasons provided for by law.
>
> When, however, as a result of exceptional and unpredictable events of a general character, the performance of the contractual obligation, without becoming impossible, becomes excessively onerous in such way as to threaten the debtor with exorbitant loss, the judge may according to the circumstances, and after taking into consideration the interests of both parties, reduce to reasonable limits, the obligation that has become excessive. Any agreement to the contrary is void.

Accordingly, under Egyptian law, the concept of force majeure or hardship may be pursued by a party to a contract even without being expressly set out in a contract, provided however, to be claimed by the defaulting party.

The suspension or suppression of a contract under force majeure or hardship is in fact, a case-by-case matter. Unless the parties have agreed otherwise, for an event to qualify as force majeure or exceptional, Egyptian jurisprudence and the precedents of the Court of Cassation require three conditions to be met: (Cass. No. 4932 of JY 81 – 22/12/2018; Cass. No. 11112 of JY 81 – 26/02/2018; Cass. No. 5917of JY 79 –24/04/2016; Cass. No. 2494 of JY 78 – 27/03/2016; Cass. No. 8714 of JY 80 – 21/01/2015; Cass. No. 10384 of JY 76 – 05/02/2014; Cass. No. 1297 of JY 56 – 21/01/1990)

- Exteriority (*extériorité*), meaning that the event is beyond the affected party's control, nor from anything or anyone for which the affected party could be held liable (such as its employees).
- Unforeseeability (*imprévisibilité*), meaning that the event could not reasonably have been foreseen at the time of the conclusion of the contract.
- Irresistibility (*irrésistibilité*), meaning that the effects of the event could not be avoided by appropriate measures. Irresistibility is the core requirement of force majeure. This is assessed *in abstracto* by Egyptian courts—the question is whether an average person in the same circumstances could have still been able to perform its obligations.

As long as performance is possible, even if it would appear very costly for the affected party, the event cannot qualify as force majeure but as exceptional event.

In such a case, the Judge shall have the ability to reduce or increase the obligations taking into consideration the interest of both debtor and creditor and he has also the authority to suspend the implementation of the obligations up to lapse of the foreign cause.

Therefore, "Impossibility" is the key difference between force majeure and hardship.

3. On International Scale

According to Article 151 of the Egyptian Constitution; treaties and international conventions acquire the force of law upon promulgation in accordance with the provisions of the Constitution.

One of the most relevant conventions in this regard, is the United Nations Convention on Contracts for the International Sale of Goods (CISG) which was signed in Vienna in 1980 and became effective on January 1, 1988. It is worth mentioning that Egypt was among the 11 first countries that ratified in the convention in 1988.

Contracts for the sale of goods are also regulated by Egyptian law. There are two kinds of such contracts under the present Egyptian law, civil (non-commercial) and commercial contracts. The former Egyptian Commercial Code for the year 1883 had no provision relating to the sale of goods contract. Therefore, the Egyptian Civil Code governed both non-commercial and commercial sale of goods contracts.

The new Egyptian Commercial Code (ECC) No. 17 for the year 1999 has reformed the field. In Articles 88-118, it governs the commercial sale contract: Articles 88-103 include general rules and Articles 104-118 govern special types of sales contracts, including the supply contract.

However, ECC is not all inclusive. According to ECC Article 2, the Civil Code shall apply in absence of a commercial rule in the Commercial Code. Accordingly, the commercial sale of goods contract is basically governed by the (new) Commercial Code; and, in absence of any rule in this code, resort shall be made to the Civil Code.

ECC differentiates between local and international commercial sale of goods contracts. Article 88/2 of the ECC subjects the international commercial sale of goods contract to international conventions effective in Egypt, i.e. CISG, as well as international commercial practice and explanations prepared by the international organizations, if the contract refers to it, such as the Incoterms or the UNIDROIT principles, for example. In fact, according to the ECC's memorandum, CISG was one of the instruments with which ECC has been influenced.

FINLAND

Like other Nordic countries, Finland does not have a comprehensive civil code and Finnish contract law consists, on top of the largely Pan-Nordic Contracts Act 1929, of several sector-specific enactments such as the CISG as transposed into Finnish law and the domestic Sale of Goods Act 1987. Beyond and aside with such enactments, the general principles of contract as established in case law and doctrine shall apply. Force majeure is recognized as a general principle of contract law.

It is conceivable certain consequences deriving from the COVID-19 pandemic can be regarded as events that may release a party from his contractual duties. This is, however, always subject to that such party [a] gives notice, without delay, of the impediment and its effect on his ability to perform and [b] proves [i] that his failure of performance is due to a clearly definable external impediment beyond his control, [ii] that he cannot reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it or its consequences. In Finland, the rule of liability founded on the ambit of control of the party invoking the impediment in contrast to liability founded on negligence, has been implemented in several enactments, chiefly featuring sale of goods or services. However, in B2B relationships, frequently sales contracts, whether general or not, contain some sort of force majeure clause most often meticulously defining a number of events which may constitute an impediment entitling to invoke release of contractual obligations. Since sales law may be deviated by contract, unless by way of exception deemed null or void on basis of some legally clearly regulated reason, such contract clauses prevail over law. Last but not least, the rule of Section 36 Contracts Act admitting the competent court to adjust an unfair contractual term or a term the application of which would lead to an unfair result may be invoked where the circumstances have changed after the conclusion of the contract.

FRANCE

Article 1218 of French Civil Code defines force majeure as follows:

> « There is force majeure in contractual matters when an event beyond the control of the debtor, which could not reasonably have been foreseen at the time of the conclusion of the agreement and whose effects cannot be avoided by appropriate measures, prevents the performance of his obligation by the debtor.
>
> If the impediment is temporary, performance of the obligation shall be suspended unless the resulting delay justifies termination of the agreement. If the impediment is permanent, the agreement is terminated by operation of law and the parties are discharged from their obligations under the conditions laid down in articles 1351 and 1351-1 ».

This provision is not mandatory and the agreements may define the force majeure events with a reduced or wider scope.

Due to the civil code reform in 2016 applicable to contracts made after the reform, the French case law decisions is not always relevant because previously, the force majeure event had also to be exterior to the party invoking the event. This lead to exclude force majeure in case of strike in the company. This is no longer the case.

In contrast to the chikungunya virus (CA Basse-Terre, 17 Dec. 2018, n°17/00739) or dengue fever in Martinique (CA Nancy, 22 Nov. 2010, n°09/00003), which are diseases that can be treated and therefore were considered surmountable, the COVID-19 disease when impeding a party to perform its obligations or compelling the closure of premises, can be considered a force majeure event.

In a decision of 14 April 2006, the Court of Cassation ruled that:

> « There is no cause for damages when, as a result of force majeure or a fortuitous event, the debtor was prevented from giving or doing what he was obliged to do, or did what he was forbidden to do; this is the case when the debtor was prevented from performing by illness, when this event, unforeseeable in its occurrence at the time of the conclusion of

the agreement and irresistible in its effects, constitutes a case of force majeure » (Cass. Ass. Plén., 14 April 2006, no. 02-11168).

GERMANY

Framework supply agreements, in particular also general delivery terms and conditions, typically contain special clauses on force majeure and it as external events that prevent delivery and are beyond the supplier's control. Such clauses often include examples such as natural disasters, strikes, import bans, terrorist attacks, but also epidemics or pandemics.

The concept of force majeure is not explicitly mentioned in German law. According to § 275 BGB, however, a supplier is released from his obligation to deliver if it becomes impossible for him to do so. This applies in particular if the delivery is based on actual or legal circumstances which the supplier cannot influence. Furthermore, he may refuse performance if the expense is grossly disproportionate to the interests of the supplier. It can be assumed that future court decisions could classify as objective impossibility some of the direct effects of the COVID-19 pandemic, which were beyond the supplier's or producer's control.

In any event, both contractually and legally, a distinction must be made between the pandemic as a trigger of force majeure or impossibility itself (e.g. if employees fall ill with COVID-19 and are unable to work), on the one hand, and the consequences of the pandemic, on the other (e.g. official closure orders, border closures, delivery problems of upstream suppliers). It cannot be said for sure that German courts will recognize any and all consequences can be considered force majeure. With respect to the supply chain, a producer may be required to choose from alternative (even if more expensive) supply sources and cannot simply rely on force majeure if his preferred supplier is not able to supply.

In addition to impossibility, the German Civil Code also recognizes the so-called loss of the basis of the transaction. In very limited exceptional situations, § 313 BGB allows the adjustment of the framework supply contract and, if this is not possible, its cancellation. The prerequisite is that something changes so fundamentally in the course of the framework supply contract that the contract, once concluded, no longer makes sense. Whether the COVID-19 pandemic itself and/or consequences derived from it will cause the business basis to cease to exist cannot be generally affirmed at present and will depend on the individual case of the contract concerned. Case law has always placed very high demands on the actual requirements. Conversely, it cannot be ruled out that the courts that will be dealing with this question in the future will grant this pandemic a special exceptional character in individual cases.

ISRAEL

Two sources should be reviewed whenever the question arises - the contract and the relevant statutory provisions.

The first source is the contract between the parties. Many contracts contain provisions that define the scope of "force majeure" ("**FM**") and its legal consequences. As a general rule, such provisions shall supersede the relevant statutory provisions, which are excluded to the extent regulated otherwise by the parties in the contract.

The main statutory provision is Section 18 of the Contracts Law (Remedies for Breach of Contract) of 1970 (the "**Contracts Law – Remedies**" and "**Section 18**", respectively) entitled "Exemption by reason of constraint or frustration of contract". Subsection (a) of Section 18 provides:

> "Where the breach of contract is the result of circumstances which at the time of making the contract the person in breach did not know of or foresee and need not have known of or foreseen, and which he could not have avoided, and performance of the contract under these circumstances is impossible or fundamentally different from what was agreed between the parties, the breach shall not give cause for enforcement of the contract or for compensation."

The Israeli Supreme Court interpreted the conditions of Section 18(a) (the "**Conditions for Frustration**") very narrowly, in particular by restricting the scope of *"circumstances which … the person in breach … need not have known of or foreseen"*. Yet, the unique circumstances of the COVID-19 pandemic might be recognized by the courts as circumstances that meet the Conditions of Frustration.

If the circumstances of the COVID-19 pandemic meet the "Conditions for Frustration", the breaching party will be protected from a demand to enforce the contract or to pay compensation to the injured party for its damages. However, the injured party will **not** be deprived of his right to terminate the contract due to the breach.

Section 18(b) of the Contract Law - Remedies ("**Section 18(b)**") describes the legal consequences of frustration, when recognized by the court, as follows:

> "In the cases referred to in subsection (a) the Court may, whether or not the contract has been rescinded, require each party to restore to the other party what he has received under the contract or, at his choice as provided in Section 9, to pay him the value thereof, and require the person in breach to indemnify the injured party for expenses reasonably incurred and liabilities reasonably contracted by him for the performance of the contract, all if and in so far as the Court deems it just to do so in the circumstances of the case."

When dealing with an international transaction for the sale of goods between parties from countries that joined the United Nations Convention on Contracts for the International Sale of Goods ("**SICG**"), it will be subject to the provisions of the Law of Sale (International Sale of Goods), 1999, which incorporated the SICG into the laws of Israel. In such a case, Articles 79 and 80 of the SICG shall apply.

ITALY

Pursuant to the Italian Civil Code some situations deriving from COVID-19 pandemic may fall under the applications of the general rules on impossibility of performance (Articles 1218, 1256, 1463 *et seq.* of the Italian Civil Code) and of hardship (Article 1467 Civil Code), depending on the specific circumstances of the case.

The general principle established by Article 1218 c.c. provides that:

> "A debtor who fails to perform exactly what is due shall be liable to pay damages if he does not prove that the non-performance or delay was caused by the impossibility of performance resulting from a cause for which he is not responsible."

Therefore, the burden of proof on the impossibility of performance is in principle on the debtor, who invokes the force majeure.

It is very important for the party invoking force majeure to promptly notify the other party the occurrence of the circumstance impeding his performance (e.g. the Government lockdown) as well as the end of the force majeure situation.

The typical consequence of force majeure is the relief of the party of all his responsibilities; therefore, the other party is not entitled to use the remedies provided by the contract for non-fulfillment (e.g. termination, damages, liquidated damages etc.).

Specific situations, e.g. temporary and/or partial force majeure situations, possible termination from the other party if the FM situation lasts for a certain period, etc. will be dealt with in the following specific Q&A.

JORDAN

The concept of force majeure is explicitly mentioned in the Jordanian Civil Code Article 247, the effect of the force majeure if all three conditions are met that the contract is deemed to be void and null, the three conditions are: the circumstance of the force majeure are not foreseeable , cannot be avoided and makes executing of the obligations impossible.

Many of the governmental closures orders have affected the possibilities of executing contracts. However, the Jordanian Defence Law was put into effect during this pandemic Article 11 of this law stats that all contracts which may be effected by applying this law is suspended to the extent that the implementation of such contracts become impossible.

The Jordanian Civil Code also recognize Contingency as per Article 205 and may be invoked amid the COVID-19 pandemic, the aforementioned Article stipulates that when there are circumstances that don't make the implementation of the obligation impossible, but rather becomes exhausting for a party the court has the right to amend the contract to make it possible for the parties to execute their obligations under the contract.

FM, Article 11 of the Defense Law and Contingency will be invoked by the defaulted party during and after this pandemic.

The official lockdown and all the applied restriction of movement will be considered as an unpredictable event, and in our opinion courts will examine each contract and all the circumstances that surround the possibility of performing the parties' obligations on case by case basis. Thus the Defence Law which was put in to effect in Jordan has the power and authority to suspend other laws provisions when appropriate through issuing an orders based on the said law.

The aforementioned articles will have a great impact on all feature disputes arise from all the restrictions pandemic triggered, along with all the governmental orders issued to counter the outbreak of the virus. Courts will determine whether these restrictions have indeed prevent a party from performing their obligations under the contract.

KUWAIT

As the spread of COVID-19 continues significantly to affect and disrupt businesses, economies and people lives across the globe in a way or another. Force Majeure clauses in all kind of agreements whether locally or globaly have become hot platter of intensive

focus. Therefore legal practitioners here in Kuwait and GCC area deem Force Majeur one of the most significant issues that contracting parties need to consider among with its associated impacts and consequensences contractually and statutory.

Generaly legally speaking, Force Majeur is unforeseeable and unavoidable circumstance, beyond the control of the parties to an agreement that prevents a party from performing or fulfilling their contractual obligations or make them impossible.

The Civil Code of Kuwait does not provide any specific definition of the term Force Majeur. However, Kuwait cassation courts set out the fundamentals of Force Majeur's notion. It is established that an event of Force Majeur should involve the following circumstances (i) an event beyond the control of the parties(external) (ii) which they could not have anticipated in advance(unforeseeable) and (iii) which renders them unable to perform or fulfill their obligations (irreversible). It is well known that Force Majeur encompasses natural disasters, civil wars, infectious diseases or some other form of superior forces that hindering the parties' performance and make them impossible to be fulfilled as it usually enumerated expressly in the agreements.

In the absence of an explicit definition of Force Majeur, the contracting parties resort to the provisions of the Civil Code to suspend, diminish or nullify their contractual obligations.

- In this context, Article 215 of the Civil Code states that in bilateral contracts, if performance of the obligation of either contracting becomes impossible for an exterior event or force beyond their control, the contract is deemed automatically revoked and the parties are discharged from their respective obligations. In the case of partial impossibility, that part of the contract which is impossible shall be extinguished, and the same shall apply to temporary impossibility in continuing contracts, and in those two cases it shall be permissible for the obligor to cancel the contract.
- Article 437 of the Civil Code states" an obligation is extinguished when the non-performing party (debtor) has established that its performance has become impossible due to an exterior cause outside their control ".

MEXICO

Mexican Federal Civil Code does not define Act(s) of God (*caso fortuito*) and gives the same treatment as an event of force majeure, in consideration that both figures are events beyond the parties' control that prevents performance of obligations and therefore could not give rise to civil liability, except if liability therefrom is expressly accepted by the parties, or imposed by law. According to Federal Courts criterion, Act(s) of God has(have) the meaning of events from nature while force majeure are acts of man or authority that make physically impossible a debtor to fulfill an obligation, with the logical consequence that debtor is not in default and cannot be held liable for failure to comply, since nobody is bound to what is materially impossible.

COVID-19 outbreak in Mexico *per se* could not necessarily be considered as an Act of God to justify the delay or failure to comply an obligation; however, the health measures or other government official determinations issued by the Mexican or foreign government(s) could constitute force majeure events that should be analyzed on case-by- case basis.

In addition, the parties to an agreement may agree the consequences arising from Acts of God and events of force majeure. Further, they may agree in indicating what type of events may be considered as such, which allows the parties to limit, to some extent, the adverse effects of these types of events. For instance, the parties to an agreement may agree to suspend any obligation(s), stay periods, mechanism to modify, among other possibilities, or even the possibility to terminate the agreement, which in any case will need to be studied on case-by-case basis.

MOROCCO

Pursuant to the Moroccan Civil Code (DOC), the situation deriving from the lockdown decision of the government to limit the spread of COVID-19 pandemic may fall under the application of the general rules on impossibility of performance (Articles 269 of the Moroccan Civil Code). Moroccan Civil Code does not provide for hardship unlike French Civil Code.

Article 269 of the DOC define force majeure as:

> "any fact that man cannot prevent, such as natural phenomena (floods, droughts, storms, fires, locusts), the enemy invasion, the fact of the prince and which makes it impossible to fulfill an obligation…". The same article also adds that "… the cause which could have been avoided will not be qualified as force majeure, if the debtor does not justify that he has done all due diligence to protect himself against it."

Parties may deviate from the Moroccan Civil Code and include specific force majeure clauses in their contract. If a force majeure clause explicitly includes governmental restrictions because of a pandemic as a situation that qualifies as force majeure, one party can normally rely on such a contractual provision provided that any other contractual requirements for invoking force majeure have been met (i.e. notification to the other party etc.).

Should a party wishes to raise the force majeure, evidence should be made that the conditions set by Article 269 of the DOC or by the definition of the contractual clause are met (i.e. the event is unforeseeable, beyond control and cannot be overcome). In that case this party would be relieved of all the contractual obligations without any exposure to any risk of sanctions for their non-fulfillment such as termination, damages etc..

As the pandemic was declared as of January 30, 2020 by WHO with the final decision on the determination of a Public Health Emergency of International Concern (PHEIC), it is worth outlining that the contracts entered between a Moroccan company and a foreign partner after this date might be considered as not meeting the condition of unpredictability and therefore the force majeure could not be raised without legal exposure.

MOZAMBIQUE

There is no direct definition of a "force majeure" event in Mozambican general law (namely in the Civil Code and Commercial Code).

The Mozambican Civil Code has some rules concerning the fulfilment of contractual obligations, which are relevant in the context of COVID-19.

As a principle, pursuant the article 405 of the Civil Code, the contracts must be performed according to what the parties have agreed and may be amended or terminated either by mutual consent or in the cases foreseen in the law.

No. 1 of article 437 Civil Code refers that if the circumstances in which the parties based their decision to contract have suffered an abnormal modification, the affected party has the right to cease the contract or to modify it under a judgment of equity, since the demand of the assumed obligations deeply affects the principles of good faith and is not covered by the proper risks of the contract. On the other hand, no. 2 of the above article states that if a party demands contract termination, the other party can oppose to such request, declaring to accept the agreement's amendment (in the terms of the previous number).

Pursuant the article 790 of Civil Code, the obligation may terminate whenever it is not possible to perform the contract obligation for a cause not imputable to the obliged party, being that if it is a temporary cause, the obliged party does not respond for damages resulting from the delay (*rectius*, article 792 of the Civil Code).

Regarding *onus probandi rules*, the proof thereof should be made by the party affected by the event.

In case of a bilateral contract (as it is the case of a sale and purchase agreement), whenever performance is not possible (because of a cause which is not imputable to the debtor) the creditor is not obliged to execute its performance and has the right to restitution of what it has already performed, in terms of unjustified enrichment (ut., article 795 no 1 of the Civil Code).

NEW ZEALAND

It will be a matter of contractual law and whether force majeure is covered in specific contracts.

Many agreements contain a force majeure clause. By force majeure we mean an event happening beyond your control like an act of God or pandemic. Each force majeure clause may be different, but the effect is the same – it relieves the party that is unable to perform, or is delayed from performing, their obligations under an agreement. In order to be successful in using a force majeure clause you must:

1. Have a triggering event occur. Each clause will detail a variety of triggering events. Some examples include an act of God, a natural event or epidemic or pandemic as mentioned above.
2. The required effect of the triggering event is that you are unable to legally or physically perform your obligations under the agreement.

Both of the above elements must be proven in order to successfully use the force majeure clause to get out of your obligations. What will count as a triggering event will depend on the exact wording of the clause in the document.

In commercial contracts which I draft I insert the following force majeure or impossibility of performance clause:

> "Neither party shall be liable to the other and neither party shall be deemed to be in default for any failure or delay to observe or perform any of the terms and conditions applicable to the party under this Agreement (other than the payment of money) caused or arising out of any act beyond the control of that party including (but not limited to) fire, flood,

lightning, storm and tempest, earthquake, strikes, lock-outs or other industrial disputes, acts of war, acts of terrorism, riots, civil commotion, explosion, malicious damage, government restriction, unavailability of equipment or product, disease and/or virus of epidemic or pandemic proportions or other causes whether the kind enumerated above or otherwise which are beyond the control of that party and where such failure or delay is caused by one of the events above then all times provided for in this Agreement shall be extended for a period commensurate with the period of the delay."

NORWAY

"Force Majeure" is not explicitly defined in Norwegian law. However, based jurisprudence and legal theory Force Majeure relates to extraordinary external events that are unavoidable and unforeseeable for the parties, making it impossible for one or more of the parties to perform in accordance with the contract either temporarily or permanently.

Force Majeure is a general contractual principle, meaning that it applies even if the contract between the parties makes no reference to Force Majeure.

Whether or not Force Majeure can be invoked as a result of the Corona Virus depends on the wording of the specific Force Majeure clause. In the absence of such a clause or if the clause only refers to Force Majeure without any definition, the understanding of the concept is based on jurisprudence and legal theory.

As seen above, Force Majeure must relate to 1) extraordinary external events that are 2) unavoidable and 3) unforeseeable, 4) making it impossible to perform in accordance with the contract.

The existence of the Corona virus in itself does not qualify as a Force Majeure. The question must be if the virus causes obstacles for the contracting parties that qualify to the conditions above.

With respect to sale of goods, CISG might apply. Article 79 states that a contractual party is not liable to perform any of its obligations if it proves that the failure was due to an impediment beyond its control and that could have not reasonably been expected at the time of the conclusion of the contract. CISG applies for international sales contracts unless excluded in the contract (which is quite often the case).

The Norwegian Sale of Goods Act and Consumer Sales Act contain a quite similar regulation to that of CISG article 79 in article 27. The main requirements are that the seller must be able to prove that the delay is caused by impediments beyond the sellers control and also beyond the control of third parties acting on behalf of the seller, and furthermore that the impediments could not reasonably be to be taken into account when the contract was entered into. It these requirements are met, the purchaser is prevented from claiming damages, but only for as long as the impediment exists.

Thus, article 27 of the Sale of Goods Act is somewhat less strict than the traditional Force Majeure principle and makes the use of traditional Force Majeure with respect to sale of goods obsolete.

In addition to the above, article 36 of the Contracts Act may be relevant in case of Covid-19. This general principle states that an agreement may be set aside or altered if it would be unreasonable or a breach of good faith to apply the agreement (or specific clauses of the agreement). When applying article 36 it is also relevant to look at factors that have

occurred after the contract was entered into. Even though it should be stressed that article 36 is very rarely applied by Norwegian courts in commercial agreements between professional parties, it might be applicable if Covid-19 makes it unreasonable to demand that the affected party performs in accordance with the contract. Article 36 gives the court the option between setting aside the agreement and altering it to avoid unreasonableness.

The general principle of **Frustration of purpose** can also be found in Norwegian law.

PAKISTAN

In Pakistan the concept of force majeure has not been defined under any statutory law, however, the same is recognized if it is included in the terms and conditions of an agreement. The party invoking the force majeure clause must establish that nonperformance of the contract was a natural consequence of the spread of COVID-19 pandemic. Moreover, for a force majeure provision to be available in case of occurrence of an event it is imperative that the event in question shall fall within the scope of the force majeure clause as the same is construed narrowly by the courts and application will require a showing of the impact of the event which rendered total or partial performance of the contract impossible.

POLAND

The Polish law does not provide a legal definition of a force majeure, however this concept is known and commonly accepted by civil law. According to the doctrine and judicature, force majeure is an event: (1) external, (2) impossible (or unlikely) to predict, and (3) whose effects cannot be prevented. All these features must appear together for force majeure to occur. According to the judgment of the Polish Supreme Court of 11 July 2019 (case no.: V CSK 155/18), *an impediment (force majeure) preventing the performance of an obligation should be understood as an external, inevitable, extraordinary, unpredictable event*. The Polish Supreme Court in the verdict dated 16. November 2005 confirmed that the epidemic can be considered as force majeure event (case no.: V CK 325/05).

Pursuant to general rule of the contract liability (Article 471 of the Polish Civil Code) the debtor is obliged to remedy the damage resulting from the non-performance or improper performance of the obligation, unless the non-performance or improper performance is due to circumstances for which the debtor is not responsible. In accordance with Article 475 § 1 of the Civil Code, if the performance has become impossible due to circumstances for which the debtor is not liable, the obligation expires. This provision applies in a situation of a consequent impossibility of performance, i.e. a situation which appears after the obligation has arisen, is of a permanent nature and the performance is objectively impossible to be performed. The time when the obligation expires is when the inability to render service is updated. Until then, the contract is valid and effective.

The Polish Civil Code provides the provisions regulating the consequences of impossibility of performance regarding mutual obligations. They read as follows:

> Article 495 § 1 of the PCC: If one of the mutual performances becomes impossible due to circumstances for which neither party is liable, the party which was to make the performance cannot demand the reciprocal performance, and, if it had already received it, it is obliged to return it according to the provisions on unjust enrichment.

§ 2: If the performance of one of the parties becomes only partially impossible, that party loses the right to the appropriate part of the reciprocal performance. However, the other party may rescind the contract if partial performance were meaningless to it due to the nature of the obligation or due to the purpose of the contract intended by that party and known to the party whose performance has become partially impossible.

If the actual cause of non-performance or improper performance is force majeure, the debtor shall not be liable for damages. Of course, it is the defaulting party that bears the burden of proof - in accordance with Article 6 of the Civil Code - to prove the circumstances that caused this. While the existence of force majeure will certainly not require proof, the non-performing debtor will have to demonstrate the effect of force majeure on its act or omission resulting in non-performance (inadequate performance) of the contract. Pursuant to COVID-19 regulations in Poland (laws and/or government's regulations) many entrepreneurs cannot conduct their activities at all (e.g. only food and hygiene products stores and pharmacies are open in the shopping malls, the places like restaurants, hotels, pubs, cafeterias are closed or can sold the food to take away only), but on the other hand - although the freedom of movement was limited for about 3 weeks, the movement for business purposes was explicitly permitted.

It should be noted that according to the Supreme Court's jurisprudence, an objective impediment to the performance of an obligation cannot be said to exist as far as the monetary performance is concerned, i.e. when, for example, the debtor loses liquidity due to the occurrence of force majeure. According to the ruling of the Supreme Court of 10 April 2003 (case no.: III CKN 1320/00), such economic inability to provide a benefit is not a reason for the obligation to expire, even if it is not even the debtor's fault, and the creditor can claim payment for the benefit it has provided. However, it cannot be excluded that in view of the scale of the current epidemic, the line of jurisprudence in Poland will change.

Polish Civil Code provides for a *rebus sic stantibus* clause (Article 357(1) of the Civil Code). The clause may apply if, at the time of its conclusion, the parties to the contract did not provide for an extraordinary change in relations (e.g. an epidemic) and the performance would be linked to undue difficulty or would threaten one of the parties with a gross loss. An extraordinary change of relationship should be understood as a situation that occurs infrequently and is unusual, uncommon, exceptional, normally unprecedented. The disadvantage of applying the *rebus sic stantibus* clause is the necessity to involve the court, because only the court can - after considering the interests of the parties, in accordance with the principles of social coexistence - determine the way of performing the obligation, the amount of the performance or the termination of the contract. In the reality of the Polish judiciary, additionally slowed down by the current circumstances, the application of the *rebus sic stantibus* clause will be very difficult in practice.

Last but not least it should be mentioned that both Polish parliament and government carry out very extensive (although poor in quality) legislative activities and the law, which is in force end of April may be out of date in May. For the time being, however, most of the new solutions concerning entrepreneurs affect the public and not the civil law sphere. The exception is the regulation of lease rent in shopping malls (see below, in 2.2.).

PORTUGAL

It is impossible to say, in abstract, what should be considered a force majeure event under a contract, since there is no legal provision, under Portuguese law, regarding the content of this clause. This means that, in what regards contracts, the answer to this question must be given on a case by case basis.

Generally speaking, a force majeure clause is highly probable to include a pandemic and its consequences. However, there must be a causal link between the force majeure event and the delay in or impossibility of the performance.

Regarding the Portuguese legal framework, despite there being no specific force majeure framework, there are several provisions which may be relevant in this time. Most notably, Article 437 of the Civil Code (approved by Decree-Law no. 47344, of 25 November 1966, as subsequently amended) provides that an abnormal change to the circumstances in which the parties agreed to enter into the contract may entitle the affected party to resolve the contract or to amend it in accordance with criteria of fairness and good-faith. This change may not, in any case, be covered by the normal risks of the contract and the demand from the affected party to comply with its contractual obligations would have to be unreasonable.

Portuguese law further distinguishes temporary and permanent impossibility to perform contractual obligations. These scenarios may have different consequences, which have to be assessed on a case by case basis.

ROMANIA

The Romanian Civil Code regulates, in Article 1351(2), the force majeure as "any external, unpredictable, absolutely invincible and unavoidable event". The doctrine provides examples of force majeure cases, like natural phenomena (floods, tornados etc.) or extraordinary social events (wars or revolutions). The court is ultimately the entity competent to establish whether an event represents a force majeure event or not.

Regularly, however, commercial contracts concluded under Romanian law include a force majeure clause. Although, given the principle of contractual freedom, the parties are free to establish the content of the force majeure clause, it usually is drafted very similarly, invoking the same examples as force majeure events and allowing the party invoking the force majeure case be exonerated from liability when the damage has been caused to the other party by the said force majeure. This shall not be applicable when the parties have contractually agreed otherwise.

The Government Emergency Ordinance No. 29/2020 acknowledges the COVID-19 pandemic as a force majeure event. As in all other cases of force majeure, the force majeure event will be analyzed *in concreto*, by referring to the specific status of the facts. For instance, with regard to the unpredictable nature of the force majeure, this will be analyzed based on whether a person could have foreseen the event by reasonable diligence. On the other hand, in case of contracts concluded, for instance, after the pandemic was already known worldwide, it is highly debatable whether the pandemic could still be invoked as force majeure event, thus exonerating the party invoking it from liability.

Regularly, the Chamber of Commerce and Industry is the entity competent to acknowledge the force majeure event after analyzing the contract. In case of the pandemic, however, the law allows the small and medium enterprises to resort to a different procedure (besides the ones before the Chamber of Commerce). Therefore, small and medium enterprises may obtain a certificate for emergency situations from the Ministry of Economy, Energy and Business Environment, thus attesting the force majeure event. The companies may use this certificate as proof of the force majeure event, allowing the respective company, for instance, to ask for delayed payment, or even terminate the contract based on force majeure, only after the said party has tried to renegotiate the contractual terms and adjust to the new conditions.

RUSSIA

According to Article 401 of the RCC, unless otherwise provided by law or the contract, a person shall not be liable for non-performance or undue performance of its obligations assumed in the course of its entrepreneurial activities, if the performance of these obligations is impossible due to an "irresistible force", i.e. an extraordinary and unavoidable event in the given circumstances (also known in practice as the *"force majeure"*). Such circumstances do not include, in particular, a breach of obligations on the side of the debtor's counterparties, the absence of goods on the market necessary for execution (e.g. supply), or the lack of necessary monetary funds[1].

The Supreme Court of the Russian Federation (the "Supreme Court") has provided further interpretation and guidance to the concept of "force majeure" by clarifying that by virtue of Article 401 (3) of the Russian Civil Code, in order to recognize an event as a force majeure circumstance, it must be extraordinary, inevitable under the given conditions and external in relation to the debtor's activity[2].

The Supreme Court has also noted that the emergency requirement implies the exclusivity of the circumstance under consideration, the occurrence of which is not usual under specific conditions. Unless otherwise provided by law, a circumstance shall be deemed inevitable if any participant in the civil commerce carrying out activities similar to the debtor could not avoid the onset of this circumstance or its consequences, i.e. one of the characteristics of force majeure circumstances (along with emergency and inevitability) is its relative nature. Force majeure circumstances cannot be recognized, the occurrence of which depended on the will or actions of the party to the obligation, for example, the debtor lacking the necessary funds, breach of obligations by its counterparties, illegal actions of its representatives.

From the given explanations, it follows that recognition of the spread of COVID-19 as force majeure cannot be universal for all categories of debtors, regardless of the type of their activity, the conditions for its implementation, including the region in which the business operates, due to which the existence of force majeure event should be established taking into account the circumstances of a particular case (including the time period for fulfillment of the obligation, the nature of the unfulfilled obligation, reasonableness and good faith the debtor's actions, etc.).

[1] Article 401 (3) of the Russian Civil Code.

[2] Section 8 of the Resolution of the Plenum of the Supreme Court of March 24, 2016 No. 7 "On the Application by Courts of Certain Provisions of the Civil Code of the Russian Federation on Liability for Breach of Obligations".

In relation to the rules of Article 401 of the Civil Code of the Russian Federation, the circumstances caused by the threat of the spread of COVID-19, as well as measures taken by state authorities and local self-government to limit its distribution, in particular, the establishment of mandatory rules of conduct when introducing a high alert or emergency, a ban on the movement of vehicles, restriction of the movement of individuals, suspension of enterprises and institutions, cancellation and rescheduling of mass events, the introduction of a regime of self-isolation of citizens, etc., may be recognized as force majeure, if it is established that they comply with the above criteria for such circumstances and the nexus between these circumstances and the default[3].

Therefore, to summarize and to be excused for the non-performance of obligation under a contract due to COVID-19, a party needs to prove that (a) the circumstances in question are extraordinary and beyond the control of the parties, and (b) that the non-performance of the obligation is a direct result of these circumstances.

By the way, the official Decree No. 20-UM of the Mayor of Moscow dated 14 March 2020 "On Introduction of the High Alert Regime" (as amended) classifies the spread of COVID-19 as a force majeure event. The Chamber of Commerce and Industry of the Russian Federation has also declared that the measures taken against COVID-19 (not the pandemic itself) may be deemed as such circumstance. Therefore, Russian Government considers COVID-19 as force majeure.

In addition, Russian law generally permits parties to designate in the contract a list of events or circumstances, the occurrence of which could be regarded as grounds for releasing each party from liability for breach of the contract (or otherwise change the grounds for liability of the parties). In other words, parties are entitled to negotiate and agree on various force majeure issues.

In the light of the above, COVID-19 and all related consequences, depending on certain circumstances and mentioned criteria, can fall under the concept of "force majeure" event under the Russian law. Otherwise, epidemics and prohibitive measures of certain states and agencies, as well as other circumstances which are beyond the control of parties, can serve as grounds for releasing the party from liability for non-performance of its obligations by virtue of contract (e.g. supply, distribution or franchise agreement). Of course, when proving the force majeure event, especially in cross-border deals, a relevant certificate of force majeure, including the one issued by the Russian Chamber of Commerce and Industry will highly be recommended as documentary evidence.

SAUDI ARABIA

In Saudi Arabia, general civil and commercial law is not codified; as a result, there are no general legal provisions on force majeure or hardship in Saudi Arabia. Some specific laws contain force majeure provisions (e.g., the Saudi Labour Regulations), but none of those provisions is relevant to agency and distribution matters.

However, rules similar to the principles of force majeure and hardship have been developed under Islamic law (*Shari'a*); in this context, principles of "act of God" (in Arabic: "*quwwa qaahira*"), "calamity" ("*jaa'eha*"), or "excuse" ("*'udhr*") are often referred to in relation to general, external, unforeseeable and unavoidable

[3] See Question and Comment 7 of the "Review of selected issues of judicial practice related to the application of legislation and measures to counteract the spread of the new coronavirus infection (COVID-19) No. 1 in the Russian Federation" (Approved by the Presidium of the Supreme Court of the Russian Federation on 21 April 2020).

circumstances that are beyond the control of the parties and render performance (temporarily) impossible or unreasonably onerous. Under these principles, the judge may, depending on the circumstances, rule that a party to a contract should not be liable for its failure to perform its obligations, that the provisions of the contract should be reasonably adjusted, and/or, in exceptional cases, that the contract may be rescinded or terminated.

In view of the general rule of Saudi and Islamic contract law, according to which contractual provisions should be enforced unless they are in conflict with *Shari'a* law principles, contractual provisions on force majeure or hardship will almost certainly be enforceable.

SLOVENIA

The COVID-19 epidemic will undoubtedly raise questions for a lot of companies whether the provisions of the Slovenian Obligations Code regulating change of circumstances (Article 112), impossibility of performance (Article 116) and uncertainty of performance (Article 102) could be relied on in cases where the fulfilment of contractual obligations will become difficult, uncertain, delayed or altogether impossible or prevented due to the COVID-19 epidemic and the strict measures adopted in its response.

The Obligations Code does not regulate the term "force majeure" as a special category, but mentions it in Article 153 in the context of liability for damage arising from a dangerous thing or a dangerous activity, which states that the person is free from liability if he proves that damage originates from some cause that was outside of the thing and its effect could not be expected, avoided or deterred.

The case law also considers force majeure to be an event whose essential characteristic is a power that cannot be successfully countered by man. In order for an event to be considered force majeure, it must be external: that is outside of the thing and outside the scope of the activity carried out by an objectively responsible person; unexpected: if the event can be expected by the party, it means that it can account for it; insuperable: the party's expectation excludes the insuperability of an external event, unless the party cannot avoid a predictable, expected event, the event is considered to be unpreventable despite the expectation. When referring to force majeure, it is necessary to prove a causal link between the event (duration of the epidemic, government measures) and the inability to fulfil the contractual obligation. It will be easier to prove direct causation (e.g. inability to perform a concert due to a ban of public gatherings and closure of venues), it will be more difficult where there are intermediate factors between the event (duration of the epidemic, government measures) and the ability to fulfil the contractual obligation.

Although the Obligations Code represents the general law applicable to all contracts it needs to be considered that the Obligations Code in line with the principle of contractual freedom gives a lot of options to the contracting parties to regulate their contractual relationship as they wish. This means that although the COVID-19 epidemic might represent a circumstance which could justify rescission of a contract or its amendment, deferment of performance, an objection of threatened performance or expiry of obligations, the exact terms of each particular contract need to be examined thoroughly before any conclusion on the fulfilment of conditions for these possibilities on the basis of general principles of the law of obligations can be made.

It should be noted that the factual circumstances of each individual case need to be examined to determine whether the COVID-19 epidemic and its consequences in fact prevented a party to fulfil its contractual obligations in the particular situation.

SPAIN

Spanish Civil code regulates implicitly "force majeure" in its article 1105:

> "Outside the cases expressly mentioned in the law, and those in which the obligation so declares, no one will be liable for those events that could not have been foreseen, or that, foreseen, were inevitable."

Case law is also demanding a causal link and its evidence between the circumstance provoking the impossibility to perform and the obligation.

Therefore, the first element to analyze is the agreement between the parties. Parties are free to decide the consequences of unforeseen or inevitable events. However, force majeure clauses used in contracts submitted to Spanish law before this pandemic quite often were very generalist, leaving a lot if issues to be discussed.

In our opinion, it is also important to take into account the specific market and the general and specific regulations during this lockdown period. In Spain, the pandemic has particularly provoked the declaration of the constitutional Alarm Status in 14 March 2020. From that moment some specific restrictions were adopted such as, to limit the personal freedom of movement and the closing of some activities. These activities were those where a huge gathering of people was foreseen such as bars, restaurants, health clubs, exhibitions, sports premises, and similar. These activities were therefore closed until the end of that Alarm Status (at present, April 27, it is officially confirmed that it will last, at least, until May 9 although it is unclear when and how this will evolve). During that period, other activities were not closed, but it was also forbidden to open the premises to the public.

From March 29 to April 9, a more severe restriction was furthermore adopted by the Government. In that second period, only essential activities were permitted (hospitals, emergency centers, transport, financial services, distribution of food and beverages…). Therefore, the rest of non-essential activities were closed, and all its employees requested to stay at home with a special and paid permit. Therefore, during that second period, almost all the economic activities were stopped.

While the pandemic could not be predicted in advance and that it is beyond the parties' control, its precise effects on each party's activities and obligations should be carefully analyzed, and the Courts will not be keen to accept opportunistic breaches or termination of agreements. The constant adoption of new rules in these days, the decisions on how and when the "normality" will be restored, what will be the business scenario in each sector and how the lockdown has affected the normal development of businesses in a medium term, are also essential elements to consider in each particular case.

SWEDEN

Under Swedish law there are no rules that are specifically applicable to an event that may constitute force majeure. Instead there are a number of provisions in various laws that may or may not be applicable on the situation. Examples of such provisions are

- 36 § Contracts Act (used to mitigate a contract or contract clause if it is unreasonable taking the contents of the contract into account, events taking place after it was entered into and other circumstances);
- Sale of Goods Act and Consumer Sales Act (includes provisions on when a party does and does not comply with a contract for sale of goods as well as remedies)
- CISG (incorporated into Swedish law)
- Act on Partnerships and non-registered Partnerships (includes a right to withdraw from a contract on partnership because of an "important reason" (roughly translated from Swedish)

One would have to assess the situation on a case by case basis and analyze the contract: is there an impediment to fulfil the contract? Is the impediment beyond a party's control? Could the impediment have been foreseen? Can the impediment be overcome? After having answered these questions, there may be a possibility that a provision described above will qualify Covid-19 as an event that grants non-performance of a party's duties in lieu of an expressed force majeure clause.

SWITZERLAND

The Swiss Code of Obligations does not explicitly regulate "force majeure". However, the concept of force majeure is recognized in case law and legal doctrine and can be defined as an extraordinary, unforeseeable, insurmountable external event that typically excuses the non-performing party from liability.

Within the framework of the contractual freedom applicable under Swiss private law, the scope of application of force majeure can be defined by the parties involved. Many contracts and general terms and conditions contain a force majeure clause, according to which, for example, floods, riots, wars, pandemics, official restrictions or other unexpected occurrences are to be qualified as force majeure. Whether a force majeure clause applies in the individual case depends on its wording (i.e. whether it explicitly covers such cases or leaves sufficient scope for interpretation) and the specific circumstances of the case.

In the event that performance becomes permanently impossible due to circumstances caused by the COVID-19 pandemic and the parties have not agreed on a force majeure clause covering such circumstances, a party might be entitled to rely on Art. 119 CO. Although it does not explicitly deal with force majeure, Art. 119 para. 1 CO regulates cases of permanent impossibility to perform without fault on a party's part, which corresponds to the concept of force majeure. Art. 119 para. 1 CO provides that "[a]n obligation is deemed extinguished where its performance is made impossible by circumstances not attributable to the obligor." An obligated party may invoke this provision if the following three conditions are met:

a) Subsequent and permanent Impossibility

   The obligated party's performance must be permanently impossible. It is not relevant whether the impossibility results from factual circumstances such as fire or earthquake, or from legal circumstances such as an administrative prohibition. The impossibility of performance must be permanent. Whether the spread of COVID-19 and the effects resulting therefrom made performance really impossible or merely delayed it, must be assessed on a case-by-case basis.

Moreover, the impossibility of performance must be due to a cause subsequent to the conclusion of the contract, i.e. the impossibility must not have already existed at the time of conclusion of the contract.

b) Circumstances not attributable to the obligated party

The impossibility must arise from a fact independent of the obligated party. Such party must not be at fault for the occurrence of impossibility. This includes force majeure events which are not foreseeable at the time when the contract was concluded, and the occurrence of the event was unavoidable such as floods and earthquakes or war, terrorism and strikes. The question of whether a global health risk such as the COVID-19 pandemic can also be considered a force majeure event has not yet been conclusively clarified, but we would deem this to be the case.

c) Adequate causal relationship:

Impossibility only leads to the extinction of contractual obligations if the force majeure event adequately caused the impossibility. The force majeure event must make the contractual performance in dispute impossible.

In summary, if a force majeure clause covering pandemics has been contractually agreed upon, the circumstances caused by the COVID-19 pandemic qualify as force majeure and the contractual clause applies to the current situation. If there is no applicable force majeure clause in place, an obligated party may be entitled to rely on the concept of subsequent impossibility pursuant to Article 119 CO. The COVID-19 pandemic and the consequences deriving therefrom would most probably be considered as a force majeure event which occurrence cannot be attributed to the obligated party. However, the obligated party would only be exonerated from performance if the above conditions are met, in particular if the circumstances caused by the COVID-19 pandemic render the performance really permanently impossible.

THE NETHERLANDS

Under Dutch law the legal concept of force majeure (“overmacht”) is implicitly defined in article 6:74 of the Civil Code and provides that a party is not liable for a breach of contract that cannot be attributed to that party (i.e. a breach that can neither be blamed to the breaching party nor imputed to that party according to the law, a legal act or generally accepted views (communis opinio).

The consequences of the measures taken by governments to counter the Covid-19 outbreak and its further spreading may result in non-performance of supply obligations. Whether a party can indeed rely on force majeure for such non-performance will depend on the facts and circumstances of each individual case. It must be established on a case by case basis whether the governmental measures indeed prevent a party to perform its supply obligations under the contract. In relation thereto it might for example be relevant to establish if the supplier has other alternative options to fulfil its supply obligations and, in the affirmative, if efforts have been made to make use of such options.
For the sake of clarity it is explicitly mentioned that supply-/ purchase contracts entered into after the outbreak of the Covid-19 pandemic will require a different analysis within the context of force majeure issues and/or renegotiation of contracts due to unforeseen

circumstances.
Parties may deviate from the Dutch Civil Code and include specific clauses in their contract on force majeure and/or material adverse change. If a force majeure clause explicitly includes pandemic as a situation that qualifies as force majeure, one can normally rely on such a contractual provision (provided that any other contractual requirements for invoking force majeure have been met (i.e. notification to the other party, how and when etc.).

TURKEY

Turkish Code of Obligations does not explicitly regulate the concept of force majeure, however, includes provisions regarding objective impossibility under Article 136. Accordingly, if the performance of the obligation becomes impossible due to reasons which cannot be attributed to the debtor, the obligation shall terminate.

Turkish Court of Cassation defines force majeure as an exceptional event which (i) occurs beyond the control of the debtor, (ii) leads to the absolute and inevitable breach of the obligation, and (iii) could not have been foreseen or overcome. In the present case, it can be said the Covid-19 pandemic could not have been foreseen or overcome and is beyond the control of the debtor. In terms of the last condition, we may say that force majeure occurs if the governmental measures make the performance impossible. For example, if the production activities of the supplier have been suspended by the government, we may conclude that performance of its supply obligation has become impossible. On the other hand, in terms of distributor's payment obligations, we should note that, under Turkish laws, it is accepted that monetary obligations do not fall within the scope of impossibility, unless the force majeure event is directly related to payment obligation such as exchange restrictions or sanctions.

Although not regulated under the Turkish Code of Obligations, Turkish doctrine and court practice acknowledge the concept of temporary impossibility as well. It is mostly accepted that temporary impossibility of performance does not terminate the obligation, whereas some legal scholars argue that the obligation shall terminate if it is uncertain for how long the impossibility will last. It is not sure whether the Turkish courts will accept the Covid-19 pandemic as permanent or temporary impossibility.

Another option the debtor could resort to is hardship, which is regulated under Article 138 of the Turkish Code of Obligations. In situations where the performance has not become impossible but has become extremely more onerous, the debtor shall be entitled to ask the court to adapt the contract or to terminate it, where adaptation is not possible. We should also note that, as per the decisions of the Turkish Court of Cassation and the majority of legal scholars, it is not possible to request for adaptation for already performed obligations (i.e. if the goods have already been supplied and the consideration has already been paid).

Finally, it should be noted that the provisions of the Turkish Code of Obligations regulating objective impossibility and hardship are not mandatory, and therefore, if the contract between the parties provides otherwise, provisions of the contract shall prevail.

UK

The starting point in analysing force majeure is always the clause in the applicable supply, distribution or franchise agreement. Not all agreements have a force majeure

clause. Relatively few force majeure clauses specifically refer to a pandemic and none, of course, refer to Covid-19. It is not uncommon for force majeure clauses to refer to governmental action preventing performance. This is likely to be relevant because the government has, under the Coronavirus Act 2020 introduced emergency legislation giving the government wide spread powers to restrict social and business activity. For instance, the government has required a number of businesses such as gyms, nurseries and restaurants to close. As a result, if a force majeure is contained in the appropriate agreement and it refers to governmental action and the relevant business activity has been subject to governmental orders to close the force majeure clause is likely to apply.

Force majeure clauses have, historically, been construed restrictively by the courts so as to limit the scope of their application but that approach may not be followed. Nevertheless, parties must prove that the non performance triggering the force majeure must be due to circumstances beyond the control of that party and that the party could not, by taking reasonable steps, have avoided or mitigated the consequences.

URUGUAY

The relevant provision in respect of force majeure is Section 1343 of the Uruguayan Civil Code, which provides as follows:

> "No damages are due, when the debtor has not been able to give or do the thing to which it was obliged to or has done what was prohibited, yielding to force majeure or a fortuitous event (Section 1549).

The following cases are not understood to be included in the above rule:

> 1. If any of the parties has taken upon itself especially fortuitous cases or force majeure events.
>
> 2. If the fortuitous case has been preceded by fault of any of the parties, without which the loss or non-execution would not have taken place.
>
> 3. If the debtor had fallen into default before the fortuitous event occur; taking into consideration the provisions of Chapter VI, Title III, Part One of this Book."

The Uruguayan Commercial Code has a similar provision in Section 220.

In summary, under Uruguayan law, the force majeure means that if a party is impeded to perform with its contractual obligations due to a force majeure event, such party is legally excused to perform, and the other party is not entitled to claim damages originated in such failure to comply. It works as a disclaimer of liability.

Even though the Uruguayan legal framework does not provide for an express definition of force majeure, it is legally understood as a term to represent events that have the characteristics of being irresistible, unpredictable and unavoidable. The debtor should not have any possible mean to comply with its obligations, because in that case, the debtor will still be liable.

It should be noted that under Uruguayan law there is no pre-established or fixed list of force majeure events. On the contrary, the determination of a situation as an event of force majeure must be taken considering all aspects involved in the particular case and circumstances.

The parties are free to agree on force majeure clauses, regarding its configuration, specific definitions or circumstances to be considered as force majeure events, effects,

conduct of the parties, mitigation obligations, time for notifications, termination of the contract, etc. All such agreements will prevail to the provisions contained in the law. However, in any aspect the contract is silent, the legal provisions for force majeure shall apply.

From our experience, it is not common in Uruguayan standard contracts that force majeure clauses expressly consider pandemics or epidemics as a force majeure event. However, since these types of clauses are general and non-exhaustive, a judge can consider the pandemic as a force majeure event, if it qualifies as such in the particular case.

According to the above mentioned, the pandemic per se is not a valid force majeure event. This means that the mere existence of the declaration of pandemic made by the World Health Organization on March 11, 2020, or even the declaration of health emergency announced on March 13, 2020 by the President of Uruguay, does not convert the pandemic automatically in a force majeure event. However, some consequences of such declarations, as long as they fulfill the legal or contractual requirements, may constitute force majeure events, and be applicable in connection to impediments to perform contractual (or not contractual) obligations.

The pandemic might create an event of force majeure if, for example, it affected all the employees of a specific contractor in the same period of time, or in case of an obligation assumed by a particular person due to technical or intellectual individual attributes which are irreplaceable, if that person gets infected with the COVID-19 virus. However, there is no general answer or rule for all cases, since each particular case and each particular contract has to be analyzed in a tailor made fashion, as relevant circumstances vary from contract to contract.

Moreover, if eventually the Uruguayan Government or Parliament resolves, through a decree or a law, a mandatory quarantine that prevents the party to comply with its obligations, it might be considered as an event of force majeure that would exonerate the contractor from the obligation to comply with its contractual obligations. However, in any event, it does not relieve the obligation to mitigate the damage caused by such breach of contract, making all the possible efforts in order to come up with the most satisfactory solution to the problem, even though if it means higher costs or a higher effort than expected, always taking into account reasonability.

It is important to bear in mind that even though the force majeure concept has been present since ever within our legal system, this pandemic has certain characteristics that shall surely challenge the understanding and treatment of force majeure, at least as we have done it until now.

The fact that this pandemic is present everywhere around the world, affecting so hardly the economies of most countries and individuals, is something that is somehow unique in comparison to other force majeure cases that have occurred in the past, at least in respect of Uruguay and Uruguayan courts.

It would be the first time that most people and companies are directly affected by the event, so mostly everybody – including judges – shall be either a main player or at least a qualified witness of the pandemic´s effects, and this changes the whole game.

In our opinion, it is not clear now how this new scenario shall affect the interpretation of the force majeure concept in the future in Uruguay. We tend to believe there are

reasons to conclude that the general position of Judges shall be in the direction to relax the evidence and interpretation of legal requirements necessary to constitute a force majeure event. Until now the Courts have been extremely rigorous when applying the force majeure exemption, but we think this may change in the future.

1.2 What are the legal consequences of a delayed delivery due to the COVID-19 pandemic?

If the delay is due to force majeure, i.e. if it is caused by circumstances beyond the control of the supplier which cannot be overcome, the latter will not be responsible for the delay: he will not be responsible for damages (or liquidated damages) and the buyer will in principle have to wait for delivery until the end of the force majeure situation.

However, if the date of delivery was essential for the buyer (e.g. for participation to a fair or for a season which comes to an end), the answer may be different (see the following Q 1.3).

ARGENTINA

If the supply agreement covers the point that timely delivery is of the essence off the agreement and it has reserved the right to cancel the agreement after a short remedial term, the lockdown of the government is enough for the cancellation of the order. But the second issue, the expected close of the shop which has not been informed to the buyer, would not be accepted. In addition section 956 covers the temporary impossibility providing that the objective and absolute impossibility but temporary to deliver its obligation shall have extinguishing effects, when timing delivery is essential for the claimant or when the duration of the event frustrates de interest of the creditor irrevocably.

AUSTRIA

In principle, an examination of the contractual agreement must be carried out in every case in order to make a legal assessment.

The legal provisions applicable can be described as follows:

If the debtor does not pay on time or at all, he is in so-called debtor's default. However, if the debtor is not responsible for the delay (e.g. due to "force majeure" or official measures preventing him from fulfilling his obligations), this is generally considered to be a so-called objective delay. In this case, the creditor can either agree to a later performance or withdraw from the contract by setting a reasonable grace period. However, the question will arise whether and to what extent the COVID-19 crisis must be taken into account in the extent of the grace period. However, the creditor does not have any claims for damages in the case of objective default by the debtor. If it is a so-called "firm deal" ("Fixgeschäft"), the contract is cancelled with immediate effect and without the requirement of a declaration of withdrawal (unless the creditor immediately declares that he is still interested in performance).

Particular caution is also required for new contracts; it would probably be culpable if a supplier, being aware of the corona crisis and the unclear effects on supply chains, were then to enter into impossible commitments from the outset.

BELGIUM

Provided force majeure is verified, the defaulting party shall be relieved of the consequences of the failure to comply with the obligation. When the force majeure affects a substantial contractual obligation, all ancillary provisions (eg a liquidated damages clause) and the provision linked to the performance of that material provision will no longer be applicable. If the hurdle is temporary only, the defaulting party will be required to perform, once the hurdle is gone.

However, the defaulting party shall not be released (i) if he was under notice already, (ii) if the parties extended by contract the liability of the party to circumstances of force majeure and (iii) if performance is required as a result of specific legal provision.

If a defaulting party to a bilateral agreement is freed from the performance of its obligation by a force majeure event, the other contracting party will no longer be required to perform its own corresponding obligation. Force majeure may also have the rescision or the suspension of the agreement as such as a consequence, whenever the equilibrium between the respective obligations of the parties is jeopardised.

CANADA

If a force majeure clause is available and effectively invoked, the usual consequences include relief from the performance of the affected contractual obligations along with an extension of time to perform those obligations. In the case of a delivery obligation, this would typically relieve the party obligated to make the delivery from meeting the delivery deadline and provide them with an extension of time to do so.

If a force majeure clause is not available, there are other common law remedies for non-performance that could apply such as frustration or impossibility; however, these are narrowly interpreted and applied. Frustration occurs when an event renders contractual obligations radically, substantially or fundamentally different from those contemplated by the parties for reasons beyond a party's control. As in the case of force majeure events, frustration is distinguished from situations where performance has become merely onerous, inconvenient or prohibitively expensive. While the pandemic might result in frustration or impossibility, the bar for claiming that a contract is frustrated or impossible is high. It should also be noted that common law remedies, unlike typical force majeure provisions, ground a termination of the entire contract, as opposed to a more tailored solution such as permitting delay or relieving a party of specific obligations (while leaving it obligated to perform the remainder).

Aside from these remedies, many contracts will address temporary disruptions directly – for example, providing that a supplier may skip a shipment of commodity on notice and with compensation if applicable. Depending on the circumstances, such a disruption may not constitute material breach under termination clauses. Every contract will be different in this respect and so a careful reading of the relevant provisions is necessary. [Current to April 30, 2020.]

CHINA

If a party cannot fulfill its obligations under the contract due to force majeure, then based on the impact of the circumstances, the party's liabilities can be exempted in whole or in part, including liabilities for breach of contract. Further, if such force majeure

renders the purpose of the contract impossible to achieve, then both parties have a statutory right to rescind the contract.

However, it should be noted that simply because the COVID-19 pandemic and the related government measures constitute force majeure, it does not necessarily follow that the affected party is exempted from its legal obligations. For the legal exemption to apply to the performance of a specific contract, the following conditions shall be met:

i. The circumstances are objective and unforeseeable, unavoidable and insurmountable;

The definition of force majeure requires the circumstance to be objective, unforeseeable, unavoidable and insurmountable. If the defaulting party is at fault and contributes to the breach, then force majeure may not apply. If the contract is signed after the incident has happened, then force majeure does not apply. Similarly, if the incident in question happened after the defaulting party has delayed its performance, then force majeure does not apply.

ii. One party or both parties cannot perform the contract; and

If the party can still perform the contract, but just the cost of such performance will increase, or the challenge is grave but can nevertheless be overcome, then force majeure does not apply. However, the defaulting party may turn to another statutory defense – change of circumstances.

Change of circumstance applies where, after the parties have entered into a contract, the unforeseeable circumstances render the performance of contract significantly unfair, or the purpose of the contract is no longer achievable. The rule of change of circumstances allows the parties to amend or rescind the contract.

iii. The fact that parties cannot perform the contract is a direct result of the force majeure.

Whether the parties to a specific contract may claim the statutory defense of force majeure is a highly fact-specific analysis. For example, a clothing factory may be ordered by the government to turn its production line into manufacturing medical masks with the raw materials the factory has, then it is likely that force majeure will apply when the clothing factory cannot deliver its orders in time. However, if some workers cannot come to work due to sickness or the government's travel ban, but the factory can nevertheless fulfill its orders by hiring extra workers or prolonging its working hours, then force majeure is unlikely to apply.

COLOMBIA

Force Majeure Clauses may provide significant protection to franchisees and distributors for delays in complying with certain deadlines under the agreement, which are simply impossible to meet as a result of the coronavirus. "Force majeure" generally refers to an unforeseeable circumstance that prevents someone from fulfilling a contract. These often include drought, flood, earthquake, storm, fire, and sometimes… epidemics.

As we mentioned above, in the case of the international distribution, sales and franchising Agreements, the movement of goods and essential components will be severely impaired by the lockdown, which will have an immediate impact on the

commercial supply chain. Therefore, in principle there will be no place for compensations or payment of damages.

CROATIA

Pursuant to Article 343 of Croatian Obligations Act the main consequence of qualification of COVID-19 pandemic as FM is that the debtor will not be liable for the damages of late delivery if it can prove that it could not perform its obligation or that it is late with the performance due to the COVID-19 pandemic. The burden of proof is on the debtor of the delivery obligation, i.e. the supplier.

CZECH REPUBLIC

Under statutory law (Art. 2913 of the Civil Code) the supplier shall not be liable to pay damages (resulting from delivery delayed due to extraordinary, not foreseeable events beyond control and not possible to overcome. including COVID-19 pandemic). However pursuant to prevailing opinion the obligation to supply is not suspended and the other party can use other remedies like termination of the contract, contractual damages (penalties) etc. According to my opinion it is likely, however, that the court would reflect the good faith principle depending on circumstances in each particular case when considering the using of such other remedies and their justification.

The situation can be different and the duty to deliver can cease to exist pursuant to Section 2006 of the Czech Civil Code on „Subsequent impossibility to perform“, if it is objectively not possible to deliver. However, having in mind that frequently this duty could be fulfilled later on, after the impediment (event preventing the delivery) cease to exist or in another way, the applicability of this instrument must be considered very carefully.

Section 2006 of the Civil Code:

> If, after an obligation comes into existence, a debt becomes impossible to be discharged, the obligation is extinguished due to impossibility of performance. A performance is not impossible if the debt can be discharged under more difficult conditions, at higher costs, with the help of another person or only after a determined period.

DENMARK

If the delay is due to force majeure, the seller will not be responsible for the delay: he will not be responsible for damages (or liquidated damages) and the buyer will in principle have to wait for delivery until the end of the force majeure situation, without being entitled to use the remedies provided by the contract for non-fulfillment (e.g. termination, damages, liquidated damages etc.).

However, if the date of delivery was essential for the buyer (e.g. for participation to a fair or for a season which comes to an end), the answer may be different (see the following Q 1.4).

EGYPT

If the applicable law is the Egyptian law and that the application of CISG is excluded, then the supplier will not, in principle, be held responsible for the delay as according to Article 215 of the Civil Code:

> “When specific performance by the debtor is impossible, he will be ordered to pay damages for non-performance of his obligation, unless he establishes that the impossibility of

performance arose from a cause beyond his control. The same principle will apply, if the debtor is late in the performance of his obligation".

However, in exceptional cases, the supplier would remain responsible if he already agreed in the contract to assume the risk and bear the burden of the force majeure events. This is possible in accordance with Article 217 of the Civil Code which disposes that:

> "The debtor may by agreement accept liability for unforeseen events and for cases of force majeure".

In case CISG Convention will apply, the supplier would be exempted from the liability for the delay

> "if he proves that the failure was due to an impediment beyond his control and that he could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it, or its consequences".

However, the supplier would still have to notify the other party of the impediment and its effect on his ability to perform. And if the notice is not received by the other party within a reasonable time after that the supplier knew or ought to have known of the impediment, he will then be liable for damages resulting from such non-receipt.

FINLAND

In respect of the sale of goods and assuming that the consequences of the Covid-19 pandemic turn it impracticable for the supplier to deliver just in time and, accordingly, qualify as *force majeure*, the supplier will not be liable for damages caused by the delivery delay (Article 79 CISG, Section 23 Sale of Goods Act), however, always subject to that he has seen to it that the buyer, within a reasonable time once the supplier has or should have come to know of the impediment, will come to know of the impediment and its effect on the supplier´s ability to perform (Section 28 Sale of Goods Act). On his part, the buyer may (wholly or partially) suspend performance of his payment obligation to the supplier (*e contrario*, Section 51 Sale of Goods Act) or even avoid the contract provided the delay in delivery will have substantial negative consequences to the buyer and the seller knew or ought to have known it (Sections 25 and 26 Sale of Goods Act,). Although there is no applicable general statute in respect of the supply of services, we have good reasons to believe the above rules can be applied to services as well. Furthermore, the provisions of the domestic Sale of Goods Act could have an impact on how the CISG would be interpreted in the absence of provisions to the contrary. It is noteworthy that Section 23 Sale of Goods Act seems to allow *force majeure* on economic grounds as well.

The above legal provisions obviously would not apply in a situation where the contract contains an exclusive list of *force majeure* events but omits ´plague or epidemics´ or other events with a similar effect.

FRANCE

When a party opposes to the other a force majeure event, the supplier will not be liable for any delayed delivery or non-delivery. The obligations are stayed up to the end of the event.

So, no penalties can be incurred and the client cannot notify anticipated termination. However, one can presume that when time was of the essence for the delivery, the client may cancel the delayed order.

GERMANY

If the system supplier is late with his delivery beyond the promised delivery date, he is generally in default. If he is responsible for the delay, he must pay damages to the customer (e.g. costs for a more expensive replacement). However, if the delay was due to a consequence of the COVID-19 pandemic, which he could not influence (e.g. due to an official measure), he is not at fault, so that he does not have to pay compensation for the delayed delivery. It will therefore have to be examined on a case-by-case basis whether he was responsible for the delay. Rather, the extent of the supplier's obligations and the extent to which the supplier has assumed a guarantee or a procurement risk must be examined on the basis of the respective contract.

It is important that the affected supplier which is unable to deliver on time examine is obliged to inform their customer as early and comprehensively as possible about the nature and extent of the delay. Otherwise, claims for damages could possibly be asserted for breach of the duty to inform. Such obligations may arise above all from an express contractual agreement or as a contractual accessory obligation in good faith.

ISRAEL

According to the interpretation of Section 18 of the Contracts Law - Remedies adopted by Israeli courts, it applies to a permanent "impossibility". It is doubtful whether the courts would apply it to a provisional suspension, even if the circumstances of the COVID-19 pandemic qualify the statutory "Conditions for Frustration".

In an international sale of goods transaction, Article 79 of the SICG shall apply. Thus, assuming that the COVID-19 circumstances meet the conditions of Article 79(1), the supplier will not be responsible for the delayed delivery "*for the period during which the impediment exists*" (Article 79(3)).

ITALY

Pursuant to Article 1256.2 c.c.:

> "If the impossibility is only temporary, the debtor shall not be liable for the delay in performance as long as the impossibility lasts."

Therefore, the answer is the same as mentioned in the general answer provided above, i.e. the supplier will not be responsible for the delay: he will not be responsible for damages (or liquidated damages) and the buyer will in principle have to wait for delivery until the end of the force majeure situation, without being entitled to use the remedies provided by the contract for non-fulfillment (e.g. termination, damages, liquidated damages etc.).

In addition, during such period, the general principles of good faith (Article 1375 c.c.) and the obligation of the damaged party to avoid and/or mitigate damages (Article 1227 c.c.) shall apply; Italian case law also refers in similar cases to the general duty of solidarity in inter-subjective relationships provided by Article 2 of the Italian Constitution.

In case of international sale contract, Art. 79 of the CISG Convention will apply and therefore, the party under force majeure will be relieved of his responsibilities for the time during which the FM situation will last.

JORDAN

Suppliers will not be responsible for delayed delivery and will not be responsible for damages due to non-fulfillment of their obligations due to the pandemic if the delay is directly caused by the governmental orders and movement restriction that effected the supply chain nationally and internationally. These restriction are consider to be unpredictable and the supplier cannot avoid, in accordance with the Civil Code article 261 and good faith principle when the parties signed the contract.

KUWAIT

As explained above that COVID 19 pandemic is expected to be deemed and event of Force Majeur subject to Articles 215 and 437 of the Kuwaiti Civil Code, to this extent supplier or any obligor shall be held liable towards a third party and vice versa. However, if there is any doubt or argument that the a contractual obligation is not considered a Force Majeur event (as the case may be determined by the court on a case by case basis) then a party may find relief under Article 198, governing hardship or unforeseen circumstances. Pursuant to Article 198 of the Kuawati Civil Code, where the performance of an obligation after the entry into an agreement was not made impossible, but extremely difficult and prohibitive for the non-performing party, a judge may revise the agreement to renegotiate and balance the obligations of the parties. This is a compulsory rule which parties cannot agree otherwise.

Whereas, a party facing unforeseen circumstances rendering its performance extremely burdensome might seek the counterparty's approval to terminate the agreement or to amend its terms due to such hardship. If the other party opposes such proposal or the parties are unable to reach an agreement, the non-performing party may seek relief before the competent court under Article 198 of the Civil Code.

Based on the above Articles and taking into consideration the provisions of the agreement concluded between parties, the non-performing party should not be considered in breach nor shall be liable towards the other party due to unforeseen, unpredictable events that are beyond its control and any delays or non-performance of its obligations shall be waived, released and discharged by the court as per the circumstances of each case.

MEXICO

The consequences would depend on whether or not the delay was caused by any of the governmental orders issued by Mexican authorities to mitigate COVID-19 outbreak, or orders issued by foreign authorities in effect in their jurisdictions. If so, except otherwise stated in the agreement or the law, the delayed party should not bear any liability, penalties, or consequences therefrom.

For instance, if roads are eventually closed by government order and/or a restriction for transit is put in place, such measures would prevent a party to deliver by land a good under a contract; similarly, if borders are closed, the flow of goods, raw materials, merchandise, etc. would be affected and delays or breaches in delivery could occur. In both cases, the breaching party should not be held liable since the breach(es) is(are) consequence of an act of authority that makes performance impossible to anyone in the same situation, this is to say a force majeure event.

MOROCCO

Pursuant to Article 546 of the Moroccan Civil Code (DOC):

> "The debtor is not liable for the delay in performance of an obligation in the event of a force majeure…"

Force majeure is the only case where the debtor can waive his obligation to deliver without being responsible for damages and the buyer will in principle have to wait until the delivery becomes possible as soon as the force majeure situation ends. The buyer will not be entitled to use the remedies provided by the contract as the legal consequences of a delayed delivery (i.e. termination, damages etc.).

Also, the Moroccan Civil Code provides in its article 231 for the general principle of good faith which will apply during the COVID-19 pandemic. As a result, the supplier should act in good faith towards its buyer and inform him in a timely manner of the situation of force majeure, provide it with information etc..

MOZAMBIQUE

Pursuant to article 792 of the Civil Code, if the supplier cannot perform because of a temporary reason, it is not responsible for any damage resulting from the delay, assuming that it has no responsibility due to the circumstances that caused the impossibility of his prompt performance.

If the creditor loses his interest in such performance (according to objective criteria) the impossibility (i.e. temporary reason) can be considered as definitive (ut., article 792 no. 2 of the Civil Code) and, consequently, the buyer will not be obliged to performance his part and has the right to be refunded of any payment already made, in the terms prescribed for the unjustified enrichment.

It is also important to refer to article 503, no. 1 of the Commercial Code, regarding the Supply Agreement regime. According to this article, as a rule, the suspension of supply can´t be made without adequate previous notice, except in case of fortuitous circumstances or force majeure event (which, again, is not defined by law).

NEW ZEALAND

If the delay is due to force majeure then there would be no liability for loss on either party. The parties may have taken out insurance to cover such an event. If there is no force majeure clause then one party could be liable to the other subject to any emergency laws which may have been passed.

NORWAY

If the situation qualifies as Force Majeure, the legal consequence depends on whether or not this is addressed in the specific contract. Without specific regulation, the consequence is that the performing party cannot be held liable for breach of contract due to non-performance during the duration of the Force Majeure situation. If the situation is permanent or of an indefinite period, the obligation may cease altogether.

With respect to article 27 of the Sale of Goods Act (and CISG Article 79), the consideration will be quite similar. However, the legal consequences are not identical. The legal consequence would rather be that the seller is not liable to pay damages due to the delay and that the customer may not demand delivery as agreed, but that other

remedies due to breach of contract are available to the customer, such as termination if the delay is material.

PAKISTAN

One of the natural legal consequences of a delayed delivery could be the affected party seeking termination of the contract or demanding compensation for the same. However, the presence of a force majeure clause could save the party in breach from such consequences.

Generally, the parties to a contract are mindful of including the clause of force majeure, however, in the absence of an express force majeure provision within a contract, parties may be able to rely upon the doctrine of frustration as specified in section 56 of the contract act 1872 whereby a contract to do an act which after the contract is made becomes void by reason of an event which the promisor could not prevent due to which the act itself becomes impossible or unlawful. However, the doctrine of frustration only comes into play when a contract becomes impossible of performance after it is made on account of circumstances beyond the control of parties.

POLAND

I. First of all, it is important to note the difference between "default" (in Polish: *zwłoka*) and "delay" (in Polish: *opóźnienie*). Default may be attributed to a party that has failed to perform a contract on time for reasons for which it is responsible. Delay occurs when the deadline is not met for reasons independent of the party that is late performing.

II. Agreements concluded under Polish law very often allow a party to renounce the contract if performance by a strictly defined time is essential for the party. Under Article 492 of the Polish Civil Code if the right to rescind a reciprocal contract is stipulated for non-performance of an obligation within a strictly specified period, the entitled party may, if the other party defaults, rescind the contract without setting an additional period. The same applies where performance of an obligation by one of the parties after the period set would be meaningless to the other party due to the nature of the obligation or due to the purpose of the contract intended by it and known to the defaulting party

Therefore, firstly the provisions of the contract have to be very carefully examined in this respect.

III. As it is mentioned under 1.1 above, according to the Article 495 of the Polish Civil Code:

> If one of the reciprocal performances becomes impossible due to circumstances for which neither party is liable, the party which was to make the performance cannot demand the reciprocal performance, and, if it had already received it, it is obliged to return it according to the provisions on unjust enrichment.
> If the performance of one of the parties becomes only partially impossible, that party loses the right to the appropriate part of the reciprocal performance. However, the other party may rescind the contract if partial performance were meaningless to it due to the nature of the obligation or due to the purpose of the contract intended by that party and known to the party whose performance has become partially impossible.

These rules may apply where a delay in delivery is actually caused by *force majeure* - the breach must truly result from the operation of *force majeure* (the epidemic), and not for

example from the lack of due diligence required under the circumstances. However, impossibility of performance resulting in extinguishment of the obligation covers situations where after the obligation arises, there is a state of complete, lasting and objective inability for the party to act in the manner provided for in the substance of the obligation, and not just a temporary difficulty in performing.

Under article 491 Polish Civil Code, if one of the parties defaults in performance of an obligation under a reciprocal contract, the other party may set an additional period for its performance with the sanction that if the specified period passes to no effect, it will be entitled to rescind the contract. It may also, either without setting an additional period or after the set period passes to no effect, demand that the obligation be performed and that any damage resulting from the default be remedied. If the performances of the two parties are divisible, and one of the parties defaults only in part of the performance, the right to rescind the contract vested in the other party is limited, at its discretion, either to that part, or to the whole remaining part of the performance not made. That party may also rescind the entire contract if partial performance were meaningless to it due to the nature of the obligation or due to the purpose of the contract intended by that party and known to the defaulting party.

If a party obliged to provide a performance states that it will not provide the performance, the other party may rescind the contract without setting an additional period, also before the designated time for the performance (art. 492^1 of the Polish Civil Code).

IV. A party that has renounced a contract is required to return to the other party all the consideration it has received from the party pursuant to the contract, and the other party is required to accept the return. Under typical circumstances (apart from *force majeure*), the party renouncing the contract may demand not only return of its own consideration but also redress, under general rules, of the injury arising out of failure to perform the obligation (art 494 of the Polish Civil Code).

V. Notwithstanding the general rules described above, the Polish Civil Code provisions regulate the delay/default in the case of a supply contract (the supplier is obligated not only to deliver goods but to manufacture them as well) and a sales contract (the supplier is not a manufacturer) separately.

Under art. 610 of the Polish Civil Code concerning the supply contract if the supplier is late (in delay) starting production of the object of the supply or its particular parts to the extent that it is unlikely he will be able to deliver them at the agreed time, the recipient may, without setting an additional period, rescind[4] the contract even before the period for delivery of the object passes. The condition for the recipient's right of withdrawal is delay, not default of the supplier. The reasons for the delay are not relevant: it may be caused by third parties or factors of an objective nature, including *force majeure*.

As regards sales contract, in accordance with art. 543^1 of the Polish Civil Code, if the seller is in delay, the buyer may set an additional time limit to hand over the thing and, after the time limit passes, it may rescind the contract. However, this provision applies only to consumer sales. In contracts between businesses, the general provisions described in under III and IV above shall apply.

[4] Może odstąpić od umowy – „rescind" było w tłumaczeniu w Legalisie, można ewentualnie zastosować „withdraw" – nie wiem, co sądzisz. Ja przyznam, że słowa „rescind" nie znałam.

PORTUGAL

Portuguese law does not provide a specific framework applicable to delayed deliveries due to the pandemic.

The delay shall be analysed, in a first moment, under the corresponding agreement. The parties must confirm whether the contract provides any mechanisms aimed at reestablishing the balance of the contract and, if it does, how these may be applicable to the specific case. It must also be confirmed whether the delay constitutes a case of temporary impossibility, in which case the debtor is not liable for damages caused by the delay, as per Article 792 of the Civil Code.

If the delay causes the receiving party to objectively lose interest in the delivery, as per Article 808 of the Civil Code, the obligation is deemed as not fulfilled.

Furthermore, if the delay is due to the pandemic, the buyer shall, in principle, have to wait until the supplier is again able to comply with its contractual obligations, which can happen only after the event of force majeure ends. Force majeure clauses usually deem the delays due to force majeure events as not enabling the non-affected party to resort to any contractual remedies (such as delay damages).

Decree-Law no 178/86, of 3 July 1986, which provides the framework applicable to agency contracts (applicable, by analogy, to other commercial contracts), provides in its Article 11 that an agent which is temporarily unable to comply with its contractual obligations (regardless of the reason) must inform its counterparty immediately and in writing. This statute further provides (Article 14) that the agent must also be informed if its counterparty becomes able to enter into a significantly lower number of contracts than those which had been agreed between the parties.

ROMANIA

In principle, the supplier will not be liable for the delay (for damages, or liquidated damages), while the buyer will need to wait until the finalization of the force majeure period, without being able to resort to contractual remedies. But, as mentioned in the general answer above, the force majeure event will be analysed *in concreto*, on a case by case basis.

Thus, the party's impossibility to perform its obligation will have to be analysed from case to case. This analysis should also cover the rest of the contractual provisions, the markets, the products, or even whether the respective delay is essential or not for the party's compliance. For instance, in case of a supply contract concluded under Romanian law, the supplier which had to buy and bring the products from another country / area affected by the pandemic, may successfully invoke travel restrictions to the respective areas, thus preventing it from buying and further supplying the products, as force majeure event, causing delays in the performance of its contractual obligation, if it may also prove that it could not procure the products elsewhere or in another manner.

RUSSIA

Delayed delivery because of COVID-19 can be explained and discussed. The party may seek for a relief of liability for breach of a contract by relying on force majeure event (COVID-19) during the period of the same. However, the occurrence of the *force majeure* event does not fully release the party (debtor) from its contractual obligation to supply the contracted goods, if the performance of such obligation will be feasible

after the current *epidemic situation* terminates. Therefore, if the *COVID-19* – being an event of "irresistible force" (as noted above) – constitutes a temporary impediment for the performance of the party's obligation, the performance will be suspended (without any liability or breach) only for the period of such event, and will be revived immediately upon the termination of such event. As a result, under such circumstances, delayed delivery may be cured and accepted, especially if the contract has a special reference to a pandemic or epidemic situation, or if the court finds COVID-19 as force majeure in the course of court proceedings. Of course, the party in delay must act in good faith. At the same time, the non-defaulting party has the right to repudiate from the contract if, as a result of the delay, it is no longer interested in receiving the benefit under the contract, provided that the defaulting party shall not be liable to the non-defaulting party for any losses caused by the delay in performing the obligations due to the occurrence of the force majeure circumstances[5].

SAUDI ARABIA

In view of the above principles, the seller will, as a general rule, almost certainly not be held liable for delayed delivery if and to the extent this is due to the COVID-19 pandemic; whether and to what extent the contractual provisions should be adjusted to reflect the circumstances, and/or whether the buyer may rescind the contract (e.g., if the delivery time is of the essence) will depend on the facts and circumstances of the matter and be, to a large extent, in the discretion of the judge.

SLOVENIA

If the supplier is late with performing his delivery obligation owing to circumstances arising after the conclusion of the contract that could not be prevented, eliminated or avoided, he is in accordance with Article 240 of the Obligations Code released from liability for damage. It would thus have to be determined in each individual case if the delivery was delayed due to such COVID-19 related circumstances that would justify that the supplier would be exempt from liability for damage.

It needs to be pointed out that each contracting party is obliged to timely notify the other party regarding facts that influence their mutual relationship, including regarding a potential late performance of obligations, otherwise it shall be liable for damage incurred by the other party because the latter was not notified on time.

The particular contract in question can also expand the supplier's liability to also cover cases in which he would otherwise not be liable. It should be noted that in line with Article 241/2 of the Obligations code the fulfilment of such a contractual provision expanding the supplier's liability nevertheless cannot be demanded if this would be in contravention of the principle of conscientiousness and fairness. The application of this provision would depend on the court's decision in each individual case on the basis of the evaluation of all the relevant circumstances.

SPAIN

In general terms the seller is obliged to deliver goods within the stipulated period. Article 329 of the Commercial code states:

[5] Section 9 of the Resolution of the Plenum of the Supreme Court of March 24, 2016 No. 7 "On the Application by Courts of Certain Provisions of the Civil Code of the Russian Federation on Liability for Breach of Obligations".

> "If the seller does not deliver the sold goods within the stipulated period, the buyer may request the fulfillment or termination of the contract, with compensation, in both cases, for the damages that have been incurred due to the delay."

Nevertheless, in a force majeure situation the answer would be different, and the purchaser would be probably freed from the damages compensation. Case law and academia classify the different scenario of force majeure depending on the total, partial or temporary inability to comply.

The consequences for the delivery will also depend on how to consider this. A mere delay could be considered a temporary inability to comply, and the debtor will probably be able to release his responsibility as long as the situation persists. Nevertheless, it will be convenient to analyze also the contract, the market and products, the concrete obligation to perform, and the rest of the contractual obligations. It shall also be considered if the delay could be considered as an essential element (for instance, a delivery of a product that had not any value after the delay agreed) or if it is something that could be rescheduled.

It is also relevant to take into account article 1184 of the Civil code stating the release of the debtor if the delivery becomes physically impossible:

> "The debtor will also be released in the obligations to make when the provision is legally or physically impossible."

SWEDEN

In general, a delivery that is delayed due to Covid-19 would have to be assessed according to what is described under the answers in section 1.1. If the analysis results in that the seller is not responsible for its non-performance, then the normal remedies under law may not be available for the buyer. However, this also depends on the buyer's situation. The non-delivery may very well create a situation where the goods are no longer needed. The buyer could in turn invoke either a "force majeure-argument" or a hardship argument to refuse acceptance of the goods. An example of this would be if a convention was postponed to a later date because of government instructions regarding Covid-19, i.a. a forced closure on convention halls. That would likely be an event which the organizer could invoke as an impediment to perform its obligations, i.e. to offer the convention at the place and time as set out. The participant would probably have to accept the postponement and still be bound by his earlier registration. However, if the participant is unavailable the new dates, the convention organizer could hardly refuse the participant's cancellation for the new dates and therefore be liable to refund any pre-paid convention fee.

As may be seen, there are no general answers. Instead the analysis must be made on a case by case basis.

SWITZERLAND

Most measures that have been implemented due to the spread of COVID-19 are of a temporary nature and, therefore, render performance not permanently impossible but rather delay it. Provided there is no contractual force majeure clause dealing with such circumstances, Swiss law stipulates that the performing party may in its discretion (i) continue to insist on the contractual fulfillment or (ii) (after having granted an additional period to perform) waive performance and terminate the agreement. Termination typically leads to a rescission of the entire contract (goods already delivered are

returned, payments are refunded), with the exception of long-term supply and distribution agreements, where the termination only has effect from the time of the default.

The non-performing party is generally liable for damages unless it can prove that it is not at fault. If the delay is caused by measures that result from the spread of COVID-19 (such as export/import bans and other governmental action, quarantines, etc.), it is quite likely that a non-performing party can exonerate itself from liability.

THE NETHERLANDS

Assuming that the consequences of the Covid-19 pandemic make it impossible for the supplier to deliver in accordance with the agreed delivery time and thus qualify as force majeure in a specific case, the supplier will not be liable for damages caused by the delivery delay. In its turn, the buyer may (wholly or partially) suspend performance of its payment obligation to the supplier or even terminate the contract. Under Dutch law the entitlement to terminate a contract does not require that the performance failure is attributable to the supplier.

TURKEY

The answer depends on whether or not the event causing delayed performance is deemed as force majeure in accordance with the contract or the applicable law. Please see answer above for what may be considered as force majeure and what may not be.

It may also be argued that delayed performance was due to temporary impossibility as explained above. There are certain legal scholars as well as Turkish Court of Cassation decisions that, in the event of temporary impossibility, date of performance shall be delayed until the disappearance of impossibility.

Therefore, if delayed performance is not due to permanent or temporary impossibility, the supplier shall be liable for compensation of the damages incurred by the distributor. On the other hand, if delayed performance is due to permanent or temporary impossibility, the supplier shall not liable for damages. However, as per Article 136 of the Turkish Code of Obligations, if the debtor (i.e. the supplier) does not notify the creditor (i.e. the distributor) without delay that the performance has become impossible and does not take measures to mitigate the damages, it shall be liable for the compensation of the damages arising therefrom. We are of the view that this provision also applies to temporary impossibility.

UK

Again, everything depends on the provisions of the supply contract. Generally, suppliers prepare terms and conditions of supply and therefore they are drafted in favour of the supplier. As a result, it is unlikely that a delay in delivery would bring the supply contract to an end, but a review of the contractual provisions would have to be undertaken.

URUGUAY

As stated above, the coronavirus pandemic per se does not constitute a force majeure event. Therefore, two situations must be differentiated.

On the one hand, if it is concluded that the delayed delivery was caused due to the COVID-19 and that in that particular contractual relationship that situation constituted a force majeure event, because it meets the legal requirements or the ones established

in the contract, the other party is not entitled to claim damages originated in such failure to comply. In that case, the event created an impossibility to fulfill obligations, so it frees the debtor from any liability and extinguishes the obligation.

This may happen for example if a mandatory quarantine is decreed by Uruguayan Government, and it makes impossible to the debtor to transfer the merchandise that was supposed to be delivered in a date that is comprehended in the mandatory quarantine.

The debtor must prove that the force majeure event was irresistible, unpredictable, unavoidable, and external to the parties. Also, it shall prove that no other possible means to comply where available, and that he adopted a proactive conduct in order to mitigate the damages.

In summary, firstly it must be followed the terms that the parties agreed in the contract. Otherwise, if there are no stipulations in the contract establishing which shall be the attitude of the parties if a force majeure event occurs, under Uruguayan law the force majeure allows to excuse the delay or the breach. Force majeure may justify a contract termination, although Uruguayan courts have been restrictive to habilitate this possibility in the past.

Please bear in mind that is advisable to notify the other party to the contract, as soon as possible, of the situation – contemporaneously to the force majeure events – by the means stipulated within the contract, or if they were not agreed, by a reliable mean. It will be also necessary for the party arguing the existence of the force majeure event, to prove that the consequences provoked by such force majeure event caused the breach of the contract.

On the other hand, if the delayed delivery due to the COVID-19 pandemic is not considered caused by a force majeure event, because it does not meet the legal requirements or the ones established in the contract, the debtor shall be responsible for the delay and thereof responsible of the caused damages. This taking into consideration the general principles: the debtor must fulfill the obligations assumed, and thereof it is obliged to deliver goods within the stipulated period.

1.3 Can a customer refuse to take delivery (and consequent payment) if he no longer needs the ordered goods due to a Government lockdown or due to his strategic decision to close his shop, or to other circumstances (e.g. seasonable goods)?

In principle, a refusal to take delivery and pay implies termination of the contract of sale, which is possible only when the impediment becomes permanent or where the circumstances justify termination. Therefore, the answer will essentially depend on the specific circumstances and reasons.

If the sales contract is governed by the CISG the buyer should be entitled to terminate the contract where the delay amounts to a fundamental non-performance under Article 25 (i.e. a detriment which deprives it of what it is entitled to expect under the contract). This could be the case (to be specifically evaluated based on the relevant case-law) where the goods were needed within a specific date which elapsed due to the delay (e.g. presentation at a fair, seasonal goods).

However, if the buyer is not in a position to terminate the contract, he has to take delivery. The risk of use for the purchased goods is generally borne by the buyer. A change of market conditions cannot release the buyer from his duty to accept the goods.

FM clauses tend to provide similar solutions. For instance, the 2020 ICC FM clause provides that:

> "Where the duration of the impediment invoked has the effect of substantially depriving the contracting parties of what they were reasonably entitled to expect under the contract, either party has the right to terminate the contract by notification within a reasonable period to the other party. Unless otherwise agreed, the parties expressly agree that the contract may be terminated by either party if the duration of the impediment exceeds 120 days."

Domestic laws tend to equate temporary impediments with permanent impediments (which consent contract termination) when the delay substantially interferes with performance or when the end of the force majeure situation is not foreseeable, but the actual solutions may differ from country to country.

ARGENTINA

The argentine law provides that no performance of an essential obligation is a valid cause to terminate an agreement in accordance with the purposes of the contract, such as

1. the strict fulfilment of the fundamental obligation in the context of the agreement
2. the timely fulfilment of the obligation is a condition of the maintenance of interest of the creditor
3. the unfulfillment deprives the aggrieved party of obligation he substantially had the right to expect.
4. the unfulfillment is done on intent.
5. the unfulfillment has been announced by a serious and definitive announce from the debtor to the creditor.

The law fails to indicate whether any of the subparagraphs suffices to typify an essential unfulfillment or the creditor has to prove all of them, since one of the clauses requires intent. In Our opinion the agreement has to indicate specifically which clause of the list by itself is essential drafting them carefully and providing that the unfulfillment of any of such clauses entitles the creditor of the obligation to terminate for cause the agreement with no compensation.

AUSTRIA

In principle, an examination of the contractual agreement must be carried out in every case in order to make a legal assessment.

The legal provisions applicable can be described as follows:

In principle, the law stipulates that the risk of sale and recovery is borne by the buyer. A lack of usability or saleability, regardless of what causes it, does not lead to the expiry of the obligations arising from the purchase or supply contract. The obligation to accept delivery and payment of the purchase price remains unaffected. If the buyer closes his business out of sheer prudence, this shall be his sole responsibility. A delivery contract

validly concluded in advance shall not automatically become invalid as a result, unless the contracting parties subsequently agree otherwise.

It is not the creditor's duty to accept the debtor's performance, but if the creditor refuses to accept the debtor's performance, he is in breach of his obligation. The consequence of this is that the creditor cannot invoke the subsequent impossibility of performance under section 1447 of the Austrian Civil Code in the event of the loss of the object. Accordingly, the risk of destruction of the respective object is transferred to the creditor at the agreed time of transfer.

If a creditor is therefore currently unable to accept the performance of his contractual partner, he is in default (despite the absence of fault). The debtor therefore continues to have his claim for payment and no longer bears the risk of the accidental loss of the respective item. If the item is therefore lost during the creditor's default, the debtor can still demand payment from the creditor.

An event of force majeure may, in addition to the default described above, also lead to a loss of the basis of the business. The basis for the transaction ceases to exist if a party to the contract can no longer be reasonably expected to be bound by the contract due to the change in the contract as a result of this event. In this case, however, only those cases are relevant which concern a change of circumstances which everyone associates with the conclusion of such a transaction and which were not foreseeable at the time of the conclusion of the contract. A typical example is the outbreak of war in the destination country of a trip. A massive outbreak of a highly infectious disease will be similar. In this case, the affected party to the contract may contest the contract or demand its adjustment.

Other conditions only apply if a right of withdrawal has been agreed. Large sports and fashion chains sometimes agree on rights of return. This means that the customer can return unsold goods after the season. It is questionable whether such a clause also allows the customer not to accept the entire goods in the first place due to the pandemic. This is likely to be negated, as the restrictions are now being (or are to be) gradually lifted. It therefore can be quite possible that parts of it can still be sold. The customer will have to make use of this possibility for reasons of good fatih corresponding to the principles of his duty to minimize damages.

BELGIUM

Pursuant to art. 1138 Civil Code, the obligation to deliver a specific property is perfected by the sole consent of the contracting parties. Title is transferred and the buyer is carrying the related risks from the moment when the property had to be delivered, even though it is not delivered, unless the seller is in default in delivering it.

The answer to the question raised will depend on the circumstances: do they qualify as force majeure or not. As indicated earlier, force majeure requires the performance of the obligation to be impossible for no fault of the debtor of the obligation. Unless the buyer is banned by law from taking delivery of the goods that he ordered, taking delivery sounds hardly impossible either temporarily or definitively. Bearing in mind the adage "genera non pereunt", the question also arises whether he validly could invoke force majeure to refuse payment. Unless a contractual provision was included along the lines of the 2020 ICC FM clause, the buyer in theory would be contrived to take delivery and to pay for the goods. Courts however tend to take the view that a situation must be

assessed in a reasonable and human way so that force majeure might extend to circumstances where the seller could not reasonably expect the buyer to take delivery.

CANADA

In general, a customer cannot refuse delivery. Upon a successful invocation of a force majeure event as contemplated by the contract, a customer would typically be granted relief from the obligation to take delivery at the originally specified time. This would likely involve simply delivery at a later time.

As discussed in 1.2 above, conceivably a customer might be able to rely on the common law doctrines of frustration or impossibility in unusual circumstances, but they would have to meet the high bar of demonstrating that the contractual obligations are radically, substantially or fundamentally different from those originally contemplated, for reasons beyond a party's control, and are more than merely onerous, inconvenient or prohibitively expensive. [Current to April 30, 2020.]

CHINA

Whether the legal exemptions will apply to a given case is highly fact-specific. The same government order may exempt the parties from performing one contract, but may not necessarily apply to the other.

A number of local government agencies and courts have issued circulars to further guide the application of force majeure provisions in contract performance. On February 20, 2020, the Supreme People's Court of China issued a detailed circular in this regard, the *Circular on Issuing the Guiding Opinions (I) on Several Issues concerning the Proper Trial of Civil Cases Related to the COVID-19 Epidemic According to the Law* (《关于依法妥善审理涉新冠肺炎疫情民事案件若干问题的指导意见（一）》)[6]. Pursuant to this circular, the Supreme People's Court of China differentiated contract performances under the COVID-19 pandemic into three categories:

i. Performing the contract will be significantly unfair to one party

If the COVID-19 pandemic or related government policies only renders it difficult to perform the contract, the parties may renegotiate. If the affected party can continue to perform the contract, the court shall mediate and encourage the parties to continue to perform the contract.

If a party requests a rescission of the contract on the ground that it has difficulties with performing the contract, the court shall reject such a request.

If it is significantly unfair for one party to continue to perform the contract, and the party requests changes to the time of performance, way of performance or the contract price, the court shall decide whether to uphold its request in light of the actual situation of the case.

If, after the contract has been changed, a party further claims partial or full exemption from liability, the court shall reject such claim.

ii. The purpose of the contract is no longer achievable

[6] See http://www.court.gov.cn/fabu-xiangqing-226241.html.

If the COVID-19 pandemic or related government policies renders the purpose of the contract no longer achievable, and a party requests rescission of the contract, the court shall uphold its request.

iii. Performing the contract is impossible

If the COVID-19 pandemic or related government policies renders it impossible to perform the contract, rules regarding force majeure shall apply, and liabilities of the affected party shall be exempted in part or in whole depending on the impact of the COVID-19 pandemic or the related government policies.

If any party is at fault or contributed to further loss, then that party shall bear the corresponding responsibilities.

Further, the party who raises the force majeure defense bears the burden to prove that it has fulfilled its obligation to notice promptly.

COLOMBIA

It is important to differentiate between the obligation to receive the goods, and the obligation to pay for them. The customer cannot unilaterally decide to refuse to take delivery and make the corresponding payment based on the fact that he does no longer need the ordered goods, unless parties had already agreed such as a discretionary decision of the customer, or that the customer had informed the principal in a timely manner, about the occurrence of a force majeure event impeding him to physically receive the goods by the agreed dates. However, case law in Colombia dictates that monetary obligations –considered as a generic obligation, as money can be easily and commonly replaced– are not usually impacted by force majeure events, as it is very unlikely for a party not to be able to execute contractual payments, unless such party is physically or literally impeded to do so. In this case, it would be more feasible for a customer to justify its payment default through a hardship clause, if it is demonstrated that payment has become extremely onerous due to external circumstances.

Therefore, customer can only justify not receiving the ordered goods in case there is a COVID-19 related measure that impedes him to do so, and not on his mere strategic decision to close his shop. Pursuant to article 1602 and 1603 of the Colombian Civil Statute contracts are legally binding for the parties, they can only be invalidated through mutual consent, and shall be executed in good faith, meaning that the unilateral decision made by customer to refuse to receive the goods and make the subsequent payment, based on a market convenience, does not seem reasonable, and therefore, such customer would likely be in default. In fact, if the goods were to be lost or damaged during the time the customer refused to receive them, supplier shall not be considered responsible, and such loses, and damages shall be borne by the customer.

CROATIA

It is unlikely that the customer could validly refuse to take delivery even in case of governmental lockdown of shop in case the lockdown is temporary. However, he could be relieved from payment of damages for delay in taking the delivery and delay in payment of the price on the basis of the above mentioned general FM rule provided by the Croatian Obligation Act

The customer could not invoke the FM rule if the closure of shop is due to his strategic decision, rather he may invoke the "hardship provision" and request renegotiations of the terms or termination of the agreement provided that all required conditions as met.

In this respect the Croatian Obligations Act foresees the right to request amendments to the contract or its termination due to change of circumstances (Articles 369 – 372 of the COA). Precisely, Article 369 states that "*Should, after entering into a contract, extraordinary circumstances arise, that were impossible to foresee at the time of entering into a contract, making it excessively onerous for one party to perform its obligation or if under such circumstances a party would suffer an excessive loss as a result of the performance, it may request amendments to the contract or even termination of the contract.*"

In case the obligation of taking delivery becomes actually impossible because for example the lockdown of shop is permanent (although it is difficult to think about this scenario) then the customer could invoke article 373 of the Croatian Obligation Act.
Article 373 of COA states that

> "Where performance of an obligation of one contractual party becomes impossible due to extraordinary external events that occurred after entering into a contract and before the performance is due and which could not have been foreseen or prevented, avoided or eliminated by the party and for which neither party is liable, the obligation of the other party is also ceased, and if the other party has performed its obligation partially, it has the right to restitution according to the provisions relating to restitution in case of unjust enrichment."

In this scenario it would be necessary to verify it the supplier actually has right to restitution because, for example, it has manufactured the goods that were ready for delivery. The answer to this question will certainly depend on the type of goods that were subject of the supply agreement (i.e. custom made or generic).

CZECH REPUBLIC

The customer mostly cannot refuse to take delivery. It is likely that even if an official closure of the shop would be treated as the event of FM, it does not suspend the duty to take delivery (as FM event relieves only from the duty to pay damages – see above). Rather we can consider the extinction of this duty pursuant to Section 2006 of the Czech Civil Code on „Subsequent impossibility to perform". However, having in mind that normally this duty could be fulfilled by taking delivery in another place or later on, after the shop is again opened, the applicability of this instrument is considerably reduced.

More appropriate might be request of the customer for renegotiation of the contract duties due to material adverse change of circumstances (hardship). If no agreement is reached, any party may apply to the court to decide on change or cancellation of the contract.

Section 1765 of Civil Code:

> (1) If there is such a substantial change in circumstances that it creates a gross disproportion in the rights and duties of the parties by disadvantaging one of them either by disproportionately increasing the cost of the performance or disproportionately reducing the value of the subject of performance, the affected party has the right to claim the renegotiation of the contract with the other party if it is proved that it could neither have expected nor affected the change, and that the change occurred only after the conclusion

of the contract or the party became aware thereof only after the conclusion of the contract. Asserting this right does not entitle the affected party to suspend the performance. (2) The affected party shall not acquire the right under Subsection (1) if it assumed the risk of a change in circumstances.

Section 1766 of Civil Code:

(1) Upon failure to reach agreement within a reasonable time limit, a court may, on the application of any of them, decide to change the contractual obligation by restoring the balance of rights and duties of the parties, or to extinguish it as of the date and under the conditions specified in the decision. The court is not bound by the applications of the parties. (2) A court shall dismiss an application to change an obligation if the affected party fails to assert the right to renew contract negotiations within a reasonable time after it must have ascertained the change in circumstances; this time limit is presumed to be two months.

If the shop is closed due to strategic decision of the customer it is likely that he cannot not only refuse to take delivery but also he will be liable for damages.

Again, in all these situations the principle of good faith, mitigation of damages and no protection to abusing of rights should be observed.

I left aside situations where the delivery was ordered on fixed date, e.g. for fair or another event to be held on specific date, where the duty to take delivery (generally) ceases to exist, if delivery is not performed on time.

DENMARK

Unless taking delivery is rendered impossible due to force majeure, e.g. a government order prohibiting taking delivery, a buyer will generally not be allowed not to take delivery. In consequence, this is clearly also the case if the buyer simply decides to close his shop for strategic reasons.

If the sales contract is governed by the CISG, the buyer will be entitled to terminate the contract where the delay amounts to a fundamental non-performance under Article 25 (i.e. a detriment which deprives it of what it is entitled to expect under the contract). This could be the case (to be specifically evaluated based on the relevant case-law) where the goods were needed within a specific date, know to the seller, which elapsed due to the delay (e.g. presentation at a fair, seasonal goods).

EGYPT

Despite the fact that both parties (supplier and purchaser) are both affected by the same force majeure event, however their respective default, in this example, is not the same. The effect of force majeure on the supplier was the delay in procurement of goods or in the extreme scenario the impossibility to perform. But the default of the purchaser is his refusal to take the goods which are ready for delivery despite the force majeure.

It should be noted that the customer in question is not a mere consumer who can simply cancel his order, but a responsible professional.

In our opinion, the reasons for refusal, as described, are not strong enough to justify the nonperformance of the purchaser. The Government lockdown as long as it takes, will not last forever. The strategic decision to close his shop is a subjective element. Probably, the valid argument could be fact that the goods are seasonable; still it does not justify the nonperformance but rather a mitigation of the situation.

Furthermore, by application of good faith in contractual relations, the purchaser should have notified the supplier in advance of his intention and within a reasonable time.

We believe that in this situation, both parties will have an interest in renegotiating the contractual terms in good faith. If however, they do not succeed to find a compromise then the solution under Egyptian law will be imposed by the judge/arbitrator in application of Article 147 of the civil Code (cf. 1.1 above).

Another solution for the supplier would be in Article 98 ECC which provides that:

> "If the price is not paid at the agreed upon time, the Seller after notifying the buyer, may resell the goods to a third party. If the goods are thus sold, in good faith, at less than the price agreed upon the seller shall have the right to claim the difference from the buyer. If the good have a known price in the market, the seller, even if he has not actually resold the goods, could claim from the buyer the difference between the price as agreed upon and the price in the market on the day prescribed for payment".

In case CISG Convention would apply, the obligations of the buyer are clearly stated.

The buyer must pay the price for the goods and take delivery of them as required by the contract and this Convention (Art. 53); the payment must be on the date fixed by or determinable from the contract and this Convention without the need for any request or compliance with any formality on the part of the seller (Art. 59); and the buyer's obligation to take delivery consists: *(a)* in doing all the acts which could reasonably be expected of him in order to enable the seller to make delivery; and *(b)* in taking over the goods (Art. 60).

FINLAND

Whatever the case may be, if the supplier inquires whether the buyer will, in spite of a delay in delivery, accept performance within a defined period or, if the supplier notifies the buyer of that he will effect performance within such a period, and the buyer fails to respond within a reasonable time after he received the inquiry or notification, the buyer may not declare the contract avoided if the supplier performs the contract within the period so specified by the supplier (Section 24 Sale of Goods Act). However, if the buyer has fixed a grace period for the delivery which is not unreasonably short, the buyer is also entitled to declare the contract avoided unless the goods are delivered within that period. During the grace period, the buyer may declare the contract avoided only if the seller makes known that he will not perform the contract within that time. (Section 25 Sale of Goods Act). Where the contract is for the supply of goods to be manufactured or acquired especially for the buyer, in accordance with his instructions or wishes, and the seller cannot, without considerable loss, make other use of the goods, the buyer may declare the contract avoided on account of the seller's delay in delivery only if the buyer's purpose with the contract has essentially failed because of the delay.

Where the sales contract is governed by the CISG the buyer should be entitled to terminate the contract should the delay amount to a fundamental breach under art. 25. This could be the case where the goods were needed within a specific date which elapsed due to the delay. It is adequate to add that because of the reservation Finland, Denmark, Norway and Sweden have made, the CISG is not applicable by virtue of Art.1 on Inter-Nordic sales, unless expressly so agreed between the contract parties.

FRANCE

There is no legal rule in this specific point.

However, one may consider that the health emergency state declared by French Government prohibiting the opening of certain commercial premises or the criminal law obligation not to jeopardize third parties, causing employers' decision to close premises due to the impossibility to run business without any risk for employees, can characterize a force majeure event impeding the customer to take delivery, without damages or penalties, provided the customer makes sufficiently anticipated notification to suppliers or carriers.

GERMANY

Statutory law sees the sales and utilization risk typically as being borne by the purchaser. Any lack of useability or sellability, no matter if those are caused by the pandemic/force majeure (e.g. closure of all retail outlets of the buyer) does not void sales contract and the corresponding duty to buy and pay automatically under statutory law. If the buyer closes his business only as a precaution or for lack of profitability, this is even more his own responsibility. Also this does not automatically invalidate under statutory law a supply contract that has been effectively concluded in advance. Both the obligation to take delivery and the obligation to pay the purchase price remain in principle, unless he agrees otherwise with the supplier. General terms of procurement typically feature standard wording which allows the buyer to cancel any order already placed without specific a reason. Such clauses are legal and enforceable under German law as far as they regulate an appropriate compensation for supplier.

In addition, problems can arise on the customer side in connection with acceptance obligations in the event of default of acceptance (§§ 293 ff. BGB). § 304 BGB provides that the supplier can demand compensation from the customer for the unsuccessful offer as well as for the storage and preservation of the goods owed on the supplier's side for additional expenses (e.g. transport or storage costs). In this respect, fault on the part of the customer is not a prerequisite for default of acceptance.

ISRAEL

One of the Conditions for Frustration under Section 18 (a) of the Contracts Law – Remedies is that the *"performance of the contract under these circumstances is impossible or fundamentally different from what was agreed between the parties."* Israeli courts ruled that "impossibility", in this context, means that the goal of the contract cannot be achieved. They ruled further that the words *"fundamentally different"* apply only where the change of circumstances was extreme and the "impossibility was not temporary (unless the delay caused the performance to be fundamentally different from the original agreement between the parties).

In view of these conditions, as a general rule it is unlikely that a buyer who refuses to take delivery of the goods purchased by him will be exempted under Section 18.

ITALY

Pursuant to Article 1256.2 c.c.:

> "If the impossibility is only temporary, the debtor shall not be liable for the delay in performance for as long as it lasts. However, the obligation is extinguished if the impossibility continues as long as, in relation to the title of the obligation or the nature of

the object, the obligor can no longer be considered to be obliged to perform or the obligee no longer has an interest in achieving performance.

Italian case-law, referring to Art. 1463 c.c. on impossibility of the performance, has recognized in some cases the creditor's right to claim his impossibility to "enjoy" the debtor's performance, in contracts of the tourism sector, although such performance was still "possible" from the debtor's perspective. For instance, in case of a dengue epidemic in Cuba (Cass. 16315/2007) or of death of the traveler's husband or injury of the traveler before the planned travel (Cass. 26958/2007 and Cass. 18047/2018), Courts considered justified the traveler's refusal to receive the performance (i.e. the travel/hotel accommodation), since the traveler was no longer interested to it, due to an event (respectively, dengue epidemic, husband's death, injury of the traveler) for which he/she was not responsible. In those cases, the Courts confirmed the traveler's right to get back the consideration paid for the journey and rejected all claims brought by the travel agency/hotel.

However, referring to the aforementioned circumstances, it is doubtful that the simple choice to close the shop or a temporary Government lockdown alone, would be regarded by the competent Court as sufficient reasons to justify termination; possible additional elements (e.g. the seasonality of goods) may play a role. However, also the supplier's position (i.e. his difficulty in selling the seasonal goods) shall be considered, on the other hand. It has also to be reminded the general principles of good faith, of mitigation of damages and of unjustified enrichment, that may be applied in such cases.

Of course, considering that the parties would probably have in force continuing supply contracts (more likely, sales contracts through purchase orders concluded within a framework distributorship/franchise contract), both parties will have an interest in renegotiating the contractual terms in good faith, especially in case of most affected sectors, such as bar/restaurants, seasonable goods, etc..

JORDAN

It will depends on the nature and circumstances of the time of delivery some businesses was not permitted to open or to accept delivery at the time of the lock down in this case the customer cannot receive such orders, this circumstances are consider to be a FM or contingency as this is a governmental orders, if the business was open the customer must accept the orders and if there was a delay in receiving the goods the contract shall govern such matter.

KUWAIT

As it is aforementioned that the response to this question might vary based on the giving circumstances. Therefore, when the business activities or contractual obligations have been directly impacted, parties can invoke the application of Force Majeure theory as a justifiable grounds for rescinding or suspension of agreements. On the other hand, when businesses and individuals not directly affected by Force Majeure but the work and activities were partially affected by the evolving circumstances, government decisions, cost, or time, which could justify the amendment of the terms of a contract in the interest of both parties.

As per the business activities that were not affected in any way by Force Majeure (business as usual), and which continued and still actively operating and completely

serving its customer under the current situation resulted from COVID 19, Force Majeure theory cannot be relied upon nor a hardship can be sought.

it is essential to note that Kuwaiti courts have ruled that, where the impediment to execution is temporary, performance of a party's obligation is merely suspended, unless the resulting delay will ultimately justify terminating the contract. Building on that we can assume that a customer cannot refuse to take delivery or not settling a due payment nor cancelling any placed orders even due to an official lockdown or due its decision to close his store or unit, unless he proves that there is a Force Majeur event that justifies his cancellation or suspension of the placed orders and consequently refusing the delivery and payment. Noting that in some case (during the Iraqi's invasion of Kuwait) Kuwait Cassation Court considered that such event to be treated as *temporary* impediment resulting in suspension, rather than termination of the contractual obligations.

MEXICO

Pursuant to the Federal Civil Code, the parties to a contract are bound to the provisions therein as well as to the consequences that, according to its nature, arise from good faith, usage, or by law, except for those extraordinary circumstances that prevent a party to perform, e.g. force majeure, under the principle that nobody is bound to do what is impossible.
Under this premise, except otherwise agreed amongst the parties, a costumer is bound to act in good faith and receive goods ordered/requested unless if reception is impossible by an Act of God or force majeure. If the customer does not accept delivery under the argument that its needs and/or strategy have change, it could be held liable to damages and lost profits therefrom.
To the extent possible and under good faith basis, it is advisable for the parties to re-negotiate terms and conditions of those agreements that might be affected in the current extraordinary circumstances.

MOROCCO

Pursuant to Article 269 of the Moroccan Civil Code (DOC), a party justify the non-fulfillment of its obligation if it can provide evidence that the conditions of force majeure set by Article 269 of the DOC are met (i.e. the event is unforeseeable, beyond control and cannot be overcome).

A customer can refuse to take delivery and consequent payment if termination is raised because of force majeure. On the contrary, should the customer be aiming at suspending for a while the effects of the contract, he would then not refuse to take delivery and would simply ask for delayed payment until evidence is made that the force majeure event no longer last. A simple choice to close the shop without temporary Government lockdown would not be regarded by the competent Court as sufficient reasons to justify suspension or even termination.

MOZAMBIQUE

Concrete circumstances should be considered in order to provide a legal opinion.

As a principle, the decision of closing the shop should not be a justification to refuse to accept delivery, as well as to pay. In fact, according to the article 792 of the Civil Code the impossibility of performance will only be considered temporary, while the creditor

has interest in its execution, considering the nature of the obligation. That means that, in order to justify the refusal to take the delivery (and to pay), the customer must invoke (and prove), *verbi gratia*, that the goods to be supplied are seasonal (i.e., they will be seeked in the market during the period agreed for the supply, as it happens with the flu vaccine which, as a rule, is bought only in winter time). In this context, the obligation can be considered as ceased, and any amount already paid should be reimbursed/returned.

On the contrary, if the supply is related with goods which are seeked all year long (and every year) it may be much more difficult for the customer to invoke (and prove) it has no interest in its acquisition, after the end of the pandemic period.

Concerning the Government lockdown, the nature of the obligation and/or the nature of the products supplied should also be considered. For example, if the customer can´t use the supplied products after the lockdown, it may invoke the loss of interest and terminate the contract (refusing to receive the goods and make payment).

Finally, according the principle of each party´s autonomy (*rectius*, article 405 of the Civil Code) this legal regime may be derogated by the agreement dispositions, so it is crucial to attend to the clauses inserted on the agreement (if any).

NEW ZEALAND

The customer cannot refuse to take delivery if the order was placed pre-Covid-19 restrictions. There are relevant statutes which would cover this position.

NORWAY

It is unlikely that a customer can successfully invoke force majeure regardless of whether the closing of a shop is due to a governmental order or based on a strategic decision, as it would require that it is impossible for the customer to arrange for alternative ways of taking delivery.

As regards the fulfilment of the payment obligation by the customer, it is highly unlikely that the customer will be relieved from such obligation by invoking force majeure. The payment in itself is not hindered by Force Majeure, and in general, the customer should bear the risk of changes that causes him to no longer have a need for the ordered products. The customer might argue unreasonableness in accordance with article 36 of the Contracts Act or Frustration of purpose, but as stated above, article 36 is very rarely applied by Norwegian courts in commercial agreements between professional parties.

PAKISTAN

We are of the opinion that it entirely depends on the force majeure provision as it only provides a cover on the occurrence of an unforeseeable event which renders the performance of the contract impossible.

Therefore, if a customer refuses to take delivery for the reason that the purpose for which he had purchased the goods is defeated due to a Government lockdown or that the goods are seasonable in nature and cannot be resold later then he may do so by relying on the force majeure clause. On the contrary, if someone strategically decides to shut down his shop or refuses to take delivery because of this reason then although he may still invoke the provision of force majeure, it will be extremely hard for him to establish that the spread of virus constrained his ability to take deliveries as the clause

only allows companies to opt out of contractual obligations because of events beyond their control.

POLAND

I. If a customer refuses to take delivery because of delay or default of the delivery, please see: 1.2 above.

II. If the contractor:

- has ordered the products and
- can take them over (i.e. *force majeure* has not caused technical impossibility of taking them over), and
- the reason for the non-take-over is that the contractor does not need products due to economic changes,

then in our opinion it is the contractor's business risk and there are no grounds to apply solutions specific to *force majeure*, described under 1.1.

Once again, due to an extraordinary change of circumstances, businesses should start to negotiate the existing terms of the agreements and agree with their counterparties on issues concerning their current business relations. Communications are vital because if a customer or supplier fails, it can also threaten one's own business.

PORTUGAL

As referred to in our answer to the previous question if there is a delay of one of the parties, its counterparty may lose interest in the contract, as per Article 808 of the Civil Code. In this case, and only if the loss of interest is due to the delay, the obligation is deemed as not complied with.

The abovementioned loss of interest is objectively evaluated, which means that the cause for the loss of interest is relevant for the purpose of assessing whether the relevant party is liable for any prejudice or damage caused to its counterparty.

If the delay is caused by a force majeure event or by an abnormal change in the circumstances, the criteria of Article 437 referred to in question 1.1 are applicable.

ROMANIA

Even if the situations mentioned above may be treated as force majeure events (Government lockdown, shop closured etc.), this shall not suspend the party's duty to take delivery, but merely its obligation to pay damages. Moreover, if the party refuses to take delivery because of its strategic decision to close the shop, then not only will he be obliged to comply with its obligation to take delivery, but he will must probably also be bound to pay damages.

More appropriate in such cases is the application of the hardship clause, regulated in Article 1271 of the Civil Code. As a rule, the parties to a contract are bound to perform their obligations even if the respective performance has become excessively onerous. However, by way of exception, if the contractual performance has become excessively onerous because of an exceptional change of circumstances which would make the debtor's obligation to execute its obligation clearly unjust, then the court may interfere in the contract and apply the hardship.

The court may decide either the adjustment of the contract, so as to equitably distribute between the parties the benefits and losses resulting from the change of circumstances; or the termination of the contract.

However, considering that most of the contracts (sale, supply) are drafted as framework contracts under which purchase orders are concluded, the parties will be interested in most cases to renegotiate the contractual clauses in good faith, trying to reestablish contractual balance.

RUSSIA

Article 523 of the Russian Civil Code lists certain cases when unilateral repudiation from a supply contract is possible on the side of a supplier and customer. Changing the needs in the ordered goods as well as the change of strategic decision to close business, or other "seasoned goods" circumstances, are not specified by the mentioned Article of the Russian Civil Code.

Again, the *COVID-19* – being an event of "irresistible force" – shall constitute a temporary impediment for the performance of the party's obligation, and the performance will be suspended (without any liability or breach) only for the period of such event, after which will be revived immediately upon the termination of such event. Therefore, a customer must accept the performance made by the supplier immediately after the end of COVID-19. Simple or strategic decision of the customer with regard to the business or the shop during the epidemic shall not cure the situation.

At the same time, under the Russian law, contractual obligations of parties may be terminated due to impossibility of their performance (Article 416 of the Russian Civil Code), or on the basis of the act of state agency (Article 417 of the Russian Civil Code). More specifically, termination of the relevant contractual obligations under Article 416 of the Russian Civil Code may take place if, in connection with certain circumstances arising after execution of the contract, there is an actual, objective and permanent impossibility of performance of those obligations[7]. Termination of obligations by virtue of Article 417 of the Russian Civil Code is possible if state or local authorities adopt acts or measures that make it impossible to perform obligations under a contract. Of course, these circumstances must be proved documentarily, not just declared.

Therefore, under these specific rules of law, "seasoning" can be explained and allow the customer to repudiate from the contract (on this part), as a result of COVID-19. But, simple or strategic decision of the customer with regard to the business or the shop during the pandemic situation shall not be cured through Articles 416 and 417 of the Russian Civil Code.

SAUDI ARABIA

The legal situation will to a very large extent depend on the facts and circumstances of the matter and the provisions of the contract. As a general rule, the buyer will be considered to bear the risk of its ability to actually use the goods; in very specific circumstances, however, the buyer may seek relief under the above (*Shari'a*) principles and request rescission of the sale, possibly against compensation for the seller.

SLOVENIA

In general, the answer is no, since the obligation to take delivery and the obligation of payment according to a valid contract remain, unless specifically provided otherwise in the terms of the contract.

[7] Contract and Liability Law (General Part): Article-by-Article Commentary to Articles 307 - 453 of the Russian Civil Code // edited by A.G. Karapetov, "M-Logos", 2017.

In certain situations, it may be possible to request rescission or amendment of the contract owing to change of circumstances in line with Article 112 of the Obligations Code.

Namely, if after the conclusion of the contract circumstances arise that render the performance of obligations by one party more difficult or owing to which the purpose of the contract cannot be achieved and in both cases to such an extent that the contract clearly no longer complies with the expectations of the contracting parties and according to the general opinion it would be unjust to retain it in force as it is, the party whose obligations have been rendered more difficult or who owing to the changed circumstances cannot realise the purpose of the contract may request the rescission of the contract, however a contract shall not be rescinded if the other party agrees to have the relevant contract conditions justly amended. It should also be noted that the parties may contractually waive any reference to specific changed circumstances in advance, unless such is opposed to the principle of conscientiousness and fairness.

The court could decide that the circumstances related to COVID-19 represent such changed circumstances that would justify a rescission or amendment of the contract, taking into account the purpose of the contract, the risks customary in such commercial transactions and the balance of the interests of the contracting parties. Of course, certain additional circumstances (for example seasonable goods) could play an important role in the court's ruling, whereas a mere strategic decision to close a shop is less likely to be considered as a sufficient reason for the request for rescission/amendment of the contract.

It should also be pointed out that the other party must be notified regarding the intention to request a rescission as soon as the first party learns that such circumstances have arisen, otherwise it shall be liable for damage incurred by the other party because the latter was not notified on time.

SPAIN

In this scenario, we should consider article 329 of the Commercial code:

> "If the seller does not deliver the sold goods within the stipulated period, the buyer may request the fulfillment or termination of the contract, with compensation, in both cases, for the damages that have been incurred due to the delay."

In this sense article 330 of the commercial code is also relevant for partial deliveries:

> "In contracts where the delivery of a determined quantity of merchandise is agreed in a fixed term, the buyer will not be obliged to receive a part, not even under promise to deliver the rest. But if it accepted the partial delivery, the sale will be consummated in terms of the goods received, except for the buyer's right to request the rest of the contract or its termination, in accordance with the previous article."

And also, article 332:

> "If the buyer refuses to receive the purchased goods without fair cause, the seller may request the fulfillment or termination of the contract, judicially depositing the merchandise in the first case.
>
> The same judicial deposit may constitute the seller as long as the buyer delays taking over the merchandise.

The expenses that originate the deposit will be for the account of whoever gave reason to set it up.

According to the Supreme Court, this deposit will not be necessary in cases of "*traditio ficta*" when the goods are delivered not physically but in a way the parties agreed.

Here the consequences would be different depending on what could be considered as "fair cause" to refuse the merchandises by the purchaser and again force majeure could be of application depending on the concrete situation. In general terms, concrete agreements shall be analyzed and the rest of circumstances of the complete contract, but a unilateral decision to simply refuse the delivery due to strategic reasons seems not to be acceptable under the general force majeure clause.

In case the decision comes when the concrete business is affected by the lockdown of the premises as foreseen by the Alarm Status, or the general lockdown (see question 1.1), the force majeure could apply to the punctuality to receive the goods (seller would be released from the obligation to deliver on time and buyer would be released from the obligation of receiving on time), but as the Alarm Status is temporary, the fairness of each party's grounds to terminate the agreement should be carefully analyzed.

Here again the situation could be different depending on the concrete market product (for instance seasonable products), how the concrete business has been affected by the lockdown, the obligation specified in the agreement and the possibility to continue the activity through to other means (online, home delivery).

SWEDEN

In this discussion, it is assumed the question concerns a contract for sale of goods between businesses (and not services or to a consumer), where the Sale of Goods Act would be applicable. Under that act (§50), a buyer is obligated to collect or receive the goods. If a buyer fails to collect or receive the goods, a seller may be entitled to damages or to terminate the contract with immediate effect, or a combination hereof, unless the buyer's non-collection or non-reception of the goods is due to circumstances relating to the seller (§51). There are no answers on how this would be assessed in a Covid-19 situation but would have to be judged on a case by case basis taking all individual circumstances into account including reasons for non-collection/non-receipt, type of goods and seller's reasons for wanting to get rid of the goods.

SWITZERLAND

As a general principle under Swiss law, contracts must be performed as agreed (*pacta sunt servanda*), regardless of whether the contractual performance has become useless or burdensome for one of the parties. Provided there is no contractual hardship clause dealing with such circumstances, a customer wishing to refuse to take delivery may resort to the so-called principle of "*clausula rebus sic stantibus*". This principle allows the equitable modification or even termination of an agreement in very exceptional circumstances, namely if an unforeseeable change of circumstances led to a serious disproportion between the parties' contractual obligations and the counterparty's insistence on the agreed upon performance would amount to bad faith.

The principle of *clausula rebus sic stantibus* can be invoked if cumulatively (i) a fundamental change of the circumstances has occurred since the contract was concluded; (ii) the changes cause a serious disturbance of the contractual equilibrium;

(iii) the changes were neither foreseeable nor avoidable, and (iv) there is no contradictory behavior of the party invoking the principle.

Whether a customer who wants to refuse to take delivery because he no longer needs the ordered goods is entitled to invoke the *clausula* principle must be assessed on a case-by-case basis. The situation is certainly different if the ordered goods become useless due to a Government lockdown rather than due to the customer's strategic decision to close his shop. In the latter case a customer would not be entitled to invoke the *clausula* principle. If the principle applies and the agreement is to be either equitably modified or terminated, one has to consider the hypothetical will of the contractual parties, i.e., what reasonable parties would have agreed on in case they had known about the subsequent change of the circumstances.

THE NETHERLANDS

A customer may invoke force majeure if the closing of a shop following a governmental order in fact affects his ability to take delivery of the goods ordered from the supplier. It is however questionable whether this can be done successfully whereas it is not unlikely that options are available to take delivery at another location. As regards the fulfilment of the payment obligation by the customer, it is unlikely that the customer will be relieved from such obligation by invoking force majeure. A governmental order to close a shop does not automatically imply that the customer is prevented from complying with his payment obligation.

The closing of a shop following a strategic decision taken by the customer on his own, is unlikely to relieve such customer from his obligation to take delivery and pay for the goods ordered. A breach of such obligations is likely to be considered attributable to the customer leading to a liability for damages.

Assuming that the contract does not include references to pandemics in a force majeure clause, a more appropriate solution might be found by applying to the Court for an amendment or a rescission (wholly or partially) of the contract on the basis of unforeseen circumstances of such a nature that the other party, by the criteria of reasonableness and fairness, cannot expect the contract to remain valid and enforceable in unaltered form (article 6:258 Dutch Civil Code). The Courts may decide that the extraordinary effects of the Covid-19 pandemic on commercial relationships qualify as unforeseen circumstances which justifies a suspension, modification or even termination of the contract. The Courts also have the power to order parties to renegotiate the terms of the contract with a view to arriving at a more balanced division of rights and obligations in the light of the mutual burden that results from the Covid-19 pandemic.

TURKEY

As mentioned in Question 1.1 above, under Turkish laws, it is accepted that monetary obligations do not fall within the scope of impossibility. This is because money can always be found and paid. Therefore, in a sales contract, the risk falls mostly on the side of the buyer (i.e. the distributor in this case). Even if the buyer's premises are closed and there are no customers to purchase the goods from it, the sales contract continue to be in force and the buyer's payment obligations remain valid, provided that delivery is in fact possible, i.e. ports and banks are operating, buyer is able to determine another location to take delivery of the goods, etc. This approach is even more certain if the

buyer closed down its premises due to its strategic decision although the governmental measures do not prevent it from keeping its premises open.

This being said, if the contract between the parties and/or the general terms allow the buyer to cancel already placed orders, such provisions will of course apply.

Especially in long-term contracts such as distribution and franchising where the parties enter into numerous separate sales contracts, it is advisable for the buyer affected from the pandemic to contact the seller in order to re-negotiate contract terms. Hardship provisions may also be resorted to, provided that the conditions thereof are met.

UK

The legal concept of "frustration" may apply. It occurs "… whenever the law recognises that without default of either party a contractual obligation has become incapable of being performed because the circumstances in which performance is called for would render it a thing radically different from that which was undertaken by the contract." A frustrating event is not the same thing as an unforeseeable event, although if a supervening event was in the contemplation of the parties (because, for instance, it was referred to in the force majeure clause) when they entered into the contract, it is unlikely that it would frustrate the contract.

Essentially, frustration occurs in three situations:

- The agreed performance is impossible.
- The purpose of the contract is impossible to achieve.
- There is a significant change to a mutually agreed state of affairs in respect of the contract.

URUGUAY

In this point Section 534 of the Uruguayan Commercial Code must be considered:

> "If the seller does not deliver the sold goods within the stipulated period, or by the one established in section 530, the buyer must request the termination of the contract, or request the fulfillment with the damages that have been incurred due to the delay."

Section 535 of the Uruguayan Commercial Code states:

> "If the buyer, without fair cause, refuses to receive the purchased goods, the seller will have the faculty to request the termination of the contract or to request the price with the current interest incurred due to the delay, putting the merchandise available for the judicial authority so that it should order it judicial deposit by account and risk of the buyer.
>
> The same judicial deposit may request the seller, as long as the buyer delays taking the merchandise; the expenses that originate the translation to the deposit and its conservation will be for the account of the buyer."

In this scenario, the consequences shall be different, regarding what could be considered as "fair cause" so that the buyer could refuse the merchandise.

In principle, except if the case constitutes a force majeure event, the customer that assumed the obligation to take delivery and pay for it, could not breach its obligation. The answer will essentially depend on the specific circumstances and reasons.

In case that the decision is caused by a strategic resolution of the customer to close his shop or for seasonable goods, it seems they are not justifying causes in order to excuse

the breach of the contract. In this case, the debtor cannot only refuse to take delivery but also, he will be liable for damages in case he did not take the delivery.

Whereas, if the decision is caused by a Government lockdown, that situation may constitute a force majeure event, and thereof frees the debtor from any liability according to Uruguayan law. Every aspect must be considered, such as how the concrete business is affected by the Government lockdown, the specific terms of the contract if provided, as well as any chance to keep with the business by other means. Please bear in mind all the aspects considered in Q 1.1.

The principle of good faith and mitigation of damages have to be taken into account in order to solve situations like the one mentioned above.

1.4 What are the consequences of not reaching minimum sales or minimum quantities due to the Corona pandemic?

Generally minimum sales (or purchase) clauses are based on the assumption that there are not significative market changes, such as a force majeure situation. The answer might be different if the party in question agreed to warrant in any case the minimum, but only by interpreting the common intent of the parties we can decide if this obligation is exempted by force majeure.

ARGENTINA

In my opinion and to the extent that the current fall of sales in medium size and small companies looms over 50% and the minimum sales and possibly the quantities are underachieved, the creditor should give a second chance to the debtor as long as the sales continue to be within certain parameters to be agreed upon. We are speaking of facts to the extent that debtor continues to pay royalties or a percentage on sales on which there is no default and no consequences, to the extent that the government does not reasonably lift the sanitary emergency.

AUSTRIA

In Austria, both the authorised distribution agreement and the franchise agreement are not (separately) regulated by law and constitute a mixed contract, which contains e.g. elements of the licence agreement and the know-how agreement, but also various other elements depending on the form of the agreement.

Therefore, the question of a legal consequences of contractual obligations of a franchise contract has to be answered on the basis of the contractual agreements in the concrete individual case (especially with regard to special questions, e.g. of compensation claims as defined in § 24 HVertrG). One of the main distinctions in the context of franchising and distribution agreements is that the regulatory content of franchising is generally more detailed than the distribution agreement. Accordingly, franchise contracts usually cover considerably more scenarios.

Thus, if the contract does not provide any specific regulation in the event of non-performance, the statutory provisions on default apply.

If the performance (e.g. purchase or sale of a certain quantity) has been determined and the party obliged to perform (debtor) fails to perform or does not perform correctly, it is a case of default. In this case, the service is either not provided at all or not provided

as agreed or usual; depending on the special case, this is referred to as non-performance/delay or poor performance/warranty.

Thus, in Austrian contract law, it is generally considered necessary, in any event in order to verify compliance with the contract, to check the provisions of the contract itself. Only if the contract does not provide any or no comprehensive regulation, the applicable legal regulations must be consulted.

In Austria, “force majeure” is understood to be an event “coming from outside”, “unavoidable” and “unforeseeable”. The event is therefore outside the sphere of influence of the contracting parties and cannot be avoided by reasonable means under the given circumstances. The definition has developed from case law and the general law on disruptions to performance; there is no legal definition.

In its decision 1 Ob 93/00h the Austrian Supreme Court (OGH) defined “force majeure” as follows:

> "Force majeure is to be assumed if an extraordinary event occurs from outside, which does not occur or cannot be expected to occur with a certain regularity and cannot be averted or its consequences rendered harmless even by exercising the utmost reasonable care. However, every non-exceptional event is also unavoidable which cannot be averted despite all conceivable expertise and caution.”

Thus, if the fulfilment of the contractual obligation of one party becomes impossible due to, for example, “force majeure”, the contractual partner is not obliged to provide his own service.

If it is only temporarily impossible to provide the service, the other contracting party has the choice of either adhering to the contract or withdrawing from the contract after setting a grace period. The granted period of grace for the performance of services must be reasonable and shall only commence upon declaration of withdrawal. Services already rendered (such as down payments) must be returned in the event of withdrawal from the contract.

If the performance of the service has become permanently impossible due to force majeure, the contractual partner of the non-performing party may demand the return of any service already provided because the performance obligations are cancelled and the contract lapses. The distribution of the economic risk is such that in this case the purchaser does not receive any performance ("performance risk") and the supplier of the performance receives no remuneration ("price risk").

In the event of force majeure, no liability for damages shall be incurred by the party that cannot fulfil its contractual obligations due to the event because it is not at fault in the breach of contract.

The Austrian Supreme Court has already dealt with this issue in connection with the SARS virus. It ruled at the time (OGH 14.06.2005, 4Ob103/05h) that this disease constitutes “force majeure”. Since the coronavirus is also a SARS virus and further due to the pandemic status proclaimed by the WHO, it can, therefore, be assumed with great certainty that a case of “force majeure” exists.

In summary, the following should therefore be considered: the debtor will only be able to invoke "force majeure" if this was also causal for the unpunctual performance of the contract. In this context, the question will also arise whether the debtor of the

performance could have prevented the effects of the "force majeure" on his performance by certain measures. For according to the Supreme Court, this is only the case if it cannot even be prevented by extreme reasonable care.

However, it must be examined in each individual case,

- whether the coronavirus has actually prevented or delayed the performance of the service, and
- whether the debtor could not have prevented the occurrence of the event.

Due to the fact that the problem of the coronavirus has only recently come into existence, there is still no case law on this issue and it, therefore, remains to be seen how the courts will decide on the COVID 19 pandemic in the near future.

Therefore, the consequence of not reaching minimum sales or minimum quantities due to the Corona pandemic is, that – if corona is causal for this (but not in case of legal restrictions such as opening hours) – the minimum sales and quantities does not have to be complied with due to force majeure. No claims for damages can therefore arise from this.

It is important to note, that the buyer must demonstrate that he is not at fault. This follows from the general rule of art 1298 Civil Code. This provides that fault is presumed in the event of breach of contractual obligations. In this assessment, the effects of the pandemic on the economic situation but also on the industry concerned must be taken into account.

In addition, minimum sales are generally agreed for the calendar year in question, so that the effects of the pandemic are not known until the end of 2020 or the end of the following years. Alternative sales opportunities, especially via the Internet, also play a role.

The final point is that the customer has to demonstrate that, despite sufficient efforts, it was simply unable to achieve its sales targets. These requirements cannot be set too high in view of the global impact of the pandemic.

In view of covid-19, a court could consider the agreed sales targets to be ineffective. This may result from supplementary interpretation of the contract or gap filling, as the pandemic is a circumstance that the parties to the contract did not and could not consider. It will play a role here how long the industry in question is affected by the effects and how the economic situation will develop in the following months, especially since, as already mentioned, it depends in most of the cases on the calendar year.

If sales targets have not yet been agreed for subsequent years, the supplier will have to take the effects of the pandemic into account, especially since the agreed sales targets must always be realistic.

BELGIUM

In the absence of a specific contractual provision, a change of circumstances will not exempt a party from reaching minimum sales or quantities unless the conditions for a situation of force majeure (see above) are met. It thus is only on condition that the COVID 19 is accepted as a case of force majeure, that non-attainment of the targets could be considered excusable.

CANADA

As with the scenario of a customer not wanting to take delivery, the pandemic does not in principle alter a contractee's obligation to achieve a minimum sales quota. The specific wording of the sales quota obligation may provide for adjustment of the quota based on market conditions or other factors set out by the parties. Barring that, a contractee obligated to achieve a minimum quota could attempt to rely on a force majeure provision, if present in the contract. [Current to April 30, 2020.]

CHINA

The answer depends on the severity of the impact of COVID-19, related government policies on the performance of the specific contract and relevant provisions of contracts.

From the end of January to the beginning of March, most factories and shopping malls in China were ordered to close pursuant to the *Prevention and Treatment of Infectious Disease Law of People's Republic of China* (《中华人民共和国传染病防治法》). To date, a number of cities and industries still have not returned to their normal state. Manufacture and retail are both significantly affected.

If it is impossible for a party to reach minimum sales or minimum quantities as a result of the COVID-19 pandemic or related government policies, then the party can claim its statutory defense of force majeure, despite what the contract says.

If it was still possible for a party to reach the minimum sales or minimum quantities, but at an unfair cost or the purpose of the contract is longer achievable, then the party can claim its statutory defense of change of circumstance, despite what the contract says.

If it was still possible for a part to reach the minimum sales or minimum quantities at a higher but reasonable cost, then the party does not have a statutory defense. Whether the defaulting party may be exempted from its liability will depend on the contract provisions.

Further, the party that claims force majeure or change of circumstance has an obligation to notify the other party in a timely manner. The innocent party should take active measures to prevent further loss. If any party is at fault or contributed to further loss, then that party shall bear the corresponding responsibilities.

COLOMBIA

It will be necessary to demonstrate a causal nexus between the relevant event and the impact on the claimant business. For a customer, while demand for certain goods or services may have declined as a result of COVID-19, automatically will not release the performance or obligation to purchase minimum quantities of those goods or services under the contracts. Mere hardship is unlikely to be relevant (for either seller or buyer).

CROATIA

In case the purchaser (distributor etc.) does not reach the minimum sales or minimum quantities due to the Corona pandemic he would not be liable for damages towards the principal for failure to achieve the minimum even if he contractually guaranteed the achievement „in any case" , provided of course that he can prove that the failure to reach the target was actually due to the Corona pandemic. It is unlikely, in fact, that the parties to the agreement intended to refer with the term „in any case" also to the cases of FM.

It is doubtful however if failure to achieve the minimum targets would entitle the principal to terminate the agreement if the principal was contractually granted the right to terminate the agreement in case the targets have not been reached by the puchaser. More likely the termination would not be valid but this will depend from the circumstances of the specific case, including the applicability of the principle of good faith by the judge.

CZECH REPUBLIC

As mentioned above statutory law (Art. 2913 of the Civil Code) shall relieve the party in breach of the contract from liability to pay damages. The obligations arising out of the contract are not suspended in result of FM and the other party can use other remedies like termination, contractual damages (penalties) etc. The court would probably consider the good faith principle depending on circumstances in each particular case. It would be recommendable to initiate renegotiation of the contract duties due to material adverse change of circumstances (see above) well in advance. If no agreement is reached, any party may apply to the court to decide on change or cancellation of the contract.

DENMARK

If sales are rendered impossible because of the Corona pandemic, e.g. a government order prohibiting sales (or purchases), the obligations of the affected party are suspended due to force majeure. This will likely mean that the period for the agreed minimum sales (or purchases) are suspended and, thus, extended.

If the Corona virus does not make sales (or purchases) impossible, the consequences of breach will likely be those specified in the distribution or franchise agreement, as there is no general *hardship* regime under Danish law. However, it cannot be ruled out entirely that Danish courts will take the Corona virus into consideration if it is clear that non-attainment was fully attributable to the Corona virus.

EGYPT

Not reaching the minimum quota in such a global pandemic circumstances seems to be a reasonable consequence and does not justify the application of any contractual penalties.

We would even assume that the question would not be raised as it is likely possible that the crisis did not only affect the distribution but also and maybe on a larger scale the production of the goods. It wouldn't be a surprise if the supplier requests to reduce the minimum quota so he can supply fairly all his distributors.

Once again mitigation will be required in this regard.

FINLAND

Unless the question of how to manage the situation so evolved is adequately provided for in the minimum purchase or minimum sales provision, and the parties prove unable to agree on adjusting their contract satisfactorily, if a contract term is unfair or its application would lead to an unfair result, the term may be adjusted or set aside by a court or arbitral tribunal as the case may be. In determining what is unfair, regard shall be had to the entire contents of the contract, the positions of the parties, the circumstances prevailing at the time and after the conclusion of the contract, as well as

to other factors deemed relevant. If such a contract term is regarded as unfair to be enforced on the remaining portions of the contract after the adjustment of the term, the remains may also be adjusted or declared terminated. (Section 36 Contracts Act). We hold it likely, if the party committed to reach some specific targets fails because of the pandemic, the courts, having reviewed the evidence and argumentation, would approve the case of such party.

FRANCE

Due to the suspension of the obligation for the duration of the force majeure event, minimum sales or purchase threshold which cannot be met due to the event, shall not be enforceable.

Based on Article 1195 of French civil code, the party committed to the minimum threshold can request to renegotiate the objectives "*due to a change of circumstances which could not have been foreseen upon the conclusion of the agreement*", making the performance becoming excessively costly for such party, unless the agreement excluded the application of these provisions by a clause stipulating that the parties accept to bear the related risk.

GERMANY

It is not uncommon for producers to demand minimum order or minimum purchase quantities in return for system-specific production, particularly favorable purchasing conditions, price reductions or advertising cost subsidies. If these are not achieved due to low demand or temporary closures, framework supply contracts are subject to sanctions such as contractual penalties, expense allowances or the discontinuation of reimbursements, up to and including the termination of the supply contract.

As far as the non-achievement is due to the pandemic and the customer is not responsible for it, e.g. due to official closure of all retail operations, the customer might refer to force majeure in order to be released from his obligation of acceptance. However, he cannot simply transfer this argumentation to other distribution channels (e.g. online shop).

At the same time, the customer could demand an adjustment (reduction and/or temporary production pause) of the quantities if it invokes in particular hardship according to § 313 BGB. However, case law links very high hurdles to the assumption of hardship. It remains to be seen how courts will decide in the next few years on the COVID 19 pandemic.

If the customer has negotiated purchase contracts, it is to be assumed that corresponding adjustment and compensation regulations for such cases have already been contractually defined. Furthermore, at least the termination of the framework supply agreement by the supplier should currently violate good faith (§ 242 BGB).

ISRAEL

According to the interpretation of Section 18 of the Contracts Law - Remedies adopted by Israeli courts, it applies to a permanent "impossibility". Therefore, unless different approach is adopted, it is doubtful whether the courts would apply it to a provisional suspension of a contractual obligation, even if the circumstances of the COVID-19 pandemic qualify the statutory "Conditions for Frustration".

In an international sale of goods transaction Article 79 of the SICG shall apply and, assuming that the COVID-19 circumstances meet the conditions of Article 79(1), the court may release the buyer from the minimum quantity obligation "*for the period during which the impediment exists*" (Article 79(3)).

ITALY

Of course, in this case the force majeure situation will not be relevant as such, but as an element in the case-by-case evaluation that would be made by the competent Court on the general compliance of the distributor's contractual obligations.

In this framework, one should consider the recent trend of Italian Courts to assess and evaluate on a case-by-case basis the specific circumstances mentioned by the parties in termination disputes for non-attainment of minimum turnover in distributorship and agency contracts, even in the absence of exceptional circumstances such as that of COVID-19. Therefore, it is likely that Italian Court would evaluate and consider *a fortiori* such situation in assessing responsibilities in these exceptional circumstances.

JORDAN

If a party cannot fulfill its obligations due to FM or contingency this party shall be relieved from this obligation, or the court has the right to amend the contract to be possible to achieve and /or to mitigate damages. And in this case we must distinguish between if the contract obligations are impossible to achieve temporary due to the FM where the party in default has the right to suspend the contract for a certain period by invoking the FM clause in the contract, or by the law, or if the obligation is still possible to achieve yet it's exhausting to meet the minimum sales or quantities. In this case the defaulted party may file a claim to amend the contract by the court.

KUWAIT

If Force Majeure event is certain and unarguable, then as per Article 215 & 437 of Kuwaiti Civil Code then it shouldn't be any consequences or implications of not reaching minimum sales or minimum quantities due to the Corona pandemic. Whilst other cases can be much harder to argue if there are partial impediment on fulfilling the contractual obligations that will not prevent the distributor or the commercial agent from attaining its preset sales or purchase targets. It is critical that each case is considered independently of others, taking into account its own and current circumstances, facts, business and sector. It is important to say what today is correct with regards to impossibility to perform and meet the agreed terms can be changed by tomorrow based on government decisions to lift up the total lockdown or introducing new specific laws and regulations regulating the consequences of COVID 19 at all levels and aspects ,then parties cannot rely upon the Force Majeure's exemption when it makes the execution of the contract in relation to one or both parties possible and feasible.

MEXICO

In those agreements in which minimum quantities or sales goals are mandatory to a party(ies) the COVID-19 outbreak could justify if such quantities or goals are not met without liability. In Mexico, federal and local governments ordered the suspension of "non-essential" activities and further listed the activities that are allowed to continue; in this scenario a party to an agreement that is not able to reach the minimum amounts

or goals due the suspension of its activity should not be held liable, nor bear consequences for such a breach.

However, it could also be the case that changes in the market derived from the pandemic will affect companies and individuals once the suspension is lifted, or even of those activities that remain operational, in which case the breach of meeting the minimums of an agreement might cause a liability. Mexican Federal Civil Code does not grant the possibility to request the amendment of an agreement to re-balance the mutual benefits of the parties to an agreement and therefore the renegotiation on good faith basis of the agreements that might be affected in this scenario is highly advisable.

MOROCCO

There will be no legal consequences of not reaching minimum sales or minimum quantities due to the Corona pandemic as long as the conditions of the force majeure are met and the customer is able to prove that the restrictions put in place by the government such as the lockdown where such as to prevent the customer to sell to people since people were not allowed to be outside of their homes; in such situation the customer will have to refer to force majeure in order to be released from such a contractual obligation.

MOZAMBIQUE

Firstly, the consequences may be provided for in the clauses inserted in the executed agreement.

According the article 437 of the Civil Code, if the circumstances in which parties funded their decision to enter into an agreement have suffered any abnormal change, the affected party has the right to terminate the contract or to modify it according to equity criteria, since the requirement to comply with obligations assumed by it deeply affects the good faith principles and is not covered by the proper contractual risks.

Therefore, following this rule, a renegotiation of the agreement conditions may occur in order to accommodate the new circumstances and to re-establish the balance of the contractual obligations. If the mentioned renegotiation is not successful, the prejudiced party may terminate the contract, but it must prove that maintenance of the agreement deeply affects the good faith principle and that the new circumstance is not a proper contractual risk (such as the pandemic, which could not be foreseen by either party).

NEW ZEALAND

Covid-19 is an extraordinary event and is often described as *"unprecedented"*. Therefore, both parties must be fair and reasonable in relation to the consequences of not reaching minimum sales or minimum quantities.

NORWAY

The answer depends on the wording of the minimum turnover clause. It is not uncommon that such a clause allows for the distributor to prove that the non-attainment of the minimum turnover is due to reasons which he could not foresee and for which he is not responsible, see for instance article 5.7 of IDI's balanced distribution contract (long form).

Even if the minimum turnover clause does not allow the distributor the opportunity to prove that he is not responsible for the non-attainment (see for instance the supplier-

friendly IDI distribution contract), it is not unlikely that Force Majeure may be invoked or that the clause might be censored by the courts in accordance with Article 36 of the Norwegian Contracts Act.

Regardless of the contractual wording, it would seem quite unreasonable and uncalled for if the supplier decides to terminate the contract based on non-attainment due to the COVID-19 pandemic. A better approach would be to renegotiate the agreement.

PAKISTAN

We are of the opinion that the reasons for not reaching minimum sales or quantities should strictly be associated with the limitations caused by the pandemic such as the decrease in demand, lack of logistical support or staff to carry out the sale of goods or services.

In order to invoke the force majeure clause the non performing party must establish that the total or partial performance was rendered impossible due to the happening of a certain event. Consequences for not reaching minimum sales would only arise if the sales volume was low even before the spread of pandemic due to the fault of the party.

POLAND

If the non-achievement of minimum turnover/sales/quantities is due to the COVID-19 pandemic and the customer is not responsible for it, e.g. due to official closure of its operations (see: 2.2 below), the customer might refer to force majeure in order to be released from above mentioned obligation.

However, every case shall be evaluated on a case-by-case basis taking into account of the specific circumstances. The question is whether:

- the non-performance of the obligation is really due to circumstances for which neither party is responsible, and
- problems are of a temporary nature, and
- performance cannot be satisfied in whole or in part, and
- if the performance can be satisfied only in part, how much of the consideration for the performance should be satisfied by the other party.

Regardless of the reasons why contractor did not achieve the intended business objectives, it is not only important to assess the consequences - contractual or legal sanctions - that may be imposed on the contractor but also what will be the consequences for company of potential e.g. termination of cooperation with a given contractor. It is worth mentioning the concept of abuse of subjective rights, provided for in Article 5 of the Polish Civil Code – one cannot exercise one's right in a manner contradictory to its social and economic purpose or the principles of community life. Acting or refraining from acting by an entitled person is not deemed an exercise of that right and is not protected. An allegation of abuse of rights may also apply to businesses.

PORTUGAL

Portuguese law does not provide a specific framework for not reaching minimum sales or minimum quantities due to the pandemic.

This would have to be assessed on a case by case basis, depending on what the parties had agreed.

Notwithstanding the above, the legal framework described in our answer to question 1.1 above. For this purpose, it may be important to distinguish whether the failure was caused by (i) the suspension or reduction of the supply; (ii) the closure of the commercial establishment due to a Government lockdown or a strategic decision; or (iii) reduction of clientele.

ROMANIA

First of all, the causes for not reaching the minimum sales / quantities must be analysed on case by case basis. If reaching this minimum has become unrealistic or impossible to be reached because of the pandemic or its consequences, then this may be qualified as force majeure event, triggering all consequences deriving from it. If the minimum could not be reached even before the occurrence of the pandemic, or because of other factors, including the debtor's behaviour, then this most probably will not be qualified as force majeure.

If the non-compliance is due to the pandemic, then the figures should be adjusted.

RUSSIA

Minimum sales and minimum quantities can be essential for the parties in certain instances when they enter into the deal. Due to COVID-19 – that may also be regarded as "material change of circumstances" - the agreed minimum amounts can hardly be reached, or not reached at all. In this case, parties may rely on the provisions of Article 451 of the Russian Civil Code.

Unlike the situations above, in case of a "material change of circumstances", parties may still have an opportunity to perform their obligations under a contract. According to Article 451(1) of the Russian Civil Code, a material change of circumstances upon which the parties have relied when executing the contract is a ground for amending or terminating the relevant contract. A change of circumstances is regarded as material when the parties' circumstances have changed in such a way that the parties would not have entered into the contract at all, or would have entered into it on significantly different terms, had they been able to reasonably foresee the change at issue.

Unless otherwise provided by the contract and does not follow from its essence, such circumstances that the parties could not have foreseen when concluding contracts may serve as grounds for amending and terminating the contracts on the basis of Article 451 of the Russian Civil Code, if the contract had not been concluded under these circumstances or would have been concluded under significantly different conditions. Moreover, under Article 451 (4) of the Russian Civil Code, a change in the contract due to a material change of circumstances at the request of one of the parties is possible only in exceptional cases when the termination of the contract is contrary to public interests or will entail damages to the parties significantly exceeding the costs required to perform the contract on the conditions as amended by the court. When satisfying a claim to amend the terms of the contract, courts must indicate what public interests contradict the termination of the contract or justify the significant damages to the parties from the termination of the contract[8].

[8] See Question and Comment 8 of the "Review of selected issues of judicial practice related to the application of legislation and measures to counteract the spread of the new coronavirus infection (COVID-19) No. 1 in the Russian Federation" (Approved by the Presidium of the Supreme Court of the Russian Federation on 21 April 2020).

Therefore, Russian law and judicial practice makes it generally possible that measures taken in connection with the spread of COVID-19 could make the fulfilment of contractual obligations so burdensome for the parties that they will be recognized by the court as "material change of circumstances". This means that parties will be able, for example, to rely on these grounds for the purpose of modifying the relevant contract in accordance with Article 451 of the Russian Civil Code.

SAUDI ARABIA

In view of the above principles, an agent, distributor or franchisee will almost certainly not be held liable for its failure to reach minimum sales or minimum quantities due to the Corona pandemic, and the principal, supplier or franchisor will probably not be able to rely on the relevant contractual remedies (e.g., termination of exclusivity, restriction of territory, termination of agreement) in that case.

SLOVENIA

Generally, not reaching agreed minimum sales/quantities would represent a breach of contract that can be subject to payment of contractual penalties or a termination of the contract. This of course depends on the provisions of the particular contract, therefore it is first necessary to determine if the contract contains any specificities in line with the principle of free regulation of contractual relations.

However, it may be that the COVID-19 epidemic and its consequences in fact prevented a party to fulfil its contractual obligations, in which case the provisions of the Obligations Code regulating force majeure (Article 116) could be relied on, namely if the performance of obligations becomes impossible for one party because of a development for which neither party was responsible then the obligation shall cease.

In such situations it may also be possible to request rescission or preferably amendment of the contract owing to change of circumstances in line with Article 112 of the Obligations Code, under the conditions as described above (answer under Point 1.3).

SPAIN

We believe that in the most cases the parties will be able to adjust the minimum sales volume to the circumstances of the market in each sector, and only very complex cases or cases when one of the parties is abusing its right (i.e. terminating the agreement or relinquishing its obligations to achieve certain sales volume) will reach the Courts.

In our opinion, the force majeure principle would be probably applied even in the absence of a specific clause, but the agent or distributor will have to prove the direct effect in his business sector, something that could be obvious in some cases but not in others.

In general terms, if the performance has been correct until that moment and then minimum sales become unrealistic or impossible due to the pandemic situation and its consequences, those minimum figures would be adapted accordingly.

It would be less probable to accept force majeure in case the minimum sales were already not reached before the pandemic or in case there were other circumstances or participation of the distributor in that non-performance.

SWEDEN

Failure to achieve minimum sales/volume target clauses in a contract would be assessed based on an interpretation of the contract. A failure does not automatically constitute a breach leading to liability or a right to immediate termination. It is possible that an interpretation of the contract would lead to that the Covid-19 is a general excuse for not achieving goals; however the opposite may be true as well, as is whether the Covid-19 event would be construed as a matter of contractual force majeure. Basically, it comes down to an interpretation of the contract.

Under law, § 36 of the Contracts Act may be invoked to mitigate or even cancel the application of a minimum sales/volume target clause.

SWITZERLAND

As a general principle under Swiss law, contracts must be performed as agreed (*pacta sunt servanda*), regardless of whether the contractual performance has become useless or burdensome for one of the parties. Provided there is no contractual force majeure or hardship clause dealing with such circumstances and the consequences, a distributor must as a rule live up to his minimum turnover obligations. If he fails or refuses to do so, the supplier may insist on deliveries being taken or claim damages, however most probably the supplier would not be entitled to early termination given the circumstances.

Provided the requirements for invoking the so-called principle of "*clausula rebus sic stantibus*" are met (see 1.3 above), the distributor may resort to this principle to be freed froa minimum turnover obligations. The *clausula* principle allows the equitable modification or even termination of an agreement in very exceptional circumstances, namely if an unforeseeable change of circumstances led to a serious disproportion between the parties' contractual obligations and the counterparty's insistence on the agreed upon performance would amount to bad faith. Based on this principle, a distributor might be entitled to request an amendment of the minimum turnover/sales provisions.

THE NETHERLANDS

Assuming that the minimum sales/volumes are contractual obligations rather than guarantees, the non-attainment thereof due to the Covid-19 pandemic is unlikely to qualify as a justified reason for early termination even if the contract contains a clause to that effect. Such an early termination could either be qualified as a misuse of a contractual right (article 3:13 Dutch Civil Code) or as being unacceptable according to the criteria of reasonableness and fairness given the circumstances.

If it can indeed be established that the buyer was prevented from attaining the minimum sales/volumes obligations due to a fall out of demand due to the pandemic, renegotiation of the contract seems to be the most obvious and appropriate way forward (either on a voluntary basis or by one of the parties applying to the Courts for a modification of the contract due to unforeseen circumstances (see above)).

TURKEY

Although in principle objective impossibility/force majeure does not apply to the buyer's individual purchase and payment obligations, resorting to contractual remedies for non-attainment of targets maybe considered as abuse of right and violation of the good faith

principle under Article 2 of the Turkish Civil Code. We are of the view that especially the exercise of the right to termination, if available under the contract, shall be unjust.

Probably the best way for the parties would be to re-negotiate the contract and determine new targets or ask the court to adapt the contract based on hardship provisions.

We should also note that, if the targets were not being attained even before the pandemic, this should also be taken into consideration and the distributor's involvement in such non-attainment should be assessed. In any case, the court will make a case-by-case evaluation.

UK

If the Corona pandemic is not covered by a force majeure clause and the concept referred to in 1.3 above of frustration does not apply, minimum performance obligations will continue to apply. Having said that, if a contracting party would be able to demonstrate to a court that the reason for its failure to achieve the minimum performance was attributable to Covid-19, it is unlikely that the other contracting party will have the sympathy of the court!

With regard to other types of agreements, such as distribution agreements and agency agreements, on the face of it minimum purchase obligations will again continue to apply and be binding on the parties. For a party to find relief from such obligations, it will need to establish force majeure grounds under the contract or possibly the common law ground of frustration of contract.

URUGUAY

In principle, except if the case constitutes a force majeure event, the party that assumed the obligation of reaching minimum sales or minimum quantities, cannot breach its obligation, and if they do, they shall respond. The answer will essentially depend on the specific circumstances and reasons.

As far as the non-achievement is due to the pandemic and if it was caused by a force majeure event, it frees the debtor from any liability according to Uruguayan law, as stated above. This shall be interpreted according to the stipulations of the specific contract, and if it did not regulate force majeure events, according to the law. For example, if the party have been fulfilling its obligation of reaching minimum sales until a lockdown was decreed by the Government, and as a consequence sale fell drastically, this could be considered as an impossibility to fulfill with the obligation.

If the non-achievement was not caused by a force majeure event, the general principles of the contract breach shall apply.

According to Uruguayan law, if the creditor claims for the damages caused by the contract breach, the contract shall be terminated. Whereas, if the creditor claims for the fulfillment of the contract, no other damages than the ones caused by the default shall be claimed.

We foresee that once the Courts are reopened a large amount of lawsuits will be filed based on breach of contracts occurred in this period of time, and possibly the most used defense shall be the force majeure caused by the pandemic.

We will need to wait some time and see how this situation evolves in order to have a clearer view of a potential different future interpretation and application of the force majeure concept in Uruguay Courts. As of today, the application and interpretation is the one previously analyzed in Q 1.1., but as commented above, this pandemic may well be a game changer.

2. FRANCHISING CONTRACTS.

2.1 Do (master)franchisees have to pay royalties during the pandemic? What would be the impact on minimum royalties or other fees (e.g. IT, marketing fees) possibly provided for in the franchise agreement?

ARGENTINA

Master franchisees that operates in an excluded business such as food production factory are bound to pay royalties according to their income. If sales from franchisees is scarce, the amount of the royalty will be reduced. If the income does not reach the level to cancel the minimum royalty he will use the pandemia to obtain a deferral of such shortages to be payable upon the finalization or control of the pandemia in instalments or simply request master franchisor to waive them until the pandemia is controlled or stabilized. Since courts are in recess some sort of a settlement is conceivable.

AUSTRIA

Austrian law provides no specific legal provisions for franchise agreements and therefore the contractual agreements and the general civil law provisions apply. Due to the Covid-19-crisis, no specific legal provisions for franchise agreements have been enacted so far. Thus, unless otherwise provided for in the franchise agreement, franchise fees and royalties are generally still to be paid. In many franchise agreements, the amount of the ongoing franchise fee is linked to the turnover and would be reduced in case of a loss of turnover. As far as the minimum fee is concerned, it is likely that this will still have to be paid. However, also in this case, the specific contractual agreement and the specific circumstances would have to be examined.

In Austrian law there is the legal figure of the disruption of the basis of business. The disruption of the business basis makes it possible to adjust or contest the contract if it would be unacceptable to adhere to the contract unchanged. Jurisprudence in Austria, however, is reluctant about the assumption of such a disruption of the basis of the business. It is therefore unclear whether the Austrian courts will apply the principles of disruption of the basis of business in the event of a pandemic.

Possible financial support for franchisees: Financial support for franchisees could be provided by the state-financed Corona-aid-fund, which grants subsidies to cover fixed costs for companies in the Corona crisis. In principle, companies whose location and business activities are in Austria and whose fixed costs have been incurred operationally in Austria are eligible to subsidies based on the state-financed Corona-aid-fund. A further condition is that the company must have suffered a loss of turnover of at least 40% during the corona crisis.

The fixed cost subsidy is staggered, and the highest compensation is 75% for a loss of turnover of 80-100%. Fixed costs are for example rents for business premises, payments for electricity / gas / telecommunications, insurance premiums or even licence fees.

Whether licence fees also include franchisee fees is not yet entirely clear and will hopefully soon be clarified in a regulation containing guidelines on fixed cost subsidies.

BELGIUM

1) The contractual provisions

The first elements that should be looked at are the contractual provisions.

A contract might contain a hardship clause that would allow the parties to temporarily modify the terms of their agreement in order to adapt their obligations to the economic consequences triggered by the pandemic.

That kind of clause applies when the economics of the contract is disrupted by an event that could not have been foreseen by the parties at the time of the conclusion of the contract and that cannot be attributed to one of the parties' responsibility. The pandemic situation qualifies as such event.

The hardship clause can either provide for the renegotiation of the contract or the automatic revision of its terms.

Therefore, franchisees could rely on such clause to obtain the reduction or the suspension of the royalties and/or other fees due under the contract to bring them in line with their deteriorated economic situation.

It should be highlighted that royalties calculated on turnover would automatically be reduced following the business lockdown or the franchisees' restrained activity.

2) Force majeure

The pandemic in itself and the governmental measures that have been taken to overcome it, such as the closing of commercial activities, can individually be considered as force majeure.

Nonetheless, franchisees would not be able to directly rely on force majeure to suspend their payment obligations.

Indeed, in accordance with the principled position in Belgium, the performance of purely monetary obligations is not prevented by force majeure events. This position is an application of the adage « *genera non pereunt* »; money is a generic good that cannot perish upon the occurrence of a force majeure event. Therefore, a debtor owing sums of money cannot allege that force majeure prevents him from paying the due amount.

However, franchisees might be able to rely on force majeure to suspend one of their payment obligations if it constitutes the correlative obligation of a franchisor's obligation that cannot be performed because of force majeure.

For example, a franchisor might be unable to provide marketing assistance to the franchisee during the time of the governmental closing of the franchisee's activity (such would be the case for instance of on-site visits by marketing people within the franchisor's organization, contractually foreseen but cancelled because of travel restrictions, or of cancelled training sessions for franchisees). Consequently, the franchisee could also suspend the payment of the related marketing and other fees over the duration of the closing measures. Considering this reasoning, franchisees would not be allowed to suspend the payment of the royalties that are due in exchange of the provision by the franchisor of its know-how, as the franchisee continues to benefit of

the know-how developed by the franchisor throughout the duration of the contract, which is not prevented by the governmental measures or the pandemic.

The contract could explicitly prevent franchisees from suspending their obligations when the franchisor cannot comply with his because of force majeure. Clauses to that effect are in principle valid, subject however to a possible abuse of right.

3) Abuse of rights

Under Belgian law, contracts must be performed in good faith. One of the application of this principle is that a party cannot abuse of a right. Where a franchise contract provided that all payments remain due regardless of a force majeure situation or simply do not regulate payment obligations under a force majeure situation, franchisees could attempt to claim an abuse of rights by the franchisor if the latter were to insist on these payments to be made in spite of the closure of the franchisee's unit.

Indeed, the franchisor could be considered as abusing from his rights should he require the full payments due by the franchisee whilst the economic balance of the contract has significantly changed to the franchisee's detriment. Belgian case law already held (in situations prior than the Covid-19 pandemic) that such would be the case when the performance of the monetary obligation would cause the ruin of the debtor in light of his absence of all revenues for reasons beyond its control.

The existence of an abuse of rights is assessed on a case by case basis by the courts.

CANADA

In the absence of contractual provisions that would relieve it, a franchisee's contractual obligation to pay royalty fees would not be impacted by the occurrence of the pandemic. To date (May 5, 2020), Canada has not enacted any legislation that would excuse the master franchisee's performance under the agreement. This would also apply to any minimum royalty or other fees under a franchise agreement. In deciding whether to enforce the agreement, franchisors should consider the statutory and common-law duty of good faith and fair dealing that apply under Canadian law, the current business and economic environment, and the particular wording of the provisions of the franchise agreement, including, as discussed above, any force majeure provision. [Current to April 30, 2020.]

CHINA

Generally speaking, royalties are charged based on the volume of gross sales. During the pandemic, many franchisees were required by the governments to shut down their business, and therefore it was impossible for them to generate any business income. It is a highly fact-specific analysis when the question goes to the minimum royalties and other fees provided in the franchise agreement. We should take into consideration a variety of factors, including but not limited to different factual information, industries, regions, contract provisions, etc.

As discussed above, in the *Circular on Issuing the Guiding Opinions (I) on Several Issues concerning the Proper Trial of Civil Cases Related to the COVID-19 Epidemic According to the Law* (《关于依法妥善审理涉新冠肺炎疫情民事案件若干问题的指导意见（一）》, the "**Guiding Opinions**"), the Supreme People's Court of China provided guidance on issues concerning contract disputes, including the application of force majeure. In

addition, many local courts have issued similar guiding opinions since the outbreak of the pandemic. Unless the parties agree otherwise, for the disputes that are directly affected by the pandemic situation or the prevention and control measures, the court should comprehensively consider the impact of the pandemic on different regions, industries, and specific case scenarios, and evaluate the degree of causality between the pandemic and the party's failure to perform the contract. And as mentioned above, in the Guiding Opinions, the Supreme People's Court of China differentiated contract performances under the COVID-19 pandemic into three categories. Parties affected by the pandemic and relevant government policies and measures should evaluate in which category their case will fall.

It is also advisable for (master) franchisees to actively communicate and negotiate with their franchisors on alternative solutions or relief arrangements, such as deferral of payments and fee deductions.

A recent survey for medium and small-size companies in China conducted by Enterprise Survey for Innovation and Entrepreneurship shows that, when a contract dispute arises, around 43.9% of the companies are considering negotiations, and around 13.5% of the companies hope that the government will coordinate and provide exemption agreements for parties affected. Only around 7% of companies choose to solve the disputes by court litigation, arbitration or paying penalties.[9] We think the above survey results are in line with the principles of the Guiding Opinions, that judges shall balance the interests of all parties, the interest of economic and social development, along with other general principles.

COLOMBIA

In Colombia there are no specific rules governing commercial franchising agreements. Under this understanding, the franchise is known as an atypical contract, because it reflects a legal business that is not regulated by any code and its clauses are, in principle, negotiated freely by the parties.

Accordingly, as the franchise is mainly regulated under the framework of a commercial contract, the applicable law is the general system of contracts and obligations of the Civil and Commercial Codes, which deal with the principles governing acts and contracts, and the obligations of civil law (effects, interpretation, mode extinction, cancellation or termination).

For this reason, the Parties must take a close look to their Franchise Agreement, which likely provides key information regarding who bear the risk on the event of FM.

However, if the risk of a pandemic is not normally foreseen in the contract and if the applicable law is Colombian, the Franchisee can apply Article 868 of the Colombian Commercial Code that indicates: "When extraordinary, unforeseen or unforeseeable circumstances, subsequent to the conclusion of a successive, periodic or deferred execution contract, alter or aggravate the provision of future compliance by one of the parties, to such an ex-tent that it is excessively onerous, it may request its review. (…) The judge will proceed to examine the circumstances that have altered the basis of the contract and will order, if possible, the readjustments that equity indicates; otherwise, the judge will order the termination of the contract".

[9] See https://mp.weixin.qq.com/s/hHU-p-KNMPqE7cjIL9tJ4Q, and https://www.thepaper.cn/newsDetail_forward_6042453

Therefore, regarding the royalty payments and marketing fees, is advisable for the Parties to directly renegotiate new conditions in the agreement; otherwise, the Franchisee may request the revision of the agreement before a judge using the argument that, regardless of its level of activity, the Franchisee is obliged to pay the franchisor a certain fixed amount and considering that the activity does not develop, or does so at very low levels, it must be understood that exceptional circumstances, of FM, exempt the franchisee from the aforementioned payment.

Also, when the activity is interrupted as a consequence of crisis beyond the control of the franchisee, said services are non-existent and therefore also their remuneration. When this is the case, the proportional calculation of the fee based on the number of days of activity / inactivity would be the most logical procedure.

CROATIA

Franchising contracts are not specifically regulated in Croatian law (same as distributorship contracts) therefore general rules on obligations by the Croatian Obligations Act would apply in addition to the contract provisions.

If the royalties are linked to the turnover the reduction of business under lockdown will certainly impact the amount of those royalties.

If the royalties are calculated in the fixed amount/minimum royalties, then eventually Article 369 of the Croatian Obligation Act could be invoked (provided that all conditions are met in the specific case) requesting amendments to the contract with respect to the payment obligation on those fix/minimum royalties.

As mentioned Article 369 of the Croatian Obligation Act expressly foresees that

> "Should, after entering into a contract, extraordinary circumstances arise, that were impossible to foresee at the time of entering into a contract, making it excessively onerous for one party to perform its obligation or if under such circumstances a party would suffer an excessive loss as a result of the performance, it may request amendments to the contract or even termination of the contract."

In case no amendments are negotiated with respect to the obligation to pay the fix/minimum royalties, those royalties would be due in their originally agreed fix/minimum amount save only that the franchisee would not be liable for damages for delayed payment if he could prove that his payment obligation was affected by the Coronavirus Pandemic (i.e. no cash funds because of activity lockdown).

CZECH REPUBLIC

The pandemic in principle does not have impact on duty to pay royalties but of course it depends on the wording and conditions of the franchising agreement and circumstances of the case. The respective provisions on suspension (rejections) of performance (including payment) in case that the other party has not performed or it is clear that it will not perform its duties, can apply. The payment of minimum royalties might probably be negotiated using the argument of material adverse change in circumstances, of course if all conditions are met – see point 1.3 and 1.4.

DENMARK

The duty to pay royalty or other fees under a franchise agreement depends on the franchisee's obligation under the franchise agreement. The general starting point under

Danish law is that performance of the obligation must have been impossible. An obligation to pay royalty or other fees merely concerns a payment obligation and it is the general opinion that parties that are to make payment cannot invoke force majeure if their business is affected by force majeure events as long as payment is still possible, e.g. the banks' payment systems are still working etc. However, the state of the law is very uncertain, and no case law is available that may be directly compared to the present situation. Also, the starting point may be challenged by specific wording set out in the force majeure clause of said franchise agreement if the agreement entitles both the franchisor and the franchisee to claim force majeure. Finally, franchisee may try to argue that the royalty amount is subject to negotiation between the parties if the franchisee can show that the preconditions for entering into the franchise agreement have changed materially.

EGYPT

Although it may be hard to argue that COVID-19 is anything but an unforeseeable event beyond the control of a franchisor and franchisee, whether a franchisee can successfully claim a force majeure to justify the non payment of royalties largely depends on the language and governing law of the franchise agreement.

Force majeure clauses tend to be construed narrowly and will generally only excuse a party's non-performance if the event that caused the party's non-performance is specifically identified in the agreement and there is a direct causal link between the event and non-performance. In particular, many franchise agreements exclude the payment obligation from the force majeure consequences, by specifying that a force majeure event will not excuse the obligation to pay the minimum royalties or those on sales that are realized.

In fact, the answer to this question should be assessed on a case by case basis.

First of all, not all franchises are effected in the same manner from this crisis. If the franchisee or master-franchisee in question is among the few fortunate essential industries such as cleaning, disinfecting, internet provider or online trading, such franchisee may be experiencing a flow in demand.

In addition, in order for a franchisee to be relieved of its financial obligations in the franchise agreement, i.e., paying royalties, technology fees, and advertising obligations, it must be demonstrated that the force majeure event itself was the sole reason the franchisee cannot perform. For example, if a gym center has a roof leakage and is forced to shut down for repairs for a certain period of time, even if the COVID-19 outbreak occurred during this period, the pandemic was not the sole reason for the shutdown. However, if a food franchise has been forced to close by a state or city executive order, then it's possible that the franchisee may not be required to pay its royalties and other obligations during the closure.

Furthermore, the franchisee or master franchisee should have tried to mitigate the effects of the crisis. For example, a fitness center franchisee cannot just stop business because there is a pandemic unless of course if it has been mandated to close by a governmental authority. Absent an executive order to close, the franchisee should try to lessen the damage to the operating business. This could be done by sending out communications to clients of enhanced cleaning measures, reducing the number of persons allowed in one fitness class, and staggering employee shifts and/or reducing

hours. Even if the fitness center has been forced to close due to an executive order, the franchisee should still try to mitigate the damage in other ways; offering gift cards for future purchases, offer online classes, etc.

On the other side, rather than thinking of paying the royalties, at this moment, franchisees are concerned primarily about not having enough liquidity to pay employees, rent, and many other difficulties resulting from lost or slowed business.

Now is the time that the role of the franchisor is mostly needed. Each franchisor should be aware that a shake-out is happening and that its system will be judged by the actions that the franchisor takes now.

It is in the franchisors best interests to help their franchisees through these troubling times and ensure that they have the ability to continue operating or reopen. Each franchisor should reassure its franchisees that this issue will pass and that franchisees should focus on the long-term plan.

Franchisors should, on the one hand, help franchisees understand how to shoulder the economic burden of temporarily shutting down, and on the other hand, help their franchisees to find alternative means of operation. For example, those franchisors in industries like fitness and coaching services, should investigate options for virtual services. For other industries like foodservice, now is the time to work with franchisees to offer delivery or take out services. These options, if not already in place, give both the franchisor and franchisees alternative methods to operate and possibly greater reach to market segments that may not have been available otherwise.

This being said, doesn't mean that franchisors should simply waive their financial rights. However, before taking action against a defaulting franchisee, the franchisor is encouraged to consider long-term implications to the system, as well as any immediate consequences to the relationship with the franchisee. Where the relationship with the franchisee is otherwise positive and the franchisor expects the franchise agreement to run the full franchise term, the franchisor may want to be proactive and transparent by negotiating new or modified terms with the affected franchisee.

A franchisor looking to protect its ability to collect unpaid royalties and other amounts is encouraged to properly and prudently document the franchisee's non-compliance. A formal notice of default is not necessary and, under the circumstances, probably is not advisable. A carefully drafted communication reminding the franchisee of the franchisor's willingness to work with the franchisee during these challenging times and advising them that the issue of unpaid fees will be addressed again in a certain number of weeks or months may suffice to parry any claim that the franchisor waived its ability to pursue unpaid fees by failing to act sooner.

FINLAND

Unless there is a contractual clause to the effect that royalties need not be paid during the pandemic or due to certain defined consequences of such pandemic, merely because of that there is a WHO declared Corona pandemic on earth, neither master franchisees nor franchisees can get rid of their contractual obligations save for by composition with the franchisor, or similarly as discussed above under question 1.4 by means of court order to the effect that the royalties be lowered or the franchisee released of his duty for the length of the impediment invoked. The above applies

likewise to any minimum royalties and other fees payable pursuant to the franchise agreement.

FRANCE

Yes royalties or minimum royalties shall be paid, unless the franchisee requests the renegotiation of the related obligation pursuant to hardship (Article 1195 of Civil Code) (see point 1.4).

GERMANY

The German government passed the Law to Mitigate the Consequences of the COVID-19 Pandemic, which has consequences for franchisors, franchisees and franchise agreements: Micro-enterprises (up to 9 employees and up to EUR 2 million annual turnover or 2 million balance sheet total) including both young franchisors and a great number of franchisees are granted the right to refuse payments until 30.6.2020 in connection with a *continuing* obligation that was concluded before 8.3.2020 if

- the micro-enterprise is unable to pay due to circumstances arising from the pandemic; or
- the micro-enterprise would not be able to provide the payment without jeopardizing the economic basis of its business.

The right to refuse performance relates to all material *continuing* obligations that are essential for the appropriate continuation of the business of acquisition. Essential for micro-enterprises are such continuing obligations which are "necessary to cover with benefits for the appropriate continuation of the business".

This ensures that micro-entrepreneurs (including franchisors and franchisees) are not cut off from basic services (electricity, gas, water, telecommunications, etc.) because they cannot meet their payment obligations. The franchise contract is also considered a continuing obligation. In addition, it can be regarded as necessary for the franchisee's business operations. The law does not refer to franchising so that this is open to interpretation. In this view, however, franchisees, if they are micro-enterprises, would also have the right to refuse to pay the fees due. The right to refuse payment of franchise fees does not apply if the exercise is unreasonable for the franchisor because it would endanger the economic basis of his business or if the non-performance would endanger the franchisor’s or his dependants' reasonable livelihood.

However, it is doubtful whether the legislator actually intended to put small and medium-sized franchisees in particular on the same level as companies providing general and basic services, which are also partly publicly owned. Accordingly, claims for remuneration, in particular current franchise fees from a franchise contract are not directly included and are not subject to any special right to refuse performance regulated by law. This also corresponds to general principles of civil law, according to which the franchisor basically provides his brands and his business concept, whereas the franchisee has the right and the obligation to implement the business concept. According to this understanding, the risk of the implementation possibility lies solely with the franchisee.

There are two more legal principles which must be considered in the light of the current situation, such as the question of the impossibility under § 275 BGB and that of

amending existing contracts within § 313 BGB from the point of view of the disruption or loss of the basis of the transaction (hardship).

It will not be possible to assume a case of impossibility. Neither the franchisor is unable to provide the franchise concept nor the franchisee is unable to pay the franchise fee. Regardless of the available liquidity, the principle "money is to be had" applies under German law. In many franchise systems, the ongoing fees represent the consideration for the ongoing use of the system. If the use of the system is objectively not possible, only these sales-related fees are at the forefront of any loss of performance. So if no turnover is achieved, the franchisee does not owe any ongoing fees.

However, the system-related ongoing franchise fees are often subject to a minimum fee. Such a minimum fee will probably still be owed, as it does not refer to a turnover to be achieved, but is designed as a flat fee. This fee represents, so to speak, the economic minimum that is owed by each franchisee to maintain the system even in the case of sales that cannot be achieved or cannot be achieved sufficiently. Franchise fees as minimum fees are therefore still subject to a payment obligation. Fixed fees such as service, IT and marketing fees also continue to be payable, unless they are revenue-based. This is because these will usually, as in the IT area, include license fees payable to third party service providers. Something different may apply if the services associated with the fees are not currently provided.

Whether the principles for disrupting the basis of business (hardship) are applicable in a pandemic case is unclear in German case law. The provision of § 313 BGB provides that in the event of a serious change in the circumstances on which the contract is based, the contract may be amended. It will depend on who ultimately has to bear the risk of business developments not originally planned. As a rule, it is every entrepreneur himself who has to bear the risk of bad sales developments and a loss of sales. This applies equally to franchisees and franchisors.

ISRAEL

When the royalties are calculated based on actual receivables, the decrease in the receivables will result in reduced royalties.

Concerning minimum royalties – according to the interpretation of Section 18 of the Contracts Law - Remedies adopted by Israeli courts, it applies to a permanent "impossibility". Therefore, unless different approach is adopted, it is questionable whether the courts would apply it to a provisional impediment and exempt the franchisee from paying minimum royalties, even if the circumstances of the COVID-19 qualify as "Conditions for Frustration" under Section 18.

ITALY

The answer will of course depend on the relevant contractual provisions as well as on the specific circumstances of the case (e.g. if the franchise activity has been suspended by lockdown restrictions, or not).

In principle, should the franchisee's activity be suspended by a Government's lockdown, the franchisor's right to royalties may not even accrue; but the question may be relevant for other fees (e.g. marketing fees) or minimum royalties.

If the franchisor's performance is also (totally or partially) suspended, the lack of payment of possible (minimum) royalties or other fees may be justified, i.e. being a

consequence of the counter performance's suspension. This may be the case more frequently in direct franchise agreements.

In case of master franchising, the lack of payment of the royalties/other fees by the master franchisee to the franchisor may be the consequence of the circumstance that the sub-franchisees have suspended their payments to the master; in that case, although it is clear that the franchisor/master and master/franchisees are separate and distinct contractual relationships, should the master be able to prove in Court that the sub-franchisees didn't pay due to force majeure, Italian Courts may evaluate such circumstance in the framework of the link between the relevant contracts ("collegamento negoziale") or as an (implied) condition, also considering that often royalties to be paid by the master to the franchisor would be a percentage of the royalties the master receives by his sub-franchisees.

A possible claim based on the rules on hardship (Article 1467 c.c.) would be less grounded in our view and, especially, such claim would lead to the termination of the contract (which may not be the actual purpose of the (master)franchisee) and, only subject to request from the franchisor, a possible renegotiation of the contractual terms would be allowed, according to the above mentioned rule.

Certainly, an immediate attempt to find an amicable temporary solution would be the best option for both parties in this case, also considering their respective interest to avoid as far as possible a contract termination.

JORDAN

The pandemic and the governmental restriction will affect the sales which will reflect on the royalties' payment if the royalties are based on sales amount, however the parties may negotiate an adjustment of the contract during the pandemic in addition to that the parties will have the right to invoke the FM clause in the contract or the contingency if the Jordanian law is applicable .if the royalties are fixed and not based on sales the party in default may suspend the contract by invoking the FM clause in the contract depending on the specific provisions in each contract.

KUWAIT

It is noteworthy to mention that n contracts binding on both parties, if Force Majeure supervenes which makes the performance of the contract impossible, the corresponding obligation shall cease, and the contract shall be automatically cancelled.

On the other hand, in the case of partial impossibility, that part of the contract which is impossible shall be extinguished, and the same shall apply to temporary impossibility in continuing contracts, and in those two cases it shall be permissible for the obligor to cancel the contract provided that the obligee is so aware (in this context Articles 215 & 437). In light of the forgoing and taking into consideration the provisions of the franchise agreement, we assume that franchisees should not pay royalties nor other fees during the COVID 19 pandemic as long as the franchised services or concepts are closed due to official total lockdown, except in the event the franchisee can operate and render the services online ,thus it has no execuse to be exemepted from paying royalties or other fees. However, if the franchisee suffers significant decrease in its turnover and profit, a rely on Article 198 of the Civil Code can efficiently serve his intrests as a relief, which governing hardship or unanticipated circumstances, that it refers to a situation where a

contract becomes unbalanced due to a change in circumstances not predictable at the time of its execution.

MEXICO

This would depend on the wording used in the Agreement, and if royalties or fees are calculated on a percentage of the monthly sales or if the agreement includes fixed fees. As previously mentioned, no one is obligated to comply its obligations under Acts of God or force majeure except when he has given cause or contributed to it, when it has expressly accepted that responsibility or when the law imposes it on.

While some franchises may be affected by lockdown and are not able to provide services, others are booming. Therefore, it will be necessary to review the provisions of the agreement (definition of force majeure and implications), the franchise activity (i.e. franchise providing cleaning services) in order to determine their applicability in each case.

MOROCCO

Franchisees or master franchisee will have to pay royalties according to the provisions of their contract during the pandemic provided they are able to sell their goods and/or services. In the event of suspension of their activities caused by lockdown restrictions, force majeure could be raised and justified by the franchisee or master franchisee since they will not be in a position to sell anything to anyone and as a result they should not be obliged to any payment: royalties, marketing fees or minimum royalties.

However, force majeure could not be raised for franchisees or master franchisees contracts entered into after January 30, 2020 and therefore the parties could only rely on hardship clause if provided in order to adjust their respective obligations in light with the obligation to enforce the contract in good faith, pursuant to the Moroccan Civil Code.

MOZAMBIQUE

There is no specific regulation regarding Franchise Contracts in Mozambique, so it is important to consider, firstly, what is provided for in the executed contract, as well as in the Civil Code general provisions.

Assuming that the contract does not contain any provision concerning this matter, the current Pandemic represents a new circumstance, which didn´t exist at the date of contract execution and was totally unexpected. In other words, the values of royalties and other fees were agreed assuming that there was no COVID-19.

Therefore, the affected party has the right to terminate the contract or modify its contents (through a negotiation with the other party), invoking that payment of the mentioned royalties and fees affects good faith and that the existence of the referred virus would not be predictable, thus not being considered a proper risk of the franchise agreement.

NEW ZEALAND

On the face of it the franchising contract will require the payment of royalties. However, the contract should contain an appropriate force majeure clause in which case royalties would not be payable because there have been no sales and resultant income from which to pay such royalties. If a franchisor took action to enforce the non-payment of

royalties then there should be legal remedies available to the franchisee to withstand such an attack.

NORWAY

The answer will of course depend on the relevant contractual provisions as well as on the specific circumstances of the case. However, it is unlikely that minimum royalties will be affected regardless of whether the franchisee's activity is suspended by a Government's lockdown or a strategic decision.

Having said that, if the franchisor's performance is also (totally or partially) suspended, the franchisee might be in a position to resist payment as the franchisor will be unable to perform his contractual obligations. Again, this will depend on the agreement, e.g if the franchise agreement does not allow for withholding of payments from the franchisee.

PAKISTAN

In our opinion it may vary from case to case and will also depend on the franchise agreement. However, if during the lockdown the franchisee is not able to pay the minimum royalty to the franchisor then the best possible way out is to find a mutually beneficial response to counter the significant challenges created by the pandemic such as to defer the royalty payment until after the lockdown is over and recover the same from the earned profits of the franchisee.

POLAND

As described in the section 1.1 above the coronavirus pandemic may be, in certain circumstances, regarded as *force majeure*. In contracts between businesses, *force majeure* is often indicated as a circumstance excluding the parties' liability for failure to perform their obligations. If the contract lacks provisions on *force majeure*, the parties may rely on general rules (please see: 1.1 above). However, contractual liability is based on the principle of presumed fault; the burden of proving that a breach was due to force majeure thus rests on the party that failed to perform its obligation.

In the case of monetary liabilities and the debtor's loss of liquidity due to force majeure, we do not, as a rule, must deal with an objective obstacle to the fulfilment of the obligation. According to the judgment of the Polish Supreme Court of 10 April 2003 (ref. no.: III CKN 1320/00), such economic inability to provide services does not cause the obligation to expire, even if it is not even the debtor's fault, and the creditor may claim payment for the services it provided.

Therefore, if there are no separate provisions in the agreement, the franchisee's cash obligations are still due. Obviously, in situation described under 1.4 above and 2.2 below, provisions concerning e.g. minimum turnover and remuneration calculated on this basis may be questioned due to the ban on trade imposed by the State. However, the results of the analysis depend on how the rules of remuneration for granting the franchise are defined in the agreement - the franchise agreement remains in force all the time and the franchisee fulfils its obligations.

What we advise our clients in such situations is responding on an ongoing basis through mutual concessions allowing everyone to make it through the crisis; a more practical solution is renegotiation of contracts. Negotiations may involve the possibility of performing obligations, changes in deadlines or spreading payments out over time and mutual agreement on repayment of currently outstanding amounts as well.

PORTUGAL

Franchise agreements are not specifically regulated under Portuguese law and, therefore, Portuguese law does not provide a specific answer to this question. The obligation to pay royalties is consequently subject to the framework provided under the Civil Code, as described in the preceding questions.

ROMANIA

To answer this, we would have to look into the contractual provisions, and also into the specific circumstances. If the franchisee's business is under lockdown, the payment of royalties should be suspended, or, in case the royalty is set based on turnover, it should be diminished. In case of minimum or fixed royalties, we would need to analyze, for instance, if the contract includes a specific clause and how the lockdown affected the respective business sector. In case the franchisor's activity is under lockdown, and thus the franchisor's compliance suspended, then the franchisees' payment of royalties' suspension could be justified, on the ground of the other party's suspension of compliance. In case of master franchising, the non-payment of royalties by the master franchisee to the franchisor may also be determined by the sub-franchisees' failure to pay their own royalties to the master franchisee. Case in which, if the sub franchisees could successfully argue that their failure to pay was due to a force majeure event, then the master franchisee may also use this argument in court to justify their own lack of payment (especially where the royalty to be paid to the franchisor is set as percentage from the royalty paid by the sub franchisees to the master franchisee).

RUSSIA

As noted above, franchisees can be just suspended from payment of royalties during the period of COVID-19. Complete release of their liability to pay royalties under the concluded contract will not be possible. Of course, it is necessary to review and rely on the concrete royalty basis, payment period and method of calculation of the same to see whether the period of COVID-19 really has any negative impact on the deal. For example, annual fixed royalties to be paid at the end of the year may still be paid at the end of the year, if pandemic situation is terminated in summer, while monthly payments dependent on net sales can be "freezed" obviously. Minimum royalties or other fees can be amended pursuant to the provisions of Article 451 of the Russian Civil Code due to material change of circumstances, as noted above.

SAUDI ARABIA

As a general rule, the (master-) franchisee will be required to pay royalties during the pandemic; however, and depending on the circumstances, the franchisee might be able to argue that payment of the full royalties would, e.g., if operation of the franchise is temporarily impossible because of lockdown measures, be unreasonable, and request an appropriate adjustment. The ultimate decision will almost entirely be in the discretion of the judge.

The same will probably apply to other fees (such as IT, marketing fees), unless the fee constitutes consideration for services or support provided by the franchisor and the franchisor actually fails to provide such services or support; in that case, the franchisee will almost certainly be entitled to an appropriate adjustment of the fee.

As regards minimum royalties possibly provided for in the franchise agreement, the above general rules (section 1.4) will apply.

SLOVENIA

In general, the obligation to pay royalties does not cease during the pandemic. Of course, the terms of each particular contract and the factual circumstances of each individual would need to be examined prior to making any conclusion.

Depending on the facts of the case it might be possible on the basis of Article 112 of the Obligations Code (change of circumstances) to request a rescission of a contract or its amendment, for example an agreement on temporary suspension of payment of royalties. However, both contracting parties need to agree to such kind of amendment. If the franchisor does not agree with the temporary suspension of payment of royalties, the franchisee has an option to request a rescission of the contract before the court (if all requirements according to Article 112 of The Obligation Code are fulfilled, as explained under point 1.3).

SPAIN

No specific legal regulation has been issued regarding this matter therefore we should look at the signed agreements and the Civil Code.

Royalties calculated based on turnover would of course be reduced for the business sectors under lockdown, but doubts arise as regards minimum or fixed royalties. In this case, first we will have to analyze if the agreement contains a specific clause and how the lockdown has affected each business sector. We should not forget that while some activities are locked (i.e. hotels, gyms, fashion stores) others are thriving (supermarkets, home delivery, on-line services).

Of course, our advice is to try to find an agreement based on equity and good faith, considering that probably both parties have an interest in keeping the contract in force.

For these cases where the parties have not been able to reach an agreement, the party who is obliged to pay could request in Court the application of the “rebus sic stantibus” principle (“things thus standing”), which is not explicitly incorporated to our Civil Code, but it is a case law concept. It is aimed to re-balance the parties’ obligations when the circumstances affecting the deal have fundamentally changed by unavoidable and unpredictable facts. The request for the application of this principle had been quite usual during the past 2008 financial crisis, especially in the real estate sector, where some properties reduced its value in more than 50%. In the past years these cases have already reached the Spanish Supreme Court, who has accepted them in very few and restricted occasions. Maybe first instance courts now would be keener to apply them in the Covid-crises.

In cases when the franchisor is the owner or the lessee of the premises where the activity is developed, and also the owner of the equipment and machinery and the franchisee just manages it, depending on the drafting of the agreement it could be easier to argue the full suspension of both parties’ obligations during the lockdown.

SWEDEN

A master franchise agreement will be in force regardless of the pandemic as well as the agreed royalty and minimum fee-arrangements. A master franchisee would most likely

endeavour to invoke the master franchise agreement's force majeure and possible hardship clause as well as § 36 of the Contracts Act, used to mitigate or cancel the application of certain clauses that in practicality be unreasonable. When assessing whether the fees are still payable, an interpretation of the contract would be made.

There are no specific laws or other type of government interventions in place to ease or suspend payments of franchise fees or royalties.

SWITZERLAND

As for all queries, the first matter to be examined is whether the agreement itself contains an answer to this question. If there is no provision in the agreement, the general principle that contracts must be performed ("pacta sunt servanda") applies.

Purely sales-related royalties must continue to be paid, which is usually also appropriate. If the franchisee loses sales due to a pandemic, for example, the franchisor and the franchisee share the economic risk.

Where a minimum royalty or other fees have been agreed, the risk of a loss of sales is borne solely by the franchisee, pursuant to a usually tacit agreement. In principle, therefore, the franchisee must pay the minimum royalty and other fees in any case and thus also in the absence of sales. The following exceptions, however, are conceivable and should be examined in each individual case:

1. If the agreement contains a force majeure clause, it must be checked whether this is applicable to the specific case and whether the (master) franchisee is exempt from the obligation to perform.

2. If performance by the franchisor due to the COVID-19 breakout has become permanently impossible by circumstances for which the franchisor is not responsible, the franchisor may be released from his obligation to perform (Art. 119 Swiss Code of Obligations). Conversely, the franchisee is then also released from the obligation to fulfil the consideration and thus from the obligation to pay minimum royalties or other fees. Impossibility is generally defined as an extraordinary, unforeseeable, unavoidable event that could not be prevented with due care and therefore makes the fulfilment of the contract objectively impossible. In view of the far-reaching prohibitions currently in force, a plea of impossibility may have good chances of success. However, the exact circumstances must be carefully assessed in particular, whether a case of permanent impossibility lies at hand.

3. Depending on the specific circumstances of the individual case it is possible that the effects of COVID-19 might be qualified as an unforeseeable, significant change in circumstances (so-called *clausula rebus sic stantibus*) which exceptionally allows the – potentially even temporarily – equitable modification of an agreement, if the unforeseeable circumstances led to a serious disproportion between the parties' obligations without fault of the parties.

THE NETHERLANDS

The answer will of course depend on the relevant contractual provisions as well as on the specific circumstances of the case (e.g. if the franchise activity has been suspended by lockdown restrictions, or not).

In principle, should the franchisee's activity be suspended by a Government's lockdown, the franchisor's right to royalties may not even accrue; but the question may be relevant for other fees (e.g. marketing fees) or minimum royalties.

If the franchisor's performance is also (totally or partially) suspended, the lack of payment of possible (minimum) royalties or other fees may be justified, i.e. being a consequence of the counter performance's suspension.

On the basis of unforeseen circumstances, the franchisee can request a Dutch court to modify a contract (or its consequences) or to wholly or partially terminate a contract. In its decision, the court must stay as close as possible to what the parties originally intended and to the risk distribution that was initially included in the agreement. With long-term contracts, a temporary change (including a suspension) or partial dissolution is more obvious than a permanent change or complete dissolution. After all, the influence and consequences of the coronavirus on the fulfilment of contracts is temporary.

If the contract has not foreseen in situations like this, which will often be the case, the statutory definition and case law will be leading. Dutch courts have generally been reluctant to apply this remedy in the context of the 2008 economic crisis on the grounds that such 'normal' economic risks are to be borne by businesses themselves. Nevertheless, courts may decide that the extreme distorting effects of the pandemic on contractual relationships indeed go beyond normal commercial risks and, as such, qualify as unforeseen circumstances. This may lead to suspension, modification or termination of the contract or give rise to a duty to renegotiate, thereby finding a new balance in the contractual relationship between the parties to share the burden that results from the Covid-19 situation. I deem it likely that the unprecedented Covid-19 situation qualifies as a unforeseen circumstance under Dutch laws and therefore may be used as an argument to renegotiate any franchise or minimum fees payable.

Certainly, an immediate attempt to find an amicable temporary solution would be the best option for both parties in this case, also considering their respective interest to avoid as far as possible a contract termination.

TURKEY

The answer would depend on several factors including i) the interpretation of the contractual clauses on force majeure (if any) ii) the industry the franchisee(s) is/are operating and iii) the type of franchise.

In case of a lock down in the relevant industry as a result of a governmental measure, the royalty payment obligations (correlated to the turnover) shall not even accrue.

On the other hand, fixed royalty fees and other fees like marketing fees are not related to the turnover and may be regarded as a reserved budget which the franchisee shall maintain in any circumstance in line with its obligation to act as a prudent businessman as regulated under Article 18 of the Turkish Commercial Code.

In case the franchisee keeps on with its operations but the turnover gained has been adversely affected due to the pandemic then the only legal remedy to be invoked shall be claiming adaptation of the contract from the court (Article 138 of the Turkish Code of Obligations). This goes same when a master franchisee is in default of its payment obligations to the franchisor as a result of lock down of the sub-franchisees by of course proving the casual link thereby.

UK

In the absence of contractual provisions such as force majeure or the application of the concept of frustration, master franchisees will be required to continue to comply with their contractual obligations including the payment of royalties, marketing fees and any other fees payable to a franchisor. In terms of the impact on minimum royalties, please see the response to 1.4 above.

URUGUAY

The coronavirus pandemic in principle does not allow a party to stop paying royalties during the pandemic.

Each answer for each particular case will depend on the specific contractual provisions of the franchise agreement as well as on the circumstances of the case, for example, if the contract regulates that in certain cases the royalties should not be paid or shall be diminished.

The aforementioned in relation to when an event shall be considered as force majeure, as well as when a breach of a contract is produced and which damages shall be claimed, are applicable in case that a party stops paying royalties.

In Uruguay, we do not have specific laws which establishes what happens when a royalty in a franchise agreement is not paid, so the general principles of contract breach shall apply.

Regarding impact on minimum royalties or other fees possibly provided for in the franchise agreement, in principle continue during coronavirus pandemic, so please bear in mind the answer provided in Q 1.4. This means that first it has to be analyzed if in the franchise agreement was stipulated what happens if the minimum royalties or other fees are not reached. In lack of those stipulations, general principles are applicable, and thereof, if the minimum royalties or other fees are not reached, we are in a situation of contract breach, except if it was caused by a force majeure event.

2.2 Do tenants of commercial premises have to pay rent if the commercial establishment has been closed by order of the State?

ARGENTINA

All tenants of establishment closed by order of the Government are not obliged to pay rent while they are deprived of using such property until such time as it is reopened and then all existing tenants have the right to have its rent frozen for a year. I do not foresee that the Government shall take any action to cancel the freeze in the meanwhile.

AUSTRIA

For rents (Miete) and leases (Pacht) of commercial premises, the Austrian Civil Code (ABGB) already contains provisions on rent reductions/suspensions in sections 1104 seq

ABGB. The Austrian legislator therefore saw no need for new legislation. Pursuant to section 1104 ABGB, a tenant is not obligated to pay rent if the lease object cannot be used or put to good account at all, due to extraordinary circumstances, such as "epidemic". The usability of the lease object is generally determined by the contractually agreed purpose. In the event of partial unusability, the rent may be reduced, in the event of complete unusability the tenant is exempted from paying the rent. However, it needs to be considered that sections 1104 seq ABGB are, in principle, non-mandatory and can therefore be amended or excluded by contract. Whether and to what extent a rent reduction or suspension is entitled is therefore to be assessed on the basis of the specific circumstances and the contractual agreements in each individual case.

BELGIUM

1) Article 1722 of the Belgian Civil Code

Article 1722 of the Belgian Civil Code provides in essence that, in case a rented property is totally or partially lost, the tenant can claim either a termination of the rental agreement or a reduction of the rent.

In the context of the governmental measures enforcing the closing of commercial establishments, this provision has been interpreted in different ways by legal scholars.

On the one hand, this provision has been contemplated as providing a ground for tenants to withhold the payment of the rent. Under this interpretation, the concept of loss of article 1722 covers legal loss. Therefore, as the governmental measures prohibits the use of the premises, tenants could argue that they are suffering a partial loss of the property as they cannot use it according to its contractual destination. This would allow tenants to suspend their payment obligation during the temporary loss of the premises. According to this opinion, this position is strengthened by the fact that, under closing order, the landlord cannot perform his own obligation to provide to the tenant a quiet enjoyment of the rented property.

On the other hand, some argue that this provision could be relied upon by tenants only to obtain the termination of the lease agreement rather than the suspension of the rent. According to this interpretation of article 1722, the provision only covers a definitive loss.

Consequently, a permanent loss could occur only if the duration of the governmental closing order equals or exceeds the duration of the lease. Tenants could then avoid paying the rent until the termination of their lease if they are prevented from exercising their activity.

2) Force majeure

Before turning to the possibility for tenants to invoke force majeure to suspend the payment of the rent, the contract has to be looked into. Indeed, a contractual clause could prevent tenants from suspending their rent payment obligation should the landlord be impeded from providing the quiet enjoyment of the property because of force majeure.

Absent such clause, as explained in point 2.2., the fulfilling of monetary obligations is not prevented by force majeure events. Consequently, tenants of commercial establishments that have been closed under State order are prevented from relying

directly on force majeure to suspend the payment of their rent over the duration of the closing order.

On the contrary, the governmental measures imposing closing of some businesses constitute a force majeure event for the landlord. Therefore, he cannot be held liable for not being able to provide tenants with a quiet enjoyment of the leased property.

The impact of the suspension of the landlord's obligation on the correlative obligation of the tenant to pay the rent does not win unanimous support.

On the one hand, it has been argued that, as the payment of rent is the correlative obligation of the landlord's obligation to provide a quiet enjoyment of the premises, tenants could suspend their payment obligation as long as the landlord cannot perform his. The obligations of the parties would then both be suspended for the duration of the closing measures.

On the other hand, it has been argued that tenants cannot suspend the payment of the rent as it is their main obligation under the lease agreement and because it consists in the payment of an amount of money that is not prevented by force majeure events.

3) Abuse of rights

Tenants might also succeed in invoking an abuse of rights by the landlord. Tenants' claim will be assessed in the light of all the circumstances related to the case. Decisions of Belgian courts could be relied upon to raise this argument. Indeed, some courts have ruled that a creditor demanding the execution of a contract while the debtor's situation had been worsened by an extraneous event could be considered as abusing his right.

CANADA

No legislation has yet been enacted to suspend or defer the obligations of commercial tenants to pay rent, so all contractual obligations in leases still bind the tenants. However, several large commercial landlords have announced rent deferral programs for their tenants. Furthermore, certain provinces have issued orders prohibiting landlords from exercising certain of their rights related to the re-entry or re-possession of their premises resulting from the tenant's failure to pay rent. [Current to April 30, 2020.]

CHINA

A number of Chinese local governments have issued policies to reduce or exempt rents for eligible micro, small and medium-sized companies during the pandemic period. Also, some large commercial real estate companies in China have released similar policies to reduce or exempt part of the rent for their tenants.

If a commercial tenant's landlord does not have such relief policies, then the tenants need to check the availability of legal claims. As mentioned above, generally speaking, there are two legal bases for claiming rent reductions and exemptions through litigation: force majeure and a change of circumstances. In addition, such tenants shall also assess its own case by taking the Guiding Opinions issued by the Supreme People's Court and specific opinions issued by local courts into consideration. Certain provinces, such as Jiangsu, issued specific opinions related to property rental disputes due to the pandemic. The specific opinions issued by the Higher People's Court in Jiangsu Province emphasizes the importance of maintaining the validity of contact, encouraging the

fulfillment of the contract, and balancing the parties' interests. Generally, if the tenant is unable to use the rental property due to the pandemic, the court tend to support the request for rent reductions or the extension of the rental term. If one party requests contract termination, the judge shall consider the term of the contract, the impact of the pandemic to the contract fulfillment, and the purpose of the rental property. The judge shall not terminate the contract simply because the rental property cannot be utilized temporarily due to the pandemic.[10]

Generally speaking, under the umbrella of force majeure, during the epidemic period, if the contract can be performed, it will be adjusted (such as rent reduction) according to the principle of fairness. However, if the contract cannot be performed, liabilities will be exempted according to the force majeure. Further, under the umbrella of a change of circumstances, the tenant can either claim a deduction of the rent or the termination of the contract. The court has a greater discretion to determine the nature of the changed circumstances and the impact on the realization of the purpose of the contract. The court will decide whether the contract shall be modified or terminated according to the principle of fairness on a case-by-case basis.

COLOMBIA

In Colombia, through Decree 579 of April 15, 2020 of the Ministry of Housing, issued special transitional measures concerning leases with commercial destination, this as a consequence of the pandemic derived from the Coronavirus COVID19.

The Decree provides, special stipulations regarding the payment of the rental fees: The form of payment of the corresponding fees from April 15 until June 30, must be settled between the parties by direct negotiation. However, if the parties do not reach an agreement, the tenant could defer the payment of the rental fees without incurring in any interest, default or penalty, but may not refuse its payment after June 30. Then on is those sums remain unpaid, the tenant shall also recognize remunerative interests with a fifty percent discount (50%) of the Current Bank Interest Rate for the amount that could not be paid on time.

CROATIA

With respect to commercial premises owned by the State, the Croatian Government on 17 March 2020 has adopted a Decision (OG 31/2020) by which it has suspended the obligation to pay the rent for those premises for a period of three months.

No similar decision has been adopted for commercial premises in private ownership and neither the Croatian Act on Lease and Sale of Commercial Premises (OG 125/2011, 64/2015, 112/2018) contains any specific provisions regarding the matter in hand.

Therefore also in this case the general rules on obligations of the Croatian Obligations Act will apply.

Accordingly, if the amount of rent is linked to the turnover of the business of the tenant (as it is frequently the case of rent agreements specially in the shopping malls where there is a minimum fee plus variable fee) the reduction of business under lockdown will impact the amount of the rent to be paid.

[10] See https://k.sina.cn/article_1762937792_69144bc000100qvc1.html?from=news.

If the amount of the rent is determined as fixed amount or in the previous case for the minimum amount plus variable amount, then eventually Article 369 of the Croatian Obligation Act could be invoked (provided that all conditions are met in the specific case) requesting amendments to the contract with respect to the payment obligation on those fix/ minimum rent.

In case no amendments are negotiated with respect to the obligation to pay the fix/minimum rent, the rent would be due in the originally agreed fix/minimum amount save only that the tenant would not be liable for damages for delayed payment if he could prove that his payment obligation was affected by the Coronavirus Pandemic.

CZECH REPUBLIC

Currently new law is to be approved by the Senat providing for the right of tenants to defer payments of the rent for the period from March till June up to the end of the year. Landlords are not allowed to terminate the lease due to the non- payment of the rental instalments for lease if such delay is based on the effects of the COVID-19 pandemic. This right of the tenant is subject to the fact that respective premises was closed by order of state and that the tenant is unable to pay (which must be proven). The payment for services linked to the lease, however, have to be paid. More details could be added after the final approval of the law.

DENMARK

If nothing specific is agreed between the parties, it can be considered both whether force majeure can relieve a party from paying rent, and alternatively whether the provisions of the Business Lease Act can exempt lessee in part completely from paying rent. To summarise, it is our assessment that neither force majeure nor the Business Lease Act can provide exemption for the lessee. However, governmental aid packages can be used to cover part of the expenses on rent. As it is an assessment encumbered with significant doubt, an overview of the relevant legislation can be found below:

Force majeure:

The immediate position is that in the present situation no circumstances have arisen preventing the lessee's payment of rent to the lessor. Lessees who have been ordered to close down are most likely not exposed to a force majeure event as the present situation does not imply that the lessee is physically prevented from performing the payment obligation towards the lessor.

The provisions of the Business Lease Act:

In addition, a question has arisen as to whether the lessee can rely on provisions in the Business Lease Act, including in particular section 18(2) and section 23(2):

The wording of section 18(2) is:

"The lessee is entitled to demand a proportionate reduction in the rent for the duration such defect impairs the value in use of the leased premises to the lessee."

The pivotal point in relation to the provision on reduction in section 18(2) has always been specific — typically physical — defects making the premises less usable to the lessee for the period of the repair of such defect. However, the provision has been applied in a few cases in the context of other than physical defects, including in two cases concerning noise nuisance.

As is known, the present situation has no precedent, and consequently it is difficult to say with any kind of certainty how Danish courts will regard the lessee/lessor situation in the current crisis. The lessor provides, as a starting point, leased premises in a physical contractual state which, seen in isolation, are just as fit for use and applicable to the contemplated use today as they were before the Covid-19 outbreak, and as they will be again when the closedown has been called off. The obstacle now introduced in terms of the lessees' use is completely beyond the lessor's control and is a general temporary restriction of the lessee's business activities by the authorities. In that situation the courts will very probably reach the result that it is not up to the lessor to bear this risk.

However, this assessment is subject to considerable uncertainty because we are moving in an unchartered legal grey zone devoid of sufficient relevant case law.

The wording of section 23(2) is:

"Where the lease agreement is terminated prior to expiry, because a public authority has banned use of the premises by the lessee for health or other reasons, the lessee is only under an obligation to pay rent until the day on which such ban becomes effective. Where such ban merely restricts the use in a manner which is of minor importance, the lessee is, however, only entitled to demand a proportionate reduction of the rent."

Opinion is divided on whether section 23(2) is applicable to the current situation. It depends on a specific assessment of the lease and on the specific agreement between the parties whether the provision is applicable. It is our assessment that the provision is not applicable in the current situation. This is supported by, for instance, the following statement in the comment to the provision (emphasis added):

"Section 23(2), which is identical to section 16(2) in the current Danish Rent Act, concerns the situation where public authorities have banned use of the premises by the lessee for health or other reasons due to matters for which *the lessor is responsible*, or matter for which the *lessor bears the risk*. If, in this situation, the lease is terminated prior to expiry, the lessee is only to pay rent until the day on which the ban becomes effective."

The present situation is not due to matters for which the lessor is responsible, nor does it constitute a matter for which the lessor bears the risk.

That none of the above provisions in the Business Lease Act are applicable in the present situation is supported by the recently-introduced compensation scheme as, by introducing a scheme involving compensation for overheads, including rent, the Danish State contemplates precisely that rent is still to be paid as previously but subject to a possibility of reimbursement/compensation. If the legal position should be that the lessees as a starting point may refrain from paying rent due to the ban, this part of the compensation scheme will be completely devoid of the intended value.

Since a very specific assessment must be made with respect to the individual lease, as mentioned, and as we are at the present time in a situation where the lease legislation may not provide a clear answer to the questions implied by the situation, the question will have to be solved commercially between the parties in terms of a large number of leases. However, the parties must be extremely careful with any agreements, as such agreements may affect the lessee's opportunity to receive compensation from the Danish State. An agreement on rent discount/exemption, and possibly also postponement, may imply that the lessee's entitlement to compensation is lost.

EGYPT

All leases concluded after 1996 are subject to the contract and the relevant provisions in the Civil Code.

In order to be relieved from paying the rent or at least postponing it, tenants should review their leases for express language providing rent relief, such as “force majeure,” “continuous operations,” or “business interruptions.” Without such express language in the lease agreement, it is unlikely that the tenant will have a contractual right to stop paying the rent while keeping the premises.

Nevertheless, franchisees may and still should consider asking their landlords for relief if their business operations have been impaired by COVID-19. There may be good economic reasons for landlords to offer rent deferrals that, if granted, would likely be just that − a deferral and not a forgiveness − especially if the alternative is a closed location with bleak prospects of economic recovery for the landlord.

As a practical matter, where resources are available, franchisors may also extend assistance to their franchisees by curing lease defaults and/or engaging in relief negotiations with landlords on their behalf.

If no agreement is reached, the tenants will have recourse to the provision of the Civil Code which disposes in Article 574 that:

> “If, as a result of an act lawfully done by a Government authority, the enjoyment of the property leased is appreciably diminished, the lessee may, in accordance with the circumstances, and unless otherwise agreed between the parties, claim resiliation of the lease or a reduction of rent.“

Furthermore, according to Article 608 of the Civil Code:

> “When a lease is made for a determined period, either of the contracting parties may, if serious and unforeseen circumstances arise of such a nature as to render, from the commencement of or during the lease, the performance too burdensome, demand the termination of the lease before its expiration, provided he gives notice in accordance with the delays provided for in Article 563 and pays equitable compensation to the other party.
>
> If it is the lessor who demands termination of the lease, the lessee will not be compelled to deliver the leased property before he has been compensated or obtained adequate guarantee. “

In practice, it should be noted that all tenants of commercial premises are obliged to pay a security deposit equal to two months’ rent, plus sometimes the rent is paid on quarterly installments in advance, which this gives the landlord a better position to enforce the payment of the rent by the tenant.

FINLAND

Yes, at least under present conditions. A contract based on the consent of the parties to it is binding (pacta sunt servanda) and is supposed negotiated and executed in good faith. However, under the Act on Lease of Business Premises, if the amount of the rent is deemed contravening good manners or otherwise unconscionable, the rent can be subject to adjustment about the way described above under question 1.4. However, litigation costs money, generally takes years, and the outcome of any litigation is very hazardous, almost always catastrophic for the lessor unless he prevails.

Nevertheless, many corporate and private lessors as well as municipalities, such as Helsinki the capital, have rushed to signal willingness, under limited conditions, to suspend, lower or completely remit their prospects of earning rent for the time of the Corona crises. Meanwhile, the present leftist-centrist-green Cabinet (Council of State) is busy frenziedly attempting to find new means of relieving the tremendous negative effects on business and the entire economy, including every private household, the measures taken in order to combat and contain the pandemic have resulted in. Accordingly, special legislation within many fields can be expected within short. Important relaxations as to employment were adopted in March this year. Presently, certain government proposed amendments are debated in Parliament on a number of relaxations in favour of debtors. Only recently, the Cabinet started funnelling considerable amounts to enterprises being quick enough to apply for funds to cover the negative effects inflicted by the emergency on their business. On 24 April, the Cabinet came out with the suggestion to pay back the VAT assessed so far this year, however, only on a loan basis with a duty for business to pay back every cent, later on.

FRANCE

In spite of the announcement of the President of the French Republic that rents shall be cancelled and recommendations of the French Minister of the Economy inviting the major landlords to cancel rents, none of the various ordinances and decrees issued since the law putting in place the health emergency state, ruled that the rents may be stayed or cancelled. However most of the tenants, when their premises were closed due to the Government's decisions opposed that the landlord faces a force majeure event because the premises were no longer accessible. Consequently they asked for the cancellation of their rents. To date, the suspension, the rescheduling or the cancellation of rents depends on each landlord's decision.

GERMANY

Based on the Law to Mitigate the Consequences of the COVID-19 Pandemic of March 27, 2020, franchisors and franchisees benefit equally from restrictions on the right of termination of their landlords: Landlords are not allowed to terminate the lease without notice or notice of termination in due form for lease debts from the period from April 1, 2020 to June 30, 2020 if the lease debts are based on the effects of the COVID-19 pandemic. The tenant must provide *credible evidence* of this. The obligation of tenants to pay the rent remains in return.

This does not affect the other rules of civil law regarding due date and default. As a result, tenants must continue to pay rent on time and may be in default if they do not pay on time. Furthermore, termination of the tenancy for other reasons (e.g. other important reasons based on serious misconduct by the tenant towards the landlord) remains possible.

Secondly, it cannot be excluded that the current closures are, at least with respect to specific rental agreements, interpreted as rental defects which would entitle the tenant to a reduction in rent (§ 536 BGB). A rental defect can also be recognized as resulting from the fact that the contractual use of the rental space is not possible due to public law regulations. For example, if rental space is rented out expressly "for the operation of a restaurant" (in many cases, even the brand is defined in the lease agreement), a lack of statutory or official permission for such use may constitute a rental deficiency

that entitles the tenant to a reduction in rent. However, according to the case law of the Federal Court of Justice (BGH), this only applies if the restriction of use has a structural and not an operational cause (BGH of 20.11.2013, Az. XII ZR 77/12). It is expected that this issue will still be litigated in the upcoming years.

Third, it cannot be ruled out that the courts will measure the Corona lease cases also as a temporary impossibility (§ 275 BGB) or a disturbance of the basis of the transaction (§ 313 BGB). It is recommended to pay the April and eventually further rent only under express reservation of all rights in writing.

If the franchisor's main rental agreement with the landlord and the sub-lease agreement between franchisor and franchisee are related in the business calculation for a franchisor who rents locations in order to sub-let them to franchisees, they must be considered completely independent of each other under civil law. All tenancy law principles, including the special provision of the Law to Mitigate the Consequences of the COVID-19 Pandemic of March 27, 2020, must be considered independently of each other with regard to the main tenancy agreement with the owner on the one hand and the subtenancy agreement with the franchisee on the other.

This also means, for example, that the franchisor cannot invoke the financial difficulties of the franchisee or the franchisee's failure to pay the sublease. Rather, the franchisor must, for his part, explain to what extent he is economically affected by the Corona crisis as a franchisor and to what extent he is therefore unable or unwilling to pay his rent.

ISRAEL

This question has been widely discussed in the media in the context of the COVID-19 pandemic. The Ministry of Justice formed a committee that is expected to work out guidelines and possibly legislative initiatives.

Concerning the applicable statutory provisions - in addition to the general provision (Section 18 of the Contracts Law – remedies), there is a specific frustration provision dealing with leasing relationship – Section 15 of the Leasing and Borrowing Law, 1971. This provision releases the tenant from lease payments if (a) the use of the leased property is prevented due to circumstances related to the property or the roads leading to the property; and (b) the tenant did not know, and could not have foreseen such circumstances upon entering into the agreement. However, if the impediment lasts beyond a reasonable time, the lessor is entitled to terminate the lease agreement, unless the tenant advises him that he agrees to pay the rent.

ITALY

Under the general contract of **lease of property**, pursuant to Italian case law the tenant's obligation to pay the rent can be unilaterally suspended or reduced only when the disposal of the premises is totally prevented; Italian Courts have excluded such right even in cases in which the premises where seriously damaged and even where the landlord responsibility was not excluded. On the other hand, there is a provision on "partial" impossibility of the performance which allows the other party to claim (in Court) a reduction of its the counter performance (Art. 1464 c.c./Art. 1258 c.c.), that may possibly apply.

The lockdown decided by the Italian Government for COVID-19 is a temporary restrictive measure, which in principle do not limit the tenant's right to use the premises, but only

to perform his commercial activity in such premises. It has also to be considered that although retails sales are banned in brick and mortar outlets, online sales are permitted and, in some cases, the premises are used by the tenant for managing online sales.

Therefore, depending on the circumstances, there may be some space for claiming the application of the said rule on partial impossibility; however, considering that claiming a reduction of the rent in Court is currently not possible (as long as Courts remain closed) and it is certainly not a fast option in any case, and reminding that a unilateral suspension or reduction of the rent is not allowed (although the enforcement of proceedings for eviction on arrearage are currently suspended by the COVID-19 rules until September 1st, 2020), the best option for tenants would be to negotiate with their landlord a possible reduction of the rent, for the period during which the impossibility will last.

Moreover, limited to the rent of March 2020, provided that the full rent has been paid to the landlord for such month, tenants of shops and stores can obtain a tax credit equal to 60% of the relevant rental amount, as an offset on the payment of taxes for the year 2020 (Art. 65 of Decree-Law 7/3/2020 n. 18, "Cura Italia"; and it is likely that this principle will be extended at least to April).

In addition, it has to be mentioned that, especially in the framework of franchise contracts (e.g. where the franchisor is the owner of the premises provided to the franchisee) or in shopping mall outlets, as an alternative to the typical lease of property contract (which provides for a strong protection of the tenant particularly on termination), the parties frequently opt for a different contract, i.e. the "lease of business" (a legal concept similar to the French "location-gérance"), where not only the premises are leased to the tenant, but the universality of (movable and immovable) goods necessary for managing the business.

In such a case, the rights granted to the franchisee (or to the franchisor e.g. by the owner of a shopping mall) would include not only the disposal of the premises but also the other rights and elements to be used with the aim of performing the franchise activity. Therefore, in this case it is more likely that the Government lockdown prevents (temporarily) the performance of the contractual activity, situation which may justify a suspension of payment of the fees, in addition to the possible application of the rules on "partial impossibility" of the performance, mentioned above concerning the reduce of the rental fee.

Also in this case, it would be advisable to negotiate with the landlord a modification of the contractual conditions.

JORDAN

In general commercial premises tenants are oblige to pay the rent for such premises during this pandemic as they still possess the premises which also provide a safe place to protect their inventory and equipment in return for the rent they pay. However we are expecting to see number of claims as tenants may file claims to adjust the rent amount if they were not fully or partially operating during the lockdown period, or due to any governmental orders, there is a discussion and multiple legal opinions on this subject at the time being. However tenants may try to negotiate the terms of the contract with the landlord and in our opinion tenants may file a claim to adjust the rent amount under the provisions of contingency as stated in the Civil Code. We may provide

further information on this subject when courts are back to operate in Jordan based on expected case law.

KUWAIT

Article 581 of the Civil Code applies when there is a total lockdown of the commercial malls and store's investment agreement. The explanatory note issued in connection with the Kuwaiti Civil Law provides actions issued by public authorities, including decisions issued by the administration which deprive the tenant of the rent, are considered an event of force majeure. Accordingly, a tenant or lessee is entitled to terminate the lease/investment agreement or, in the alternative ask for a reduction in rent. Pursuant to the government directive requiring all store-fronts inside commercial malls to shut down the stores inside commercial malls and restaurants, these tenants may refuse to pay rent by invoking Article 581 of the Civil Code.

However, in the absence of express provisions within an investment agreement regarding the Force Majeur that granting the investor the right to suspend the investment and services fee, an investor is expecting to continue paying such fees during the COVID-19 period. Noting that by applicable law in normal circumstances an investor's failure to pay the investment fee on time will give a right by a landlord to file an eviction lawsuit. We assume that the Kuwait Court will adopt the principle of Force Majeur where a total lockdown is taking place.

MEXICO

This would depend on the wording used in the Agreement, and if royalties or fees are calculated on a percentage of the monthly sales or if the agreement includes fixed fees. As previously mentioned, no one is obligated to comply its obligations under Acts of God or force majeure except when he has given cause or contributed to it, when it has expressly accepted that responsibility or when the law imposes it on.

While some franchises are being affected by lockdown and are not able to provide services, others are booming. Therefore, it will be necessary to review the provisions of the agreement (definition of force majeure and implications), the franchise activity (i.e. franchise providing cleaning services) in order to determine their applicability in each case.

MOROCCO

The Parliament in Morocco is currently in the process of approving a law which provides for the right of tenants to defer payments of the rent for the period of lockdown restriction that started from March 24th, 2020.

It is important to note that even in the absence of such law, the civil courts, on the ground of exceptional sanitary situation, are reluctant to sentence termination or expulsion since the start of the lockdown period as of March 24th, 2020.

If the law passes, the case law will be confirmed and landlords will not be allowed to terminate the lease due to the non- payment of the rental instalments for lease if such delay is based on the effects of the governmental restrictions deriving from COVID-19 pandemic. This right of the tenant is subject to the evidence that respective premises was closed by order of state and that the tenant was unable to pay.

MOZAMBIQUE

In Mozambique, tenants are obliged to pay the rentals despite COVID-19 and the State of Emergency which is currently implemented. However, according to the temporary measures resulting from the mentioned Emergency State, landlords may not evict tenants, even if the rents are not paid during such period.

Once again, based on the existence of a subsequente and abnormal circumstance (COVID-19), the tenants may renegotiate the terms of the agreement with the landlords, e.g., agreeing on a moratorium or a suspension of rent payment during the period the commercial establishment is closed (*rectius*, article 437 of Civil Code).

NEW ZEALAND

The answer to this question depends on the form of commercial lease used by the parties. The Auckland District Law Society (ADLS) lease is used for the majority of premises. The sixth edition contains a no access clause which is clause 27.5. This clause reads as follows:

> "27.5 If there is an emergency and the Tenant is unable to gain access to the premises to fully conduct the Tenant's business from the premises because of reasons of safety of the public or property or the need to prevent reduce or overcome any hazard, harm or loss that may be associated with the emergency including:
>
> a) a prohibited or restricted access cordon applying to the premises; or
>
> b) prohibition on the use of the premises pending the completion of structural engineering or other reports and appropriate certifications required by any competent authority that the premises are fit for use; or
>
> c) restriction on occupation of the premises by any competent authority,
>
> then a fair proportion of the rent and outgoings shall cease to be payable for the period commencing on the date when the Tenant became unable to gain access to the premises to fully conduct the Tenant's business from the premises until the inability ceases."

Clause 27.5 above was included after the Christchurch earthquake occurred in 2011 as tenants of many businesses were physically unable to access their premises.

This clause allows for abatement of rent and outgoings if the tenant is legally or physically unable to access their premises due to safety of public or property or to prevent, reduce or overcome any hazard or harm. The period of rent abatement will start from the time that you cannot access the premises. There is also a non-access period which will be defined in the First Schedule.

Other forms of leases limit the suspension of rent and outgoings to an amount that the landlord is able to recover under its own insurance. Some shopping centre leases penalise tenants for not keeping the premises open during usual centre trading hours. However, given that the centre itself is closed, then the tenant should not be penalised as it is obeying both the directions of the centre management and the New Zealand government.

The tenant's main obligation under the lease is to pay rent and outgoings. Before any tenant should stop paying rent, it is advisable to talk to the appropriate landlord. Landlords are aware that this is an unprecedented situation, and should be willing to compromise on payments.

NORWAY

The answer will depend on the wording of the lease agreement, but in most cases the tenant will most likely have to pay rent even if the commercial establishment has been closed by order of the State, as the tenant in most agreements will bear such a risk.

Having said that, the tenant might argue that full or partial payment of rent in such a case is unreasonable and should be censored by the courts based on article 36 of the Contracts Act and/or claim Frustration of purpose. As stated above, article 36 is very rarely applied by Norwegian courts in commercial agreements between professional parties, but the Covid-19 pandemic is unprecedented in how the contractual parties are affected. Thus, one should not exclude the possibility that courts might intervene.

PAKISTAN

Pursuant to the prevailing rent laws in Pakistan a tenant has to pay the rent to the landlord in the mode and by the date mentioned in the tenancy agreement. However, if the date of payment is not mentioned in the agreement, a tenant has to pay the rent before the 10th of the following month. Therefore, the tenants of commercial premises have to pay rent during the period of lockdown as the Federal Government of Pakistan has not issued a directive barring the payment of rent during the said period. However, the Government of Sindh while exercising its provincial autonomy has issued THE SINDH COVID-19 EMERGENCY RELIEF ORDINANCE 2020. As per the Ordinance, landlord shall defer or suspend the rent of premises for the period of lockdown however; the same shall not apply if the tenant is a widow, differently abled person or a senior citizen. Therefore, commercial establishments operating within the province of Sindh have the option to defer payments during the period of lockdown in accordance with the 3rd Schedule as prescribed in the Ordinance.

POLAND

I. In connection with the coronavirus pandemic, from 14 March 2020, on the basis of the Regulation of the Minister of Health of 13 March 2020 declaring a state of epidemiological threat in the Republic of Poland, until further notice a total ban was introduced in Poland on retail sales in commercial facilities with a sales area above 2,000 m2 by tenants of commercial space, with the exception of specific industries which may continue to sell (e.g. grocery stores). For many tenants it caused total loss of sales revenue. On the other hand - the regulation of the Minister of Health does not directly impact the tenants' obligation to pay rent. Polish law does not grant tenants a statutory right to claim a rent reduction or even suspension in the event of a temporary closure of the premises because of public orders.

On 8 March 2020, the Law on special arrangements for the prevention and combating of COVID-19, other infectious diseases and crisis situations caused by them (so called: Anti-Crisis Shield) took effect. It introduced a number of provisions setting rules and procedures for preventing and combating infection and spread of the COVID-19 pandemic.

On 31 March changes to the Anti-Crisis Shield was published. The changes came into force on the day of publication and caused important interference in existing lease contracts. The new law has not only legislative defects but also contains errors and raises many questions of interpretation.

II. Provisions of the Anti-Crisis Shield concerning lease agreements in buildings with retail space of over 2000 m2 are as follows:

- during the period in which the tenant's activities in a retail facility with retail space of over 2000 m2 have been prohibited, the mutual obligations of the parties to the lease, tenancy or other similar agreements under which the retail space is let for use expire. The above results in a kind of "suspension" of the parties' obligations under the contract, therefore the lessor is not obliged to provide the lessee with the premises, the lessee is not obliged to operate in leased premises and pay the rent and other fees as provided for in the agreement. This solution has aroused a lot of controversy, and although there are disputes as to whether the provision is mandatory, the parties to many lease agreements have entered into negotiations on lease agreements which aim is to ensure protection of the property in the leased premises and to reduce the amount of the rent (while maintaining the obligation to pay part of it);

- a tenant shall make an unconditional and binding offer to the landlord of their will (the legislator uses the wording "offer of will" that has no legal definition in Polish law) to extend the agreement on the existing terms and conditions for the period of the prohibition extended by 6 months. The tenant should submit the above offer within three months following the lapse of the period of the prohibition. If the tenant does not make an offer to extend the term of the lease within such a specified period of time the provisions about expiration of mutual obligations of the agreement shall cease to be binding on the lessor at the moment of the ineffective lapse of the period to submit the offer. Extension of the lease is "a price" for not paying rent during an epidemic period. If the tenant does not make the statement referred to above, we believe they will be required to pay the outstanding rent.

However, under Regulation of the Council of Ministers of 2 May 2020 on certain restrictions, orders and prohibitions in view of the epidemic, the restriction described in point I. above has been lifted. Starting from 4th May, the entrepreneurs are allowed, under certain conditions, to sell their products in premises located in commercial facilities with a sales area above 2,000 m2. Therefore, from that date, the parties to the lease agreement are bound by their obligations anew, in particular the tenant should start paying the rent and other charges related to the lease.

III. Another solution introduced by law is extension of the lease period of premises until 30 June 2020. If the lease period of premises under the lease contract concluded before 31 March 2020 expires after 31 March 2020 and before 30 June 2020, the lease agreement shall be extended on the existing terms and conditions until 30 June 2020. The condition is that the lessee submits to the lessor a declaration of will to extend the agreement on the last day of the lease agreement at the latest. Moreover, we have a ban on terminating the lease agreement and the amount of rent by the lessor until 30 June 2020. However, the landlord can terminate the lease agreement e.g. if lessee violate the provisions of the lease agreement.

PORTUGAL

In accordance with the legal framework approved under the State of Emergency, most private commercial premises have been closed by order of the State, with the exception of those which provide goods and/or services deemed as essential.

Although Article 10 of Decree no. 2-A/2020, of 20 March 2020, which provides the measures to be taken under the state of emergency, provides that the closure of facilities and establishments pursuant to the Decree may not be invoked as grounds for the termination of the lease / rental agreements, the issue of payment of rents in case of commercial establishments has not been specifically addressed in the legislation prepared under the State of Emergency.

Therefore, the fact that a private commercial premise has been closed by order of the state shall, in principle, constitute a force majeure event for the purposes of the relevant clause in an affected agreement or an abnormal change in the circumstances on which the parties based their decision to contract for the purposes of Article 437 of the Civil Code.

Without prejudice to the framework referred to in question 1.1., Article 1040 of the Civil Code provides that if the use of the premises by the tenant is limited, there shall be a reduction of the rent. If this limitation is not caused by the landlord, the right to the reduction only exists if the limitation exceeds a sixth of the entire duration of the contract.

ROMANIA

In case of lease of commercial premises, the main characteristic is that the lessor shall ensure to the lessee the use of the premises, meaning that the lessor shall undertake all measures required for the lessee to use the premises according to their destination (including the access of the public).

If the commercial establishment has been closed by order of the State, the first question is whether the lessor is able to fulfill its obligations in full. In the current context, it seems that the answer to this query would be negative. This means that the lessee will not be able to use the leased premises according to their destination, and, therefore, this entails the lessor's non-fulfillment of contractual obligations. Even if this non-fulfillment is not imputable to the lessor, the lessee would be justified to ask for a reduction of the lease and even a temporary suspension (not exoneration) of the payment obligation.

However, a high degree of precaution should be maintained when invoking force majeure in commercial contracts in the current context. Since the activity of the courts currently is extremely limited, we can only anticipate on how the courts are going to interpret the effects of the current situation on lease contracts. However, it is to be expected that the courts might try to avoid through their decisions severe unbalance between economic categories, while also grounding their decisions on principles like the equity principle in cases where the legislation is unclear or lacunar. It is also to be expected that any abusive use of force majeure or hardship in the current context might be sanctioned by the courts, case in which the party in breach would have to pay damages to the other party, together with court expenses. Considering all this, it is recommendable for the parties to try to reach amicable solutions and negotiate contractual clauses.

There are specific legal provisions applicable to small and medium enterprises. According to the Government Emergency Ordinance No. 29/2020, throughout the state of emergency, the SMEs which totally or partially interrupted their activity based on decisions issued by the competent public authorities, and which hold the emergency situation certificates issued by the Ministry of Economy, Energy and Business

Environment, benefit from the deferral of paying the rent and utilities for the premises where their headquarters and secondary headquarters are located.

RUSSIA

Russian Government decided to support tenants and lessees during these uncertain times and provided "rent holidays" to the leasing businesses. More specifically, according to the recently issued Resolution of the Russian Government No. 439 dated April 3, 2020 "On requirements to conditions and periods of postponement of rent payments under real estate leases (the "Resolution") a tenant is now entitled to postpone rent payments in case the following conditions are met: (a) lease is made in relation to any real estate, except for residential one; (b) lease is made before the launch by the relevant Russian region of the regime of high-alert or extreme situation (the "Regime"); and (c) tenant's activity falls under the list of the most injured industries due to the spread of Covid-19.Rent payments may be postponed from the date of introduction of the Regime by the respective Russian region until 1 October 2020. Upon termination of the Regime and until 1 October 2020 the tenant may postpone 50% of rent payments. The parties may decrease the amount of rent which should be postponed under the additional (amendment) agreement. Operating expenses and other utility payments may not be postponed even if they are included in the rent (and not provided separately), except when the landlord is released from such payments under the regulations of the respective Russian region. The tenant who meets the criteria mentioned above shall approach the landlord and ask it to sign the lease amendment agreement. The amendment agreement should be concluded within 30 days. In case of a long-term lease the amendment agreement must also be registered. Finally, landlords are prohibited to ask for any penalties, interests or any other payments, including those already provided for in the lease agreements.

SAUDI ARABIA

There are no specific legal provisions, and the legal situation will depend on the facts and circumstances of the matter. As a general rule, tenants of commercial premises are still required to pay the rent if the commercial establishment has been closed by order of the State, as the tenant will usually be considered to bear the risk of its ability to actually use the premises; however, and similar to the situation of the continuous obligation to pay royalties, the franchisee might be able to argue that payment of the rent would be unreasonable, and request an appropriate adjustment. The ultimate decision will almost entirely be in the discretion of the judge.

SLOVENIA

If the lease agreement regulates a situation in which due to force majeure, state measures, epidemics, etc. the tenant is unable to use the space, the terms of the lease agreement are primarily applicable. Otherwise, the applicable legislation governing lease relationships, as well as case law, must be considered. The Business Buildings and Business Premises Act and the Obligations Code do not explicitly stipulate the legal consequences for cases where the lessee cannot carry out business activities in the leased premises without his fault (as well as without the fault of the lessor). Thus, in our opinion, the legislation does not provide a direct basis for non-payment of rent. Generally, none of the statutory provisions that would justify a lessee's claim for a reduction in rent would be applicable in our opinion as well. The Obligations Code

namely foresees a reduction in rent only for the following cases, i.e. if the object of the lease is partially destroyed or damaged, if the lessee's right to lease the property is restricted due to a right of a third party, if the object of the lease is defective at delivery or if a defect occurs during the lease term, etc.

Notwithstanding the above, it is of course necessary to take into account all circumstances of each individual case, as situations may vary significantly and legal assessment of the case could, due to materially different facts of the case, also be different.

Furthermore, new legislation has already entered into force, which provides for a temporary measure, according to which tenants of business premises, that are owned by the state or a self-governing local community, whose business activity is prevented or significantly impeded due to government measures or due to the spread of COVID-19, are, subject to certain conditions and limitations, exempt from paying rent (or part thereof) until cancellation of the proclamation of the epidemic.

SPAIN

Urban leases are ruled in Spain by a specific Act (Ley de Arrendamientos Urbanos, LAU or *Lease Agreements Act*), applicable to residential, commercial and industrial premises. No article in this law allows the tenant to suspend the payment obligation in case of impossibility to develop its activity. It only allows the termination of the agreement in case the premises become unsuitable for the activity, but, opposite to other jurisdictions, the vast majority of the Spanish lease agreements put the responsibility to apply for the necessary permits and licenses to develop the activity on the tenant, with full indemnity for the landlord in case such permits are not granted. In summary: the Spanish Lease Agreements Act does not allow the tenant to suspend the payment of the rent in case of impossibility to develop his activity.

On April 21st the Spanish government approved some measures -which in general imply a postponement in the payment of the rent-:

a) **Premises to which they are applied:** leased premises dedicated to activities different than residential: commercial, professional, industrial, cultural, teaching, amusement, healthcare, etc. They also apply to the lease of a whole industry (i.e. hotels, restaurants, bars, etc., which are the most usual type of businesses object of this deal), however, as it is not an ordinary lease, full suspension of the rent payment might be legally possible.

b) **Types of tenants:**

   i. Individual entrepreneurs or self-employed persons who were registered before Social Security before the declaration of the state of alarm on March 14th, 2020.

   ii. Small and medium companies, as defined by article 257.1 of the Capital Companies Act: those who fulfil during two consecutive fiscal years these figures: assets under € 4 million, turnover under € 8 million and average staff under 50 people.

c) **Types of landlords:** in order to benefit from these measures, the landlord should be a housing public entity or company or a big owner, considering as such the individuals or companies who own more than 10 urban properties (excluding parking places and storage rooms) or a built surface over 1.500 sqm.

d) **Measures approved:** The payment of the rent is postponed without interest meanwhile the state of alarm is in force, but in any case, for a maximum period of four months. Once the state of alarm is overcome, and in any case in a maximum term of four months, the postponed rents should be paid along a maximum period of two years, or the duration of the lease agreement, should it be less than two years.

e) **For landlords different to those mentioned in point c):** the tenant could apply before the landlord for the postponement in the payment of the rent (but the landlords is not obliged to accept it), and the parties can use the guarantee that the tenant should mandatorily have provided at the beginning of any lease agreement (usually equal to two month's rent, but could be more if agreed by the parties), in full or in part, in order to use it to pay the rent. The tenant will have to provide again the guarantee within one year's term, or less should the lease agreement have a shorter duration.

f) **Activities to which it is applied:**

   i. Activities which have been suspended according to the Royal Decree that declared the state of alarm, dated march, 14ht, 2020, or according to the orders issued by the authorities delegated by such Royal Decree. This should be proved through a certificated issued by the tax authorities

   ii. If the activity has not been directly suspended by the Royal Decree, the turnover during the month prior to the postponement should be less than 75% of the average monthly turnover during the same quarter last year. This should be proved through a responsible declaration by the tenant, and the landlord is authorised check the bookkeeping records.

g) **Term to apply and procedure:** The tenant should apply for these measures before the landlord within one month's term from the publication of the Royal Decree-law, that is, from April 22nd, 2020, and the landlord (in case belongs to the groups mentioned in point c) is obliged to accept the tenant's request, except if both parties have already agreed something different. The postponement would be applied to the following month.

As the status of alarm was declared more than one month (March 14th) before the approval of these measures, landlords and tenants have already been reaching some agreements, for example 50% rent reduction during the status of alarm, and 50% rent postponement during the following 6 months; in cases where the rent is very high -based on previous market conditions for high street stores- a 25% reduction until end of 2021 has been negotiated.

Tenants who do not reach an agreement with the landlord could face an eviction procedure (however court procedures are suspended during the state of alarm), plus the obligation to pay the full rent until eviction takes place, and landlords could face a long period with the rent payment suspended and, maybe, at the end, the tenant's insolvency.

However, tenants also have the legal remedy of claiming in Court for the application of the "rebus sic stantibus" principle ("things thus standing"), which is not explicitly incorporated to our Civil Code, but it is a case law concept. It is aimed to re-balance the parties' obligations when the circumstances affecting the deal have fundamentally changed by unavoidable and unpredictable facts. The request for the application of this principle had been quite usual during the past 2008 financial crisis, and in the past years

these cases have already reached the Spanish Supreme Court, who has accepted them is very few and restricted occasions. Maybe first instance courts now would be keener to apply them in the Covid-crises.

Besides, even though many businesses (all retail stores except food, beverages, tobacco and IT) have been prohibited from opening to the public, which implies a temporary impossibility or difficulty to develop the main activity (these two concepts are not the same), tenants still keep the possession, can work inside and on-line, have some stock inside, keeps using the windows and the commercial logos and this makes more difficult to legally support the release from the payment obligation.

Spanish Courts would probably be keener to accept an early termination of the lease agreement by the tenant (without the agreed prior notice or without completing its duration) based on the impossibility to develop the main activity because of force majeure (lockdown) than the non-payment of the rent while keeping the possession of the premises.

Another aspect is the lease of a whole business ("arrendamiento de industria"), which implies that the lessor grants the possession of a whole on-going business -and not just premises- to the lessee in order for him to manage and make a profit on it. This type of deal is usual in the hospitality sector, and some franchisors use this type of agreement in some cases). As the lessor's obligation is to make available for the lessee the on-going business and not just premises, if the business has been affected by the lockdown, it would be easier to argue the suspension of the mutual obligations because of force majeure, and the termination of the agreement if the force majeure persists. This type of leases, however, are included in the above-mentioned measures approved by the Spanish government.

SWEDEN

As a general rule, a tenant would be liable to pay rent even though a closure was made because of a government intervention. It is possible that the tenant would have a claim against government should that be the case.

In Sweden there are no government orders in place today (22 April 2020) that force a business to close. Instead, Swedish government has issued "recommendations". This means that it is doubtful whether a tenant could launch a successful claim against government if the tenant chooses to close business because of the recommendation.

Government has issued an ordnance supporting landlords in certain cases. It is based on that the landlord and tenant should enter a (voluntary) agreement to lower the rent between 1 April and 30 June 2020. Government would then subsidize half of the reduction, up to 25 per cent of the total rent. This means that a landlord could lower the rent by 25 per cent and receive a 50 per cent subsidy of the reduction. The other half would have to be paid by the landlord. The ordnance will be in effect for reduction agreements entered into on or before 30 June 2020 and for the time set out above.

SWITZERLAND

To date, this question has not been explicitly regulated by Swiss law, nor has it been decided by a court. On the contrary, the Swiss government has deliberately refrained from regulating it and has called on the parties to seek appropriate solutions on a case-by-case basis.

Art. 259d of the Swiss Code of Obligations states:

> "Where the object is rendered unfit or less fit for its designated use, the tenant or lessee may require the landlord or lessor to reduce the rent proportionally from the time when the landlord or lessor became aware of the defect until the effect is remedied."

There is a controversial debate in the academic world as to whether the closure of a business ordered by the authorities on account of COVID-19 constitutes a defect in the sense of tenancy law, which entitles the tenant to demand a temporary reduction or remission of rent from the landlord. This is affirmed by various authors. Large real estate companies have in some cases voluntarily waived or at least reduced the rent for their tenants for the duration of the official measures. However, as long as the question has not been decided by the highest court, it cannot be answered unequivocally.

Alternatively, the tenant could argue that the landlord is unable to provide the rented premises for the intended use due to the official measures. On the basis of the already cited Art. 119 Swiss Code of Obligations, the landlord is exempt from the obligation to perform for the duration of the official measures. However, he also loses the right to the rent for the same period.

THE NETHERLANDS

Under Dutch law a "defect" to a leased property is defined as a condition or feature of the leased property or any other circumstance not attributable to the lessee, as a result of which the lessee cannot use the leased property in the way he was entitled to expect. A defect may therefore concern a direct effect to the leased object itself, but also other circumstances that limit the use of the leased property.

Dutch law provides the lessee with the option to claim rent reduction or compensation for damages as a result of the defect. A claim for compensation of damages requires that the defect is attributable to the lessor. Such requirement does not apply to a claim for reduction of rent.

If the lessee cannot use the business premises due to a mandatory closure ordered by the State, it can be assumed that the closure is a force majeure situation not attributable to the lessor according to generally accepted views (*communis opinio)*. Compensation for damages is therefore not an option available to the lessee.

It can be argued in cases like this, that it is unacceptable to the criteria of reasonableness and fairness that the lessor demands full payment of the rent if the lessor cannot let the lessee use the leased property.

Another option is to apply to the Courts for a modification of the lease contract on the basis of unforeseen circumstances. The closure of the leased property by the State in order to prevent spreading of the Covid-19 virus is likely to qualify as unforeseen circumstances as defined in article 6:258 Dutch Civil Code and the Courts may honor a claim for modification of the lease contract if, based upon the principles of reasonableness and fairness, the lessor cannot expect the lease to remain unchanged. Such amendment can be of a temporary character and it is possible to have such a modification retroactively awarded.

TURKEY

In principle yes, unless the clauses of the contract may provide otherwise or court intervention to such aim may be obtained.

The Law numbered 7226 has entered into force as of 26 March 2020 which aims to mitigate the damage of the pandemic. According to the Provisional Article 2 of the Law, the failure to pay the workplace rent between the dates of 1 March 2020 and 30 June 2020 shall not constitute a basis for the termination of rental agreements or evictions. As can be inferred, the rental payments have not been suspended or terminated.

This leaves the tenant either to get use of the contractual clauses most probably on force majeure for the suspension of the rental payments or to apply to the court for the obtainment of an interim injunction on the suspension of rental payments.

The legal basis of such recourse to the court may vary. The tenant may invoke the defected status of the commercial premise due to lock down in accordance with Article 305 of the Turkish Code of Obligations, or may claim the theory of adaptation to be applied to the contract by the court (Article 138 of the Turkish Code of Obligations). However, given the impeditive effect of the pandemic to functioning of the courts, the application to court would require substantial effort in order for one to reach a desirable outcome.

UK

Almost certainly the leases of commercial premises will have to continue and tenants to pay rent, but by virtue of the Coronavirus Act 2020 the government has prohibited landlords taking action against tenants for any failure to pay rent in the period up to the end of June 2020.

URUGUAY

In Uruguay there has not been passed any law regarding what happens in this specific case. For example, Shopping centers were closed due to the coronavirus pandemic because of an exhortation made by the Government by Resolution No. 337/020, and not by an obligation imposed by the State.

Notwithstanding, Section 1806 of the Uruguayan Civil Code establishes that:

> "If by fortuitous case or force majeure, the tenant is compelled to not use or enjoy the thing or if the thing do not serve for the object of the convention, the tenant could require the termination of the contract or the cessation of the payment of the price for the period of time that he could not use or enjoy the thing.
>
> But, if the fortuitous case or the force majeure does not affect the thing itself, the obligations of the tenant shall continue as before."

In this context, in the cases that the Uruguayan Civil Code is applicable, if the exhortation of the State to close a commercial establishment is considered as a force majeure event, what we understood should be consider as such, the tenant shall choose between requiring the termination of the contract, or not paying the price agreed on the contract for the period of time that he could not use or enjoy the thing.

For the other cases, the general principles shall apply, and if the landlord does not fulfill its obligation to allow the use and enjoyment of the thing, it may justify the breach of its obligation stating that the exhortation of the State in order to close commercial establishments constitutes a force majeure event. If the Courts does not follow the previous interpretation, the landlord shall respond for the damages caused.

3. COMMERCIAL AGENCY CONTRACTS.

3.1 Can the Covid-19 outbreak affect the commercial agent's entitlement to goodwill indemnity or the amount thereof? If yes, to what extent?

ARGENTINA

Certainly, it shall be affected because clients are scarce these days in the middle or the pandemia and sales are off between 40% up to 60% depending whether the business is operating or if closed, even worse. Because under Argentine law commission are earned if sales are closed and collected by principal and since the commission for clientele is estimated on the average of the last 5 years, of its remunerations, the current year will bring the average down. In all cases the amount of the clientele remuneration cannot exceed one year of remunerations.

AUSTRIA

A distinction must be made here. First of all, there are practical inquiries from the clients as to whether the agency contract could be terminated with immediate effect due to the pandemic. This is to be denied in principle because the observance of the period of notice is in any case possible. This is even more the case as the further development in the following months has to be regarded. In case the agent gets a commission based on the submitted turnover, the principal has no disadvantage anyhow. In case of a fixed remuneration the parties will be obliged to negotiate the new situation to find an appropriate solution. Similar results can be derived from the supplementary interpretation of the contract or gap filling.

The actual situation can influence the calculation of the indemnity. This concerns the basis of the customer turnover when some of them has gone insolvent. Second, in case it is obvious that the turnover will be less than in the past, the further loss of commission would also has been less. The more the principle is able to show future uncertainties which are quite obvious regarding a nearly world-wide pandemic and the enormous related problems, the more the calculation of the indemnity will be reduced.

Concerning the maximum indemnity of the 5-years-period, it seems to be likely that the court will exclude the „pandemic period". The question is how long this period will be estimated by the court.

BELGIUM

The agent's entitlement to a goodwill indemnity should not be affected as such. In contrast, the amount of the indemnity is likely to be impacted in particular if the COVID 19 crisis is followed by an economic crisis as expected by the IFM according to which the Great Lockdown is the worst recession since the Great Depression, and far worse than the Global Financial Crisis. In principle courts should not accept arguments based on force majeure especially as the crisis will hurt both agent and principal.

CHINA

Generally, Chapter Seven of the *General Rules of the Civil Law of the People's Republic of China* (《中华人民共和国民法总则》) and the *Contract Law of People's Republic of China* (《中华人民共和国合同法》) govern the agency relationship. There is no legal requirement to pay goodwill indemnity to agents. The concept of goodwill indemnity

does not exist in the PRC. Usually the principal and the agent leave this issue to their agency contract.

COLOMBIA

In Colombia, according to the provisions of article 1324 of the commercial code, the principal must pay to the agent the amount equivalent to one twelfth of the average commission, royalty or profit received in the last three years, for each term of the contract, or the average of everything received, if the contract time is less. This payment shall be made regardless of cause at the time of termination. Therefore the Covid19 is not an acceptable excuse to forfeit its payment.

However, the same article mentioned another concept that must be paid to the agent in addition to the commercial layoff, when the contract ends unilaterally without just cause proven by the principal, or when it ends for just cause attributable to the principal. The Commercial Code indicates that the such payment is an equitable compensation, that must be set by a court appointed expert.

Consequently if the principal seeks to terminate unilaterally the agent agreement and avoid the additional payment of a penalty it will have to prove that the FM makes the continuing performance of the agreement impossible, which is difficult to visualize, as in most cases FM merely suspends the development of the agent's activities for a while but once the lockdown is eased the agent might continue is previous chores. In other words, the principal cannot claim that because of the Covid 19 affects the obligation to pay to the agent a commission for the deals closed on behalf of the principal.

CROATIA

Considering that there is no jurisprudence in Croatia regarding the impact of the FM event on the calculation of goodwill indemnity, the answer to this question is quite difficult and will certainly depend on the approach of the judge to the issue.

Most likely, it will have an impact on the determination of the goodwill amount.

Firstly, because in determining the maximum amount the average of commissions in the last five years need to be taken into account and, depending on the duration of the Coronavirus Pandemic, the average could be significantly lower.

Secondly, because in evaluating the benefits that the principal would have in the future from the clients brought by the agent (or with whom the agent increased business) it would be reasonable to expect that the benefit from those clients would be lower specially if those clients faced financial difficulties due to the COVID-19 pandemic which persisted also after the end of the COVID-19 pandemic.

CZECH REPUBLIC

There is no judicature in this respect in the Czech Republic but if business results after the termination of the agency are likely to be worse for long time the amount of indemnity might be affected based on arguments that the benefits resulting from the agency for the principal is not the same as anticipated etc. This assumption reflects the usual way of calculation of the indemnity which takes into consideration also the benefit to the principal based on the gross commission earned by the agent for transactions with those acquired and/or extended customers in the 12 months before termination of the agency agreement and also the duration of the benefit that the principal is

expected to derive from the relevant transactions. For the calculation and the amount of indemnity also the commission the agent has lost as a result of the termination of the agency agreement plays an important role. Consequently, if business with customers acquired by the agent falls down due to Covid – 19 situation it is likely that benefit to the principal will be lower than anticipated and also the amount of commission lost will lower – as such it might have impact on the calculation and the amount of indemnity.

DENMARK

Goodwill indemnity is calculated on the basis of Section 25 of the Commercial Agent's Act, which is similar to Art. 17 (2) of the Directive ("Indemnity model").

Thus, if, for instance, the agent's commission has been affected by the Corona virus at the end of the parties' cooperation and the benefits of the principal will be negatively affected by this, the Corono virus will negatively affect the agent's indemnity, which will be reduced correspondingly.

EGYPT

Under Egyptian law, the goodwill indemnity is based on the fact that the agency agreement is concluded in the common interest of the two parties. Before the new Commercial Code, goodwill compensation found its legal grounds in the provisions of the civil mandate. According to article 715 of the Civil Code, the mandator may at any time and notwithstanding any agreement to the contrary, terminate or restrict the mandate but must indemnify the agent for the loss sustained by him as a result of the inappropriate time or unjustified revocation. However, when the mandate is given in the interests of the agent or of a third party, the mandator cannot terminate or restrict the mandate without the consent of the person to whom the mandate was granted.

As for the Commercial Code, there was a distinction between the contract concluded for an indefinite period (article 188) and the one for definite period (article 189) 3 which later was pronounced unconstitutional by a decision of the Constitutional Court – Case Nº 193 — June 14th 20124.

With regard to contracts for indefinite period, article 188 disposes that, if the contract is for an indefinite period, the principal shall not terminate it without the occurrence of a fault by the Agent, and otherwise he shall compensate him for the damage caused to him by the dismissal. Any agreement to the contrary shall be null and void.

Accordingly, the entitlement goodwill indemnity will remain as a result for an unjustified termination of the agency agreement by the principal and the extent of the indemnity will be subject to the general rules of compensation depending on the amount damages suffered by the agent.

FINLAND

It is submitted that the Covid-19 outbreak has little or no impact on the agent´s right to goodwill indemnity provided the agency has lasted a long time prior to the outbreak and has limited impact on commercial patterns. This is because the law calls for an overall assessment of the situation in which also equitable aspects are considered.

According to section 15 of the Act on Commercial Agents and Salesmen (417/1992, ´the Agency Act´), an agent is entitled to indemnity if and to the extent

(i) he has acquired new customers to the principal or significantly increased the volume of business with existing customers and provided that the principal gains substantial benefit from such business in connection with or after the termination of the agency contract; and

(ii) the payment of the indemnity is deemed equitable considering the commissions lost by the agent on the transactions with such clients and all other relevant circumstances.

If there is loss of contracts or sales for the Covid-19 outbreak, its effect may be considerable, if the length of the agency has been short and the agent has not been able to contribute much due to it. It is submitted that an agent cannot invoke a ´would-be´ scenario in his favour.

On the other hand, the pandemic could have a considerable impact on the amount of indemnity if the duration of the agency has been short. In long term agency contracts, the impact should be limited. This is based on the calculation method for the indemnity.

The amount maximum amount may not exceed a sum equivalent to the remuneration (commissions added by possible other remunerations) of the agent for one (1) year calculated from the average annual remuneration over the five (5) years immediately preceding the termination or, if the agency contract has been in force for a shorter period than that, the average calculated from the total remuneration during the term of the contract.

The Agency Act does not provide any express method of calculating the indemnity but amount of indemnity is determined on the basis of the same criteria that apply to the assessment whether the agent is entitled to an indemnity in the first place. Thus, benefits created to the principal, commissions lost by the agent and the general requirement of equitability are the criteria for the indemnity. An overall assessment of all relevant circumstances on a case-by-case basis would be done considering the duration of the contractual relationship, the agent's sales efforts and success as well as the agent's diminished variable operating costs.

It is submitted that an agent should have a possibility of receiving indemnity near to its maximum amount, if he has launched the principal's products on the markets, created the whole or a considerable customer base for the principal therein and the principal still continues its business with such customers after the termination of the agency contract.

FRANCE

There is no specific rule on this question. However, the French courts consider that the calculation of the indemnity is a legal use and generally corresponds to two years of the average commissions due over the three last years. Some court decisions do not take the worst period (e.g. when last year sales are lower than the previous). The principals may argue that the calculation should be made over shorter periods when the agreement duration was short (depending on courts, under two or five years). One may presume that courts will neutralize the duration of the force majeure event for the indemnity calculation.

GERMANY

This is possible, because the basis for the calculation of the indemnity are the commissions of the last contractual year. Furthermore, the maximum amount of the indemnity is the average commission or remuneration of the agent out of the last five years. So therefore, if the business is affected by Covid-19 the amount of the indemnity might be reduced, as well in regard of the basis of the calculation as well as regarding the maximum amount.

Furthermore, in order to receive an indemnity, advantages of the principal must exist. Whether this is the case is estimated at the date when the agency contract ends. If business is low the advantages of the principal will probably also be low.

ISRAEL

If an agent is entitled to compensation upon termination under the "Commercial Agent law", such compensation is to be calculated based on its performance during the period of three years preceding the termination, which performance might be affected by the COVID-19 implications.

ITALY

In determining the goodwill indemnity there should be enough space for not considering the force majeure period when calculating the amount of the indemnity on the basis of the commission earned in the last 5 years.

However, with respect to contracts which have lasted for a short period and more in general, considering the important impact corona virus is currently having on business and particularly if the COVID-19 situation will have important consequences for a quite long period (e.g. depending on the specific products or services provided), it is likely that competent Courts would take into consideration such circumstances, based on possible arguments brought by the agents' attorneys (e.g. projections on future benefits for the principal; negative consequences to be shared between the parties; etc.).

JORDAN

Article 261 of the Civil Code stats that if a person proves that the damage was caused by a sudden accident, a force majeure, or The act of the third party this person is not liable to pay compensation unless the law or the agreement stipulates to the contrary.

In accordance with the Jordanian Commercial Agents Law the agent has the right to claim damages and loss of profit based on his/her calculation supported by all the documents the agent can provide to prove such claim, the pandemic outbreak itself shall not affect the amount or the entitlement to goodwill indemnity. Generally if the termination is unlawful the agent has the absolute right to claim damages and loss of profit.in light of the Covid-19 outbreak court will review each case based the termination circumstances to determine the legality of the termination and if it's based on FM or contingency.

KUWAIT

We assume that Covid-19 outbreak will not affect the commercial agent's entitlement to goodwill indemnity, where the agent still eligible to claim it as direct root cause resulted from the post termination consequences which finds its base on the legal nature of the alleged termination and its justification.

The best advice that may be given to the contracting parties, is to cooperate and reach an amicable arrangement that will satisfy all parties involved, without the need to resort to the judiciary or taking judicial proceedings which hinder both parties' interests.

MEXICO

Covid-19 outbreak should not affect agent´s rights and entitlements under the relevant agreement for generated commissions or any other amounts payable thereunder, except otherwise agreed with principal.

MOROCCO

The Covid-19 outbreak cannot affect the commercial agent's rights to goodwill indemnity or the amount thereof. The law does not include any provision regarding the method of calculation of such compensation. However, the amount of compensation generally recognised by jurisprudence is two to three years of commission. This position of the courts may evolve after this pandemic by taking into consideration the circumstances of each case taking into account for example the duration of the lockdown period and the consequences of such a lockdown on the sale of certain products or the offer of certain services.

MOZAMBIQUE

Pursuant the article 551 Commercial Code, the agency agreement may be terminated by either party, in the presence of circumstances that render it impossible or seriously harm the contract's goal in such a way its maintenance till its term is reached is not reasonable. In this scenario, the law grants the right to an indemnity, to be determined in accordance with equity.

In addition, the Commercial Code also provides for a customer's compensation, after the termination of the agency agreement, which is calculated in equative terms, not exceeding the equivalent to an yearly indemnity, calculated on the basis of the average of payments received by the agent in the past five years. If the contract has lasted less than five yearstime, the calculation of such indemnity will be made according to the average of the period in which the contract was in force.

In summary, the COVID-19 should not affect the calculation of the above-mentioned indemnity.

NEW ZEALAND

There is nothing under New Zealand law to affect such an entitlement, in our opinion. However, if someone took action it is likely that the courts would take into consideration the circumstances of the pandemic and may be sympathetic accordingly.

NORWAY

As in other countries that has adopted the EU agency directive entitlement to indemnity is based on the customer relations developed during the term of the agency. The formula used is described in the country report. Changes in the market situation created by the pandemic may influence on all elements in said formula.

Indemnity is e.g. quantified on the basis of the gross commission earned by the agent for transactions with new and/or "extended customers" in the 12 months before termination of the agency agreement. This amount may in the current market situation experience extreme variations. If the end customer is in the hotel/hospitality sector the

turnover may fall dramatically. If the end customers are medical facilities /laboratories the demand may be abnormally high.

The formula for indemnity has been applied rather strictly by Norwegian courts. It cannot be ruled out that courts will be more discretionary if the pandemic give unreasonable or unexpected outcome. However, such “corrections” are expected to be made within the flexibility already offered in the formula.

PAKISTAN

In Pakistan all agency agreements are governed by The Contract Act 1872 and there is no explicit provision regarding goodwill indemnity under the said act. Moreover, goodwill of a company always belongs to the principal and the agent gets his due commission for bringing in new customers and increasing the client base. Therefore, under Pakistani law the agent is not entitled to goodwill indemnity or the amount thereof at the time of termination of contract.

POLAND

Polish Civil Code repeats the prerequisites of the goodwill indemnity provided in the Directive: upon termination of the agency agreement, the agent may claim an indemnity from the principal if, during the term of the agency agreement, the agent (1) has acquired new clients or has led to a significant increase in turnover with existing clients and (2) the principal continues to benefit significantly from the contracts with those clients. The agent shall be entitled to this claim if, taking into account all circumstances, and in particular the agent's loss of commission on the contracts concluded by the principal with these clients, the claim is supported by the (3) equity principles. The maximum amount of goodwill is one-year agent’s commission calculated on the basis of the average annual remuneration received during the last five years. If the term of the agency contract is shorter than five years, the remuneration is calculated with account taken of the average for the whole contract term.

So, there are two legal factors, mentioned above, which will be of importance while calculating the amount or goodwill indemnity, taking into account the COVID-19 situation: five-years period, which is a base for the calculation of the maximum amount of goodwill and the equity rules. Depending on the moment, when the agency contract is terminated, the COVID-19 period may cause the decrease of the amount of goodwill, provided that the epidemic had negative influence on the agent’s business (sale level, number of orders, customers situation on the respective market etc). It is confirmed in the Polish jurisprudence that the reasons of equity may be in favour of and against granting the agent an indemnity (verdict of the Supreme Court of 27 January 2012, case no.: V CSK 211/11). Each party to the proceedings is required to demonstrate the circumstances, which should be considered in the light of equity. The equity therefore may lead to increase or decrease of the goodwill. In one of the most recent judgments (8 November 2018, case no: XX GC 488/17), the District Court in Warsaw indicated that only circumstances related to the agency agreement should be taken into account within the framework of equity principles. Thus, in the opinion of this court, e.g. circumstances concerning the property situation (financial problems, etc.) of the agent are irrelevant. As a rule, in the light of equity the circumstances that have arisen until the termination of the agency agreement should be evaluated.

PORTUGAL

The legislation approved under the state of emergency does not provide any limitation regarding the commercial agent's entitlement to goodwill indemnity or an effect to the amount thereof.

Nonetheless, the parties may have created adjustment mechanisms which result in such limitations, which would have to be assessed on a case by case basis.

ROMANIA

The goodwill indemnity cannot exceed an amount equal to the annual commission calculated as the average for the commissions for the past 5 years. If the agreement was in force for less than 5 years, the annual indemnity shall be calculated as an average of the amounts received during the contractual period. Since this is the maximum, the parties may contractually agree on other smaller amounts.

Especially in case of contracts concluded for shorter period, and also considering the presumably long effects of the pandemic (also taking into account elements like products / services to be delivered, markets etc.), is it very likely that these circumstances be taken into considering triggering a reduction of the goodwill indemnity.

RUSSIA

Under Russian law, there is no such concept as "goodwill indemnity" as it is recognized in other jurisdictions. However, according to the Civil Code of the Russian Federation ("Civil Code"), the parties are free to agree on the provisions similar to goodwill indemnity in the contractual arrangements.

According to the Civil Code, the agent is entitled to claim compensation of damages or expenses in case of termination of the agency contract by the principal for the reasons not related to a breach of the contract by the agent. Article 1003 of the Civil Code states that the principal has the right to unilaterally terminate the contract entered for the definite term, which entitles the agent to claim compensation of the damages caused by such termination. This article is applicable, if the agent acts in its own name, but at the expense of the principal. In case the agency contract is concluded without specifying the term of its validity, the principal is obliged to pay the agent remuneration for the transactions made by the agent before the termination, as well as to reimburse the expenses incurred.

Regulation is different if the agent acts in the name and at the expense of the principal. In this case, if the principal terminates the contract, the agent does not have the right to claim damages incurred as a result of the termination, unless the agent acts as a commercial representative as provided for in Article 978 of the Civil Code.

There is no specific regulation regarding the impact of COVID-19 on performance of agency contracts.

As mentioned in previous sections, force majeure events exempt the debtor from liability for improper performance or non-performance of obligation. Principal's right to unilateral termination of the agency contract is legally recognized.

Consequently, the COVID-19 outbreak, government-imposed restrictions and other COVID-19-related events, if considered as force majeure, are likely not to relieve the

principal of its obligation to pay for the damages incurred by the agent due to unilateral termination of agency contract by the Principal for the reasons not related to improper performance or non-performance of agency contract by the agent.

At the same time, it should be taken into account that the lack of necessary funds (e.g. principal's inability to pay the compensation, remuneration for the contracts made by the agent, agent's expenses) generally is not recognized as force majeure by the court practice. However, as stated by the Supreme Court[11], if the lack of necessary funds is caused by the COVID-19-related restrictions, in particular, the ban on certain activities, a regime of self-isolation, etc., it may still be recognized as a force majeure event, provided that the criteria of an extraordinary and inevitable event are satisfied and there is a casual link between these events and lack of the necessary funds.

SAUDI ARABIA

Under Saudi law, there is no mandatory obligation for the principal to pay goodwill indemnity to the commercial agent; as a result, goodwill indemnity is only payable if it is foreseen in the contract and, therefore, the entitlement to goodwill indemnity will depend on the interpretation of the contract. It is entirely uncertain and completely in the discretion of the judge to decide whether the agent's limited ability to perform its obligation in view of the pandemic should be considered when determining goodwill indemnity in accordance with the provisions of the contract.

SLOVENIA

According to the Slovenian Obligations Code the agent shall after termination of the contract have the right to payment of indemnity if and insofar as the agent obtained new clients for the mandator or appreciably expanded the transactions with previous clients and after the contract terminates the mandator enjoys significant benefits with such clients, or if the payment of indemnity is demanded by special circumstances, in particular the loss of commission on transactions with such clients.

In determining the indemnity payment, it shall be necessary to make appropriate consideration of the commission obtained by the agent for contracts concluded after the termination of the relationship with the mandator and any prohibition on competitive activities after the termination of the relationship with the mandator. The amount of indemnity payment pursuant may not exceed the average annual commission over the last five years or the relevant shorter period since the conclusion of the contract.

Unfortunately, Slovenian case law does not give an answer to a question whether force majeure in general affect agent's entitlement to goodwill indemnity or its amount. However, in our opinion it is not excluded that a court would, on the basis of the statutory provisions of the Obligations Code, take into account the COVID-19 epidemic and its negative consequences for business in determining the appropriate amount of the indemnity payment (for example, that the mandator consequently enjoys benefits to a lesser extent after the contract terminates or that payment of indemnity is not demanded by any special circumstances or that the contract was terminated due to force majeure).

[11] Review of selected issues of judicial practice related to the application of laws and measures to counteract the spread of the novel coronavirus infection (COVID-19) in the Russian Federation No. 1 " (Approved by the Presidium of the Supreme Court of the Russian Federation on April 21, 2020).

SPAIN

Goodwill indemnity is derived from the Commercial Agents Act and is a compulsory one. Parties cannot decide to exclude it or to limit its extension before or at the signature of the Contract. Therefore, goodwill indemnity will be still enforceable.

The goodwill indemnity is, nevertheless, calculated taking into account the remuneration received by the agent during the years in which the agreement was effective (one year of remuneration as average of the five previous years or the whole duration of the agreement if it was shorter). Therefore, if the sales were reduced as a consequence of the pandemic, the amount of the goodwill indemnity will be probably also be reduced without the possibility of invoking the pandemic situation and the force majeure clause.

SWEDEN

The agent is entitled to an indemnity in the first place only if and to the extent that he has brought new customers to the principal or significantly increased the business with already existing customers, and only to the extent that the principal continues to derive benefits from such changes. Any such indemnity also shall be equitable in view of the circumstances.

Obviously, to the extent that the corona pandemic decreases or even eradicates either such positive changes or subsequent benefits for the principal, the prerequisites for an indemnity will not be fulfilled and the agent will lose his right to indemnity.

If the agent is entitled to receive an indemnity, it shall not exceed an average of one year's commission calculated on the last five years. It is as of yet an open question whether courts, in calculating such average, could be persuaded by the agent to disregard the exceptional period during which Covid-19 has had negative impacts on the levels of business.

SWITZERLAND

Art. 418u CO entitles commercial agents to a goodwill indemnity at the end of an agency relationship provided certain conditions are met. If the conditions are met, the indemnity payable to the agent may amount up to the agent's net annual earnings from the agency relationship, calculated as the average earnings of the last five years. In case the agency relationship lasted shorter than 5 years, the average earnings over the entire duration of the agency relationship are decisive.

Considering that the COVID-19 pandemic has a major impact on the economy, it is likely that the current situation will also affect the agent's sales in a negative way and, accordingly, negatively impact on the basis (average earnings) on which the goodwill indemnity is calculated. A further negative impact on the calculation of the agent's goodwill indemnity might result from the fact that the supplier's benefits are impaired because the COVID-19 pandemic will not allow him to take full advantage of the customer base and business build up or increased by the agent. Such impaired benefits would be taken into consideration by Swiss courts.

THE NETHERLANDS

Under Dutch law the commercial agent may become entitled to payment of a goodwill indemnity insofar and to the extent that he has acquired new customers or has

significantly increased the volume of business with existing customers provided that the agreements with these customers are likely to continue to be substantially beneficial to the principal after termination of the agency contract. Once these conditions have been fulfilled the entitlement to payment of an indemnity is given. Calculation of the indemnity takes place in three consecutive steps.

The first step is to quantify the benefits that the principal derives from transactions with those customers that were acquired by the agent or with customers whom the agent took over but with whom the business relationship was significantly extended.

The benefit to the principal must be determined on the basis of the gross commission earned by the agent for transactions with those acquired and/or extended customers in the 12 months before termination of the agency agreement. This amount should then be adjusted for factors relating to (a) the duration of the benefit that the principal is expected to derive from the relevant transactions, (b) the "migration rate" of that customer base, and (c) the accelerated receipt of commission income by the agent as a result of the lump sum indemnity payment.

The second step is to assess whether the amount calculated in the first step should be adjusted for reasons of equity. The commission the agent has lost as a result of the termination of the agency agreement plays an important role in this assessment; this amount should be determined on the basis of the gross amount of commission.

The third and final step, is to assess whether the amount thus calculated does not exceed the maximum of one (1) year's commission calculated on the commission earned during the last five (5) years as laid down in article 7:442 paragraph 2 of the Dutch Civil Code. If it does not exceed this maximum, the lower amount will be due. If it does exceed this maximum, the maximum will be due.

If the Covid-19 pandemic will cause a serious decrease of business with the acquired and/or extended customer base and assuming that the agency contract will be terminated in the months/year ahead, this will obviously already in step 1 negatively affect the agent's goodwill indemnity entitlement when quantifying the benefits. In addition and depending on the circumstances, a further downward adjustment in step 2 for reasons of equity may be found appropriate.

If the agency contract was terminated recently and no substantial negative effects were seen yet at the time of the Covid-19 pandemic at the termination date but are imminent or already showing, it is not unlikely that downward adjustments in steps 1 and 2 may be considered appropriate.

TURKEY

Although certain new regulations have recently entered into force in Turkey due to Covid-19 outbreak, they do not include any provisions on agency contracts; therefore, general rules will apply. Goodwill indemnity is regulated under Article 122 of the Turkish Commercial Code. Accordingly, for the agent to request goodwill indemnity, among other conditions, the agency contract should have been terminated by the principal without agent's fault, or the agent should have terminated the agency contract due to the principal's action that justifies termination. If the agency contract is terminated due to Covid-19 outbreak, as the agent will not have any fault in the termination of contract in principle, it will be entitled to request goodwill indemnity. Even if goodwill indemnity is not regulated under the contract, the agent may still ask for it.

Goodwill indemnity is calculated by taking the last 5 years of agency relationship and it shall not exceed the total of the commissions and other payments the agency obtained in the last 5 years. If the agency contract lasted less, then such period shall be taken into account. Although Covid-19 outbreak does not affect the agent's entitlement to goodwill in general sense, due to the calculation method designated at law which takes into consideration the last 5 years' commissions and other payments, the amount of indemnity will be affected, since Covid-19 will most probably affect the sales figures of the agent.

In addition, for entitlement to goodwill indemnity, the agent should have brought new customers to the principal and the principal should continue to derive substantial benefits from the business with such customers. If Covid-19 negatively affects the benefits derived by the principal from the agent's customer, this may also affect the amount of goodwill indemnity.

UK

In theory, the pandemic should not have any impact on agent's entitlement to compensation. Unless the Principal can establish termination due to the Agent's material breach, the Agent will be entitled to the goodwill termination payment if the agreement is terminated. The pandemic may however have an impact on the amount of the termination payment. If there is a significant downturn in business (e.g. certain customers have reduced demand or have become insolvent), this is likely to be factored in when calculating the amount of the payment.

URUGUAY

In Uruguay no laws have been passed in this regard. What is more, Agency contracts are not specifically regulated in any law, so the general principles of contracts shall apply.

Firstly, the stipulations of the contract regarding this matter shall be analyzed. In case no agreements in this regard were made, the general principles are applicable.

Accordingly, if the agency contract has been signed and is in force, in principle the agent entitlement to goodwill indemnity should not be affected. Nevertheless, if in the agency contract was agreed that the goodwill indemnity shall be calculated based on the remuneration received by the agent, naturally the amount of the goodwill indemnity may be reduced, if the area of the business has been affected by the covid-19 pandemic, reducing for example the sales.

Nevertheless, the concepts of force majeure and breach of contract mentioned above, are important factors to keep in mind when considering an eventual contract breach.

3.2 If the principal gives the termination notice during the lockdown period ordered by the Government, is the notice effective during the lockdown?

ARGENTINA

Under section 1492 of the Civil Code the principal does not need to give any reason to terminate an agreement since they are of undetermined term by law. But the notice has to be served at the end of the month and the term shall be one month for each year that the contract has been into effect. The fact that there was a pandemia does not make the condition any better. If principal fails in a 5 years contract to give 5 months prior notice, principal shall have to pay compensation equal to five months of profits,

unless the agent has reduced significantly its sales for the last two years in a row, where the principal may give the agent an indemnity of only two months, no matter if the contract has run for more years or had a determined term, since termination was for a valid legal cause.

AUSTRIA

A termination notice during the lockdown would be effective provided the termination notice period is observed (see 3.1.).

BELGIUM

Termination during the lock-down period should be effective, it being understood that the agent would be entitled to notice period (or as the case may be to compensation in lieu of notice period) and goodwill indemnity as provided by law. Termination for cause should not deprive the agent from those rights if he can demonstrate that the non-performance alleged by the principal is excused by force majeure.

CHINA

Article 173 of the *General Rules of the Civil Law of the People's Republic of China* (《中华人民共和国民法总则》) provides for the termination of agency. Unless otherwise provided in the agency contract, either the principal or the agent can terminate the agency contract.

In order for the termination notice to take effect, both parties need to comply with relevant requirements regarding termination notice in the agency contract. It should be noted that the delivery of the termination notice may be delayed or even fail due to the mandatory quarantine, traffic control, post-service interruptions or other pandemic prevention and control measures in China. And it may not be fair that the termination takes effect without the agent's knowledge or the prompt delivery of the termination notice to the agent.

With respect to the bases of termination, please refer to the analysis under section 2.2 above.

COLOMBIA

Yes, unless the means of communicating such decision is hampered by the lockdown (for example delivery of letters by courier is severely limited and offices are closed) but if notice can be delivered to an email. The Covid 19 would be a poor excuse.

CROATIA

Considering that the Croatian law is silent on this point (i.e. does not contain a prohibition to terminate the contracts during the lockdown period), it is likely that the termination shall be effective, provided that it has been exercised in accordance with the contractual provisions and the mandatory provisions of the Croatian Obligations Act on agency agreements if Croatian law is applicable to the agreement.

CZECH REPUBLIC

It is likely that the termination notice shall be effective and that the lockdown period and Covid – 19 situation does not prevent the principal in exercising his right to terminate the agency contract in conformity with the contract and the law.

DENMARK

Yes, a the principal's termination notice will likely be effective even if given during the lock down period ordered by the government.

However, please note that if the principal's termination notice is a termination for breach, it must be considered if the obligation that has been breached has been suspended or not (see answers to questions 1.1 and 1.4 above; even if they have been given in relation to distribution and franchise agreements).

EGYPT

It is probable that the termination notice shall be effective and that the lockdown period and the pandemic situation will not prevent the principal from exercising his right to terminate the agency agreement in conformity with the contract and the law.

FINLAND

A termination notice made in accordance with legal requirements, most notably the notice period and potential form requirements, is valid irrespective of the circumstances arising from Covid-19 pandemic. This applies where the termination is not based on the fault of the agent and in which a notice period is required. Should the principal seek an immediate termination based on the agent´s non-compliance with the commercial terms of the contract impacted by pandemic, equitable aspects could come into consideration.

Section 36 of the Contracts Act states as follows:

> "If a contractual term is unfair or its application would lead to an unfair result, the term may be adjusted or set aside. In determining what is unfair, regard shall be had to the entire contents of the contract, the positions of the parties, the circumstances prevailing at and after the conclusion of the contract, and to other factors".

This general rule of adjustment applies to all kinds of contracts and finally it is up to the competent court to decide whether a contractual term is considered unfair in the aforesaid meaning and thus subject to possible setting aside or adjustment. Before the pandemic, this provision was extremely seldom applied in B2B relations as the principle *pacta sunt servanda* is predominant. It is submitted that the crisis will trigger more case law on the application of the provision especially in relation to considering the impact of changed circumstances.

FRANCE

A termination notice shall be effective during the lockdown period unless the termination is due to a breach of a contract due to force majeure event, should this event was previously notified by the defaulting party.

GERMANY

Yes.

ISRAEL

The right of the principal to terminate the agency agreement is unlikely to be affected by the COVID-19 pandemic.

ITALY

Considering that, during the lockdown, for the agent it is impossible or very difficult to fulfil the contract and exercise his/her right to collect the orders, the Courts may take into account such circumstance and (i) grant him/her an indemnity in lieu of notice to compensate the agent or (ii) in analogy with the provisions protecting the agent during illness or pregnancy, suspend the agency agreement (and consequently the notice period).

JORDAN

If termination notice is based on a reason or a default caused by the pandemic, governmental orders and restrictions (FM, Contingency) it's unlikely that court will consider it valid as this termination is not due to agent fault or failure to fulfill his/her contract`s obligation. as per The Jordanian Commercial Agency Law which allows the agent to claim damages and loss of profit caused by the unlawful termination.

KUWAIT

The termination notice during the lockdown period ordered by the Government, is valid and effective, provided that there is not abuse of right and the termination notice should be justified and meet the provisions of the termination clause. However, the Court shall have the sole discretion to assess and monitor if the termination notice was in according with the terms of the agreement and in consistent with applicable laws.

MEXICO

Pursuant to Mexican Code of Commerce, principal is entitled to revoke the agency at any time and therefore a termination notice during the lockdown shall be effective, as long as the agent effectively receives the notice and/or complies with the notification requirements set forth in the agreement, if any.

MOROCCO

The governmental lockdown is a force majeure event which cannot allow the agent to fulfil the contract and therefore if the principal gives the termination notice during the lockdown period ordered by the Government the notice would not be effective during the lockdown.

MOZAMBIQUE

In our opinion, there is no legal restriction to the principal notifying the agent about the termination of the contract. However, if the agency contract lasts for an indefinite period of time, it is important to respect the following previous notices: one month, if the contract doesn´t last for more than one year; 2 months, if the contract lasts for more than one year; 3 months, if the contract lasts for more than 2 years; 4 months, if the contract lasts for more than 3 years; 5 months, if the contract lasts for more than 4 years; 6 months, if the contract lasts for more than 5 years (ut., article 549, no. 1 of the Commercial Code).

If these prior notice is not respected, the other party has the right to receive compensation corresponding to the damages caused, being that the agent may require, in alternative, an amount calculated on the basis of the average monthly commissions received in the previous year, multiplied by the missing duration of the contract (ut., article 549, no. 2 of the Commercial Code).

NEW ZEALAND

A notice would be unlikely to be effective. It would be a matter of contract and having assessed all relevant circumstances in relation to special regulations which may be applicable during that period.

NORWAY

It is likely that the termination notice will be effective and that the lockdown period and Covid – 19 situations does not prevent the principal in exercising his right to terminate the agency contract for convenience in conformity with the contract and the law.

If the obligations of the agent is suspended due to force majeure – it might however be argued that the notice period should be extended (by the force majeure period).

PAKISTAN

If the notice is sent during the period of lockdown then the termination cannot be ineffective only on the basis of the lockdown being in place. However, the agent may challenge the termination on any other ground if he‘s able to establish the quantum of loses. In case the contract has been wrongly terminated, the agent, subject to establishment of quantum of losses, may be entitled to compensation for wrongful termination of the contract, however, he may not be granted an injunction for the same.

POLAND

The COVID-19 special regulations in Poland have not dealt with a rights or obligations of the parties to the agency agreement up to date. It means that the general rules of the Civil Code regarding termination and termination notice still apply.

In consequence, also the rules regarding the commissions during the termination period (which remain due) and/or compensation of the damage for the improper termination are not affected, either.

PORTUGAL

Given that there is no specific provision under the legislation approved under the state of emergency, we see no reason for the notice not to be effective. This is, nonetheless, subject to the principle of good faith which must always guide the parties’ conduct.

ROMANIA

It is unlikely that the right of the principal to terminate the contract be affected by the current pandemic. However, the right to terminate the contract needs to duly observe all applicable legal and contractual provisions. The termination notice may be sent during the lockdown period, but the prior-notice term must be complied with, and all commissions due until termination shall be duly paid to the agent.

RUSSIA

A termination notice given by the principal during the lockdown period ordered by the Government is likely to be effective.

The President of the Russian Federation has issued decree[12] under which the days starting from April 4 till April 30, 2020, are declared as "non-business". According to the Supreme Court's recent clarifications,[13] the "non-business days" declared as such by the President's decree are among the measures taken to ensure sanitary-epidemiological well-being of the population aimed at preventing the spread of COVID-19 and cannot be considered as non-business days within the meaning of Civil Code and defined in Articles 111-112 of the Labour Code of the Russian Federation.

Otherwise, it would mean suspension of all civil obligations without exception for a long period of time and significant limitation of civil turnover as a whole, which does not meet the objectives of the said decree of the President of the Russian Federation[14].

Although closing of businesses and suspension of their operations is not universal throughout Russia and depends on specific circumstances (type of business, location and restrictions in place in a certain territory), the lockdown period does not prevent the principal in exercising its right to terminate the agency contract, as there are a lot of alternative ways of notifying the counterparty available to the principal.

SAUDI ARABIA

Under Saudi law, there are no legal provisions on the termination of agency agreements and, therefore, the principal's right to terminate is subject to the provisions of the contract; as a general rule, however, it is to be expected that the principal's right to terminate for convenience will not be affected by the pandemic, but termination for cause may not be enforceable during the lockdown period ordered by the Government if it is based on reasons related to the pandemic.

SLOVENIA

The lockdown period ordered by the Government due to the COVID-19 epidemic will not affect the principal's right to terminate the agency contract in accordance with the applicable law.

SPAIN

The right of the principal to terminate the agency agreement is unlikely to be affected by the pandemic situation. At present (April 20) there is no specific rule affecting private agreements. In our opinion, the general suspension of limitation terms decided by the Royal Decree 463/2020 approving the Alarm Status does not affect the minimum notice period to terminate agency agreements that should be of one month per year the agreement was in force with a maximum of six months.

Therefore, the principal will remain free to send the termination letter during the lockdown period but respecting the appropriate previous notice. The agreement will remain in force until the termination date and all the commissions or remunerations to the agent shall be paid. According to Agency Act, and unless otherwise expressly

[12] Decree of the President of the Russian Federation, dated April 2, 2020 No. 239 "On measures to ensure sanitary-epidemiological well-being of the population in the territory of the Russian Federation in connection with novel coronavirus infection spread (COVID-19)".
[13] Review of selected issues of judicial practice related to the application of laws and measures to counteract the spread of the novel coronavirus infection (COVID-19) in the Russian Federation No. 1 " (Approved by the Presidium of the Supreme Court of the Russian Federation on April 21, 2020).
[14] Ibid.

foreseen in the agency agreement, the termination will be effective the last day of the month of that previous notice.

One practical question may arise in case the agent is a corporation and its premises remain closed and therefore unavailable to receive communications. In this case, an electronic communication by a mean already used between the parties could be accepted by the court in case of conflict.

If the principal decides not to respect the previous notice or to give a shortest one, he will probably be liable to compensate the agent for the non-respected period. Although this compensation is generally calculated according to the remunerations the agent could have obtained in this period (by comparing it with the same period in the previous year, for instance), this is not something automatic and it seems that in the current circumstances, the situation derived from the pandemic will probably reduce the amount the agent will receive in this case.

SWEDEN

The principal´s right to terminate the agreement is unlikely to be affected by the pandemic as such.

The principal must consider the provisions on termination in sections 24-26 of the Act on Commercial Agency. The period of notice is at least one month unless it is a termination with immediate effect. In order to be entitled to terminate the agreement with immediate effect, the principal needs to establish that there is an *important ground* to do so. Typically, force majeure events will per se be deemed to constitute such important grounds. However, the principal also needs to demonstrate that the effects of Covid-19 will entail long-lasting hindrances that have substantial negative impacts on the contractual relation, and that these effects are burdensome primarily upon the principal and not upon the agent. It will be an *in casu* assessment, where the specific circumstances must be taken into account.

SWITZERLAND

It is likely that the termination notice is effective and that the lockdown and Covid - 19 situation does not prevent the principal from exercising his right to terminate the agency contract in conformity with the contractual provisions and/or applicable agency laws.

In case of early termination without notice, a court would consider the COVID-19 situation when assessing whether the conditions for the termination were met.

THE NETHERLANDS

The right of the principal to terminate the agency contract is unlikely to be affected by the Covid-10 pandemic.

If the principal terminates with due observance of the applicable notice period, commission for all transactions concluded between the principal and the customers in the territory or customer group assigned to the commercial agent shall be due.

If the principal would decide not to terminate with due observance of the applicable notice period, he will be liable for payment of a compensation for the loss of commission during the period that the agency contract should have been continued in case of a regular termination. Such compensation is usually calculated on the basis of the average monthly commission earned in the twelve months prior to the termination. This

calculation method is based on the assumption that circumstances after termination will not materially change.

However if it is obvious that the Covid-19 pandemic will result or has already resulted in an exceptional decrease or even standstill of business with the customers in the territory or the customer group assigned to the commercial agent, the principal may have good reason to argue that calculation of the compensation on the basis of the business and commission earned in the last twelve months is unreasonable and that a decrease of business is to be taken into account when establishing the amount of the compensation.

TURKEY

The Law numbered 7226 which entered into on 26 March 2020 suspended the statutory periods to avoid any forfeiture of rights due to Covid-19, however, it does not prevent a party to terminate an agreement or to give a termination notice. The right to terminate is a unilateral right, and the termination notice automatically becomes effective once it is served to the other party.

As per Article 18/3 of the Turkish Commercial Code, a termination notice between merchants shall be served via notary, registered letter with return receipt, telegram or registered electronic mail system by using secure electronic signature. If any of these methods (such as serving via notary or registered letter with return receipt) cannot be used during the lockdown, other methods designated under the article may be used for serving the termination notice. It is also noteworthy to mention that Turkish public notaries still continue their services as of today, although there are some changes in their working hours.

UK

Putting aside the effect of any force majeure clause in the contract, the Principal will still need to comply with the termination notice requirements at law and in the contract. Subject to this, there are no statutory restrictions preventing the Principal from terminating the contract even during the government lock down period.

URUGUAY

In Uruguay there has not been decreed a compulsory quarantine. Nevertheless, the exhortation of the government to the individuals is to stay at home if possible. In our opinion, the declaration of health emergency announced on March 13, 2020 by the President of Uruguay does not affect the effectiveness of communications made in this period.

Furthermore, if a compulsory quarantine is ordered by the Government, in principle the termination notice during the lockdown period is effective, unless a specific rule set the opposite. Hereto, the principal may exercise its right to terminate the agency contract in conformity with the contract and the law.

Thereof, if there has not been passed any rules establishing that certain communications such as letters or telegrams are not effective during the lockdown, or that their effects will begin when the lockdown is finished, the notice shall be effective, provided that the terms of the contract are fulfilled.

Please bear in mind that in Uruguay, - up to the date, April 24 - judicial terms are suspended until April 30, so an eventual legal claim cannot be made until May.

3.3 Is the commercial agent's entitlement to the agreed commission affected by the cancellation of already confirmed orders by customers due to the pandemic?

ARGENTINA

If orders were cancelled and principal has not collected any money the agent suffers the whole loss of its commission.

AUSTRIA

The commission claim remains unaffected if the business is not performed from reasons attributable to the principal.

The customer will, in principle, not be entitled to refuse delivery (see point 1.3.). In case the principal accepts the customer´s wish just to serve him securing future business, the commission claim remains unaffected.

In case there is a contractual right to withdraw, there is no commission due. This might not be sufficient to cancel the commission claim in case the withdrawal right is contained just in the customer´s general terms and conditions or framework agreements. But in case it is contained in the order itself, there is no commission due.

BELGIUM

If the contract provides that the right to commission shall be extinguished if it is established that the contract between the third party and the principal will not be executed, and that fact is due to a reason for which the principal is not to blame, the principal shall be entitled to suspend payment of the commission. Likewise the commission shall not be due if the principal could not execute the contract concluded with the customer for no fault of his own (eg he failed to deliver as a result of force majeure).

CHINA

Both parties shall check the commission payment provisions in the agency contract. If the agency contract provides that the commission is due when the order is confirmed, then the principal is obligated to pay the commission to the agent, whether or not the order is canceled later by the customers due to the pandemic. The principal may claim force majeure or a change of circumstances, but the chance of success is not high since the court will respect what the contract says.

However, in the agency contract, if the payment of the commission to the agent is conditional on other factors, such as the principal's receipt of payment from its customers, then the principal has a valid ground not to pay the agent if the customers cancel the order due to the pandemic.

Again, during this pandemic period, firstly, the courts will respect the mutual agreements between the parties in the contract. However, if the performance of the contract or the realization of the purpose of the contract has been affected by the pandemic, the courts will evaluate the impact and determine whether to modify or terminate the contract based on the principle of fairness.

COLOMBIA

The agent is entitled to commission where a sale has been concluded between the principal and a customer which he did not directly arrange, but the customer is one whom the agent originally acquired for the principal for transactions of the same kind. Therefore, if there is room for the cancellation of the orders and refund of the money by the principal, the agent's commission will be affected, because the right to said commission does not arise.

CROATIA

Pursuant to Article 824 of Croatian Obligation Act the agent will lose the right to commission in case of non-fulfilment of a contract between the principal and a third person through no fault of the principal.

CZECH REPUBLIC

In principle the right for commission does not arise (the agent is not entitled to commission) if it becomes apparent that a business (contract on the basis of an order transmitted by the agent) will not be performed. It does not apply, if the business is not performed from reasons on the side of (attributable to) the principal. If already confirmed order is cancelled by customers due to the pandemic, it is likely that the courts would not treat such situation as reason attributable to the principal, unless such cancellation is done in agreement with the principal.

DENMARK

The agent's right to commission can be extinguished only if and to the extent that is established that the contract between the customer and the principal will not be executed and this is due to a reason for which the principal is not to blame.

If the transaction between the customer and the principal is not executed as a result of the fact that the principal voluntarily and without a legal obligation, decides to accept a cancellation, the agent should normally receive payment of the agreed commission whereas the non-execution of the transaction between the customer and the principal is attributable to the principal.

If the transaction is rightfully cancelled by the customer due to force majeure, the reason for the non-execution of the transaction is not attributable to the principal. The commercial agent shall in such cases not be entitled to payment of the agreed commission.

If the transaction is cancelled by the customer due to the fact that the principal has not (timely) delivered the ordered goods (or services), commission will still be due unless the non (timely) delivery by the principal is caused by force majeure.

EGYPT

As a general rule, the Agent is entitled to his remuneration as soon as the transaction in his charge is concluded, and that he does not guarantee the fulfilment of the third party's obligation unless he is bound by a *del credere* obligation.

According to article 150 ECC, the Agent is entitled to a commission when the transaction is concluded, or if he establishes that the non-conclusion of the deal was due to the Principal. The later could however argue that the non-performance from his side was justified (e.g. serious risk that the customer will not pay or force majeure).

Other that the above, the Agent shall not be entitled to a commission but only to a compensation for the effort he exerted as prescribed in commercial practices and usage. Moreover, according to Article 710 of the Civil Code, the Principal must reimburse the Agent for any expenses incurred by him with interest from the date such expenses were incurred, for the normal performance of the mandate, regardless of the success of the Agent in the execution of the mandate.

FINLAND

In principle, the agent is entitled to a commission for all contracts concluded by the principal. In case the contracts are not thereafter carried into effect by the parties, in total or partially, the agent's right to the commission will lapse in respect of the non-performed part of the contract. However, in case such non-performance is due to a situation where the principal

(i) cancels, without the agent's approval, the contract with the customer or amends its terms and conditions to the effect that the contract would not be fulfilled, or

(ii) the non-performance of the contract is otherwise attributable to the principal or to any circumstances under his control (i.e. reasons for which the principal is responsible) and it is evident that the contract would neither be fulfilled later, in which cases the agent's right to the commission will, according to Article 13 of the Agency Act, survive.

If the non-performance by the customer is caused by the principal failing to perform his obligations, the agent's right to the commission is not affected. The wording of the Act seems to make an exception for *force majeure* situations especially where the contract is later terminated.

The situation is somewhat more unclear if the principal does not perform, because he presumes that the customer will not be able to perform his obligations since Section 13 Agency Act requires that it must be evident that the customer will neither be able to perform later. The principal should be able to prove the customer's non-performance as a permanent circumstance based on objective criteria e.g. bankruptcy or unsuccessful attempt of debt collection.

According to Section 12 Agency Act, the agent is entitled to commission as soon as one of the following conditions is satisfied:

(i) the principal *has fulfilled* his performance obligations based on the contract with customer,

(ii) (ii) the principal *should have fulfilled* such obligations, or

(iii) (iii) the *customer has fulfilled* his obligations (in the absence of delivery, this means payment) based on the contract with the principal.

A *force majeure* prevailing in the supply contract impeding the principal´s delivery, the first two conditions would not be met. Depending on the terms of payment or the applicable legal or contractual regime the customer may nevertheless fulfil his payment obligations, which triggers the payment of the commission as well.

FRANCE

Absolutely not. Force majeure event does not alter the obligations to pay commissions for sales agreed prior to the lock-down.

GERMANY

This is determined by § 87a sec. 2 and 3 HGB (German Commercial Code). The commission of the agent will be reduced or lost insofar as the customer does not settle the invoice. However, the principal needs to sue the customer beforehand and try to enforce the judgement. This is not necessary if the business is such of a small amount (approximately 100 euros) or if it is obvious that the customer is unable to pay (for instance insolvency).

Furthermore, provision is reduced or lost if the business is not concluded in the way it was acquired by the agent and if that is not due to a fault of the principal. As the corona-pandemy is not a fault of the principal, it is very likely that the agent will lose his right to commission if the business is not fulfilled in the way it was acquired by the agent.

ISRAEL

The answer depends on the agreement between the parties. If the agent's entitlement for a commission depends upon the performance of the transaction or actual payment of the consideration by the buyer, he would not be entitled to a commission if the transaction failed. If the agent's right emerges upon the conclusion of a sale contract between the principal and the buyer, the principal would be able to avoid payment of the commission only if the Israeli Courts adopted a wider and more flexible interpretation of the "Conditions for Frustration" under Section 18 of the Contracts Law - Remedies (see answer to question 1.1. above).

ITALY

The principal is entitled to refuse payment of the commission if the contract with the customer is not executed for a reason for which the principal is not to blame. Consequently, if the customer cancels the contract invoking force majeure the principal should be exonerated from paying the commission. However, the answer might be different if the customer cancels the contract because the principal does not deliver the goods: if late delivery is excused by force majeure the principal should be exonerated, but if the principal is not justified by force majeure (e.g. because he prefers keep the goods for more important customers), the agent might be entitled to commission.

Also possible settlement agreements between the principal and his customers may give rise to possible (partial) rights to commission, depending on the specific circumstances of the case.

JORDAN

If the order is lawfully canceled by the customer due to the contingency or FM the agent is not entitled for the agreed on commission.

KUWAIT

Pursuant to the Force Majeur theory as enumerated in Articles 215 &437 of the Kuwaiti Civil Code, the commercial agent’s entitlement to the agreed commission should be definitely affected by the cancellation of already confirmed orders by customers due to the COVID 19 pandemic. Usually the agent will not be entitled to receive its commissions

unless on actual sales or upon payment by the customers otherwise no commission shall be due to agent.

MEXICO

Depending on the relevant covenants with principal and especially those related as to the moment in which the commission is generated, agent´s entitlement to payment could be affected by cancellation of confirmed orders, regardless of the underlying cause of cancelation. Nevertheless, it could be possible for agent to obtain payment if the order is completed in the future.

MOROCCO

According to the Moroccan commercial code, the commission is due to the agent as soon as his principal has performed a contract concluded on the basis of an order transmitted by the agent or should have performed the transaction pursuant to the agreement with the customer or even as soon as the customer for his part, executed the operation (Article 401 paragraph 1).

If the principal does not perform the contract, the agent is entitled to the commission only if and to the extent the non-performance is due to reasons for which the principal is responsible. Indeed, this article provides that the right to commission can be lost only if it is established that the contract between the customer and the principal cannot be executed because of reasons that are not attributable to the principal (Article 401 paragraph 3 C.com).

As a consequence, the commercial agent's entitlement to the agreed commission may be affected by the cancellation of already confirmed orders by customers who would raise the force majeure since the contract between the customer and the principal cannot be executed because of reasons that are not attributable to the principal.

MOZAMBIQUE

In our view, the principal has the right to refuse payment of commissions to the agent, if the client (customer) cancels the orders due to COVID-19, as it is an event not imputable to the principal. In fact, pursuant the article 540, no. 1 of the Commercial Code, the agent acquires the right to the commission as soon as, and if any of the following circumstances is verified: the principal has complied with the contract before the third party (client) – which implies that the orders have not been cancelled; and, on the other hand, if the third party (client) has complied with the contract (which also implies that the orders have not been cancelled).

NEW ZEALAND

If it proves impossible to perform the contract the right for commission should not arise, in our opinion.

NORWAY

The answer will depend on whether or not the cancellation is caused by circumstances "attributable to the Principal".

If the transaction is rightfully cancelled by the customer due to force majeure on his part, the reason for the non-execution of the transaction is not attributable to the principal. The commercial agent shall in such cases not be entitled to payment of the agreed commission.

If the transaction is cancelled by the customer due to the fact that the principal has not (timely) delivered the ordered goods (or services), commission will still be due unless the non (timely) delivery by the principal is caused by force majeure.

PAKISTAN

As per section 182 of the Contract Act 1872 an agent is defined as “a person employed to do any act for another or to represent another in dealings with third person”. Since the agent works on behalf of the principal it is likely that if the principal’s profits are affected due to cancellations of already confirmed orders by the customers then the agent’s commission will also be affected and the agent will not be entitled to any commission from the principal.

POLAND

Pursuant to Article 761(4) of the Polish Civil Code the agent cannot demand commission if it is obvious that the contract with the customer will not be performed due to circumstances for which the principal is not liable, and if the commission has already been paid to the agent, it will be returned. Any provision of an agency contract less favorable for the agent is invalid. So, in general, even if the orders are confirmed, but the customer denies executing the contract with the principal due to the pandemic, the agent is not entitled to the commission.

The Polish jurisprudence emphasizes that the circumstance that the contract will not be performed must be “obvious” (not only probable) and that the above provision refers only to the situation of non-performance of the contract and not to the improper performance of the contract by the customer. Pursuant to the above semi-imperative provision, it is important, whether the non-performance of the contract is the liability of the principal; all other circumstances, including those relating to the client, are covered by the agent's risk.

PORTUGAL

Under Article 18 of Decree-Law no 178/86, of 3 July 1986, which provides the framework applicable to agency contracts, the agent is entitled to the commission as soon as the solicited contract is entered into. However, the agent may only request the payment of the commission once the third party complies with its contractual obligations. If, however, the non-compliance is caused by the principal, the agent is still entitled to receive the commission.

ROMANIA

If the contract is cancelled by the clients for reasons not attributable to the principal, then the principal is entitled to refuse the payment of the commission to the agent. For instance, if the customer cancels the transaction because of force majeure, the agent shall not be entitled to receive the commission, since the non-compliance was not attributable to the principal. On the other hand, if the transaction is cancelled and the principal voluntarily accepts this cancelation, thus the cancellation being attributable to the principal, then the agent should be entitled to the commission. If the customer cancels the transaction on the ground that the principal has not delivered the goods / services in due time, then the agent should be entitled to the payment of the commission, except for the case where the principal’s failure to deliver in due time is caused by force majeure.

RUSSIA

Pursuant to Article 991 of the Civil Code, in case the agent acts in its own name, but at the expense of the principal, if the agency contract has not been executed for the reasons under control of the principal, the agent retains the right to the agreed commission fee as well as to reimbursement of expenses incurred.

At the same time, Russian court practice15 has clarified that the agent's right to claim payment of the agreed commission does not depend on the performance of a transaction concluded between the agent and the third party, unless otherwise arises from the essence of the obligation or agreement of the parties. According to para. 1 of Article 991 of the Civil Code, the main duty of the agent, the execution of which is associated with the agent's right to remuneration, is the obligation to enter into the transaction, and the acceptance of execution under this transaction may or may not be included in the subject matter of the commission order, depending on the agreement between the principal and the agent. In addition, if the payment of remuneration under the agency contract is dependent on the will of a third party, and therefore is dependent on a certain condition, it does not meet the criteria of contracts providing for compensation (non-gratuitous agreements), which include the agency contract.

Thus, it is not likely that agent's entitlement to the agreed commission will be affected by the cancellation of already confirmed orders. However, it depends on terms and conditions of the agency contract, provisions of contracts made by the agent with third parties, whether the customer had a right to cancel the order, whether the transaction was cancelled for reasons, including attributable to the principal (e.g. delay in delivery).

SAUDI ARABIA

Under Saudi law, there are no legal provisions on the commercial agent's entitlement to commission and, therefore, the principal's obligation to pay commission is subject to the provisions of the contract; as a general rule, however, it is to be expected that the principal's right to accept, refuse or cancel orders would be upheld and, thus, the commercial agent will, depending on the circumstances and the provisions of the contract, not be entitled to commission for an order thus cancelled.

SLOVENIA

According to the applicable law the agent shall acquire the right to a commission if, and in the extent to which, the mandator performs or should have performed the transaction with the customer or if the customer performs the obligations deriving from the transaction with the mandator. The agent shall not have the right to a commission when it is clear that the contract will not be performed and the reason for the non-performance is not on the part of the mandator. If in such a case the commission has already been paid, the agent must return it.

Thus, if the specific agency contract in question does not stipulate otherwise, the agent is not entitled to the commission if the contract is not performed for reasons not attributable to the mandator.

If an already confirmed order is cancelled by a customer due to the pandemic (in accordance with the provisions regulating force majeure or change of circumstances),

[15] Information letter of the Presidium of the Supreme Arbitrazh Court of the Russian Federation dated 17.11.2004 No. 85 „Review of Dispute Resolution Practice under Commission Agreement".

the reason would not be considered to be attributable to the mandator, which means that the agent wound in such case not be entitled to the commission (unless for example, the cancelation would be done without justified reasons and the mandator wound not oppose it).

If the order is cancelled by a customer due to the mandator's late performance of his obligation, the agent would in such case be entitled to the commission (since the reason for cancellation would be attributable to the mandator), unless the late performance would for example be a result of force majeure due to the pandemic.

SPAIN

According to article 17 of the Agency Act:

> "the agent will lose the right to commission if the Principal proves that the act or operations concluded through the intermediary between the latter and the third party have not been carried out for circumstances not attributable to the Principal. In such case, the commission that the agent would have received on account of the act or operation pending execution, must be immediately returned to the Principal."

Therefore, if the Principal is able to prove that the cancellation is due to the decision of the customers (for reasons not attributable to the Principal), this article shall apply and the agent will lose his commission, independently of the consequences between the customer and the Principal.

SWEDEN

The principal´s right to terminate the agreement is unlikely to be affected by the pandemic as such.

The principal must consider the provisions on termination in sections 24-26 of the Act on Commercial Agency. The period of notice is at least one month unless it is a termination with immediate effect. In order to be entitled to terminate the agreement with immediate effect, the principal needs to establish that there is an *important ground* to do so. Typically, force majeure events will per se be deemed to constitute such important grounds. However, the principal also needs to demonstrate that the effects of Covid-19 will entail long-lasting hindrances that have substantial negative impacts on the contractual relation, and that these effects are burdensome primarily upon the principal and not upon the agent. It will be an *in casu* assessment, where the specific circumstances must be taken into account.

SWITZERLAND

According to Swiss agency laws, the agent loses his claim for a commission insofar as the performance of a concluded business transaction does not occur for reasons for which the principal is not responsible. As a general rule, accepting a cancellation or the return of goods for commercial reasons or when there is a risk that the customer will not pay are considered reasons for which the principal is responsible.

If a customer is entitled to cancel the order due to COVID-19, this qualifies as a reason beyond the control of the principal and, accordingly, the agent loses his entitlement to commission. On the other hand, if a principal accepts a customer's cancellation for commercial reasons and without being obliged to do so, the agent retains his right to compensation.

THE NETHERLANDS

Assuming that the agency contract provides that commission becomes due when the sales transaction between the customer and the principal has been executed, the non-execution of the transaction shall however only deprive the commercial agent from the agreed commission if the reason for such non-execution is not attributable to the principal. The question arises whether cancellation of an already accepted order deprives the agent from his commission entitlement. In general this may be the case if the customer was entitled to cancel the order even after it was accepted by the principal. However, in most cases no such cancellation right exists. If the transaction between the customer and the principal is not executed as a result of the fact that the principal voluntarily and without a legal obligation, decides to accept a cancellation, the agent should normally receive payment of the agreed commission whereas the non-execution of the transaction between the customer and the principal is attributable to the principal.

If the transaction is rightfully cancelled by the customer due to force majeure, the reason for the non-execution of the transaction is not attributable to the principal. The commercial agent shall is such cases not be entitled to payment of the agreed commission.

If the transaction is cancelled by the customer due to the fact that the principal has not (timely) delivered the ordered goods (or services), commission will still be due unless the non (timely) delivery by the principal is caused by force majeure.

TURKEY

As per Article 114 of the Turkish Commercial Code, the agent becomes entitled to the agreed commission only when and to the extent the transaction is fulfilled by the third party, unless otherwise agreed by the parties under the agency contract. If a confirmed order is cancelled by the customer, as the customer will not make any payment, the agent will not be entitled to commission with respect to such cancelled order.

If it becomes definitive that the customer will not perform the executed transaction, agency's right to commission shall terminate, and the already paid amount shall be returned to the principal.

On the other hand, if it becomes definitive that the principal will not be performing the contract partially, totally or as designated under the contract, the agent may still request commission. Having said that, if and to the extent the contract cannot be performed due to reasons which cannot be attributed to the principal, the agent's right to request commission shall terminate. Therefore, if the principal cannot perform the contract due to Covid-19 outbreak (i.e. if the conditions for Covid-19 to qualify as force majeure exist), the courts will most probably consider the reason of non-performance as not being attributable to the principal, and the agent's entitlement to commission may terminate accordingly.

UK

This will depend on the terms of the contract and what the contract says about the trigger for the commercial agent's commission.

UK's The Commercial Agents (Council Directive) Regulations 1993 (the "Regulations") provide the Agent with some minimum safeguards. The Regulations state that the

Agent's commission will become due once the third party has executed the transaction or the principal has executed the transaction, or should have executed the transaction. If the transaction is not executed and this is due to any failure by the principal then the Agent will still be entitled to the commission. This however may not be the case if the order is not executed by customer and this is through no fault of the principal.

URUGUAY

In principle, the agent is entitled to the agreed commission for each contract that the principal concludes due to the agent.

In this context, if the customer cancels the order due to a consequence of the pandemic and it is considered as a force majeure event, meaning that the cause is not attributable to the principal, the commercial agent should not be entitled to the agreed commission, and the principal is not responsible. Nevertheless, if the order is cancelled in agreement with the principal, this shall be considered as a reason attributable to the principal, depending on the specific circumstances of the case.

Notwithstanding, if the order is cancelled due to reasons attributable to the principal, for example if he do not deliver the merchandise in time, and this is not due to a force majeure event, this situation shall not affect the commission of the agent.

In conclusion, the principal should refuse the payment of the commission only if the contract with the customer is not executed for a reason not attributable to the principal. For example, if the customer cancels the contract invoking a force majeure event.

4. FINAL GENERAL QUESTIONS.

4.1 Is there any rule issued specifically with reference to Covid-19, which is relevant for the international contracts mentioned above? Are States issuing certificates of force majeure?

ARGENTINA

The Argentine government does not give any certificate of force majeure. It has simple closed business or maintained some sectors of the economy working. So far the remaining persons and companies who are not excluded have to close the production facilities. The compensations to workers are on the papers but the organization of payments is delayed until may 7, they have not started to pay so far. Employers have suspended many workers and reduced salaries by consent with unions averaging in many cases 25%. The figure is not fixed it depends of the negotiation with the Union and to the extent that the pandemia is not controlled, it seems to hold water.

AUSTRIA

In Austria, there are no specific legal regulations regarding international contracts relating to Covid-19 adopted so far. Neither there are any state certificates on force majeure.

Therefore, in Austria the decision whether to argue force majeure depends on the individual case. First of all, it is necessary to examine the contract in question to see whether it contains a force majeure clause and, if so, how it is defined there?

If the contract does not contain a provision, legal regulations may apply (e.g. loss of the basis of the transaction, etc.).

BELGIUM

The concept of "certificate of force majeure" does not exist in Belgium. As said above, force majeure is to be assessed, in case of dispute, on a case by case basis by courts.

The Belgian Government did not take measures specifically impacting commercial contracts, like distributorship, commercial agency or franchise agreements.

Among the other measures that have been decided, which can have an impact on any business, are:

- Financial support to self-employed persons (which individual franchisees can benefit of):
- Expanding the conditions for "temporary unemployment" allowances ("furloughing" staff instead of laying it off), with the consequence that the franchisee is discharged of the obligation to pay its staff during the lockdown period and the staff receives an allowance from the State;
- Deferral in time of payment obligations for taxes and social contributions;
- Suspension of statute of limitation periods expiring during the lockdown period until one month after the end of the lockdown;
- Suspension of procedural deadlines expiring during the lockdown period, until one month after the end of the lockdown.

CHINA

The Chinese government issued several rules specially with reference to COVID-19. As discussed above, in the *Circular on Issuing the Guiding Opinions (I) on Several Issues concerning the Proper Trial of Civil Cases Related to the COVID-19 Epidemic According to the Law* (《关于依法妥善审理涉新冠肺炎疫情民事案件若干问题的指导意见（一）》), the Supreme People's Court of China provided guidance on issues concerning contract disputes, including the application of force majeure, labour disputes, consumer complaints, and limitation period.

The China Council for the Promotion of International Trade ("**CCPIT**") issues the certificate of the occurrence of an event of force majeure.

Chinese courts do not require the parties to provide a CCPIT certificate to prove force majeure because the COVID-19 pandemic and Chinese government policies are considered as objective facts that do not need to be proved. The CCPIT certificate is generally used in litigation outside of China. Further, what the certificate proves is the force majeure event, such as the existence of the government orders claimed by the Chinese party. It does not establish the next step of the force majeure analysis - the Chinese party cannot perform the contract as a result of the force majeure event. As such, the certificate itself does not necessarily allow the party to be exempted from its legal obligations.

COLOMBIA

Yes, in those cases were certain restrictions for medial supplies and equipment have been lifted to import them into Colombia the FM event serves to facilitate import export operations.

CROATIA

Not yet.

CZECH REPUBLIC

The Economic Chamber of the Czech Republic issues the certificate of FM. However, the issuance of such certificate does not automatically mean that the court would accept its existence in relation to respective legal obligation and relief from liability.

DENMARK

No, not currently (26 April, 2020).

The Danish state does not issue certificates of force majeure.

I note that certain relief packages are available for Danish businesses, which may help them to fulfil (payment) obligations also in international contracts.

EGYPT

Several rules have been issued, but till now nothing specifically relevant for international contracts mentioned above.

FINLAND

No, at least not yet. However, with reference to the discussion above under question 2.2, a government bill for a number of relaxations in favour of debtors is likely to pass into legislation.

FRANCE

French Ministry of the Economy only stated force majeure is automatically applicable to public tenders for companies which cannot perform their obligations due to force majeure. In such situation, the public entities cannot require penalties or indemnities.

GERMANY

Not yet.

ISRAEL

No rules have been issued yet concerning COVID-19/force majeure. The Chamber of Commerce has been issuing certain certificates, but these shall not release a party seeking to rely on a certain statutory provision from proving the elements required by the relevant provision.

ITALY

Italian local offices of the Chambers of Commerce issues, upon request of the companies, declarations confirming the existence of the pandemic as well as mentioning the main restrictive provisions issues by the Italian Government. However, although such declarations may be of help for the party invoking force majeure in complying with his burden of proof, they cannot be deemed as sufficient, since they do not provide any evidence of the impact that the COVID-19 and/or the relevant restrictions have had on the specific performance allegedly become impossible.

Several other provisions have been issued in order to support companies in these exceptional circumstances, which are not directly relevant here.

JORDAN

Currently there are no regulations regarding international contracts have been issued. The official entities are not providing certificate of force majeure.

KUWAIT

There is no rule issued by Kuwait legislative committes specifically with reference to Covid-19, which is relevant for the international contracts up to date.

MEXICO

Not the case for Mexico. No specific regulations regarding international contracts have been adopted. The State is not providing certificates of force majeure.

MOROCCO

There is no rule issued specifically with reference to Covid-19, which is relevant for the international contracts mentioned above. As of date, Moroccan State does issue certificates of force majeure.

MOZAMBIQUE

Certificates of force majeure have not been issued in Mozambique.

NEW ZEALAND

As far as we know there is no specific rule which relates to international contracts during this period.

NORWAY

As of this date no specific regulations regarding international contracts have been adopted. The State is not providing certificates of force majeure.

The Norwegian parliament has enacted a number of support programs – e.g. covering costs of enterprises hit by a reduction in turn over. AS in other countries Norwegian authorities have enacted rules that impose quarantine on those travelling to Norway, as well as restrictions on the operation of certain businesses. These general rules may have influence and should be observed.

PAKISTAN

The Government of Pakistan has not issued any certificates of Force Majeure or made rules relevant to international trade contracts as yet.

POLAND

There are no special rules with reference to Covid-19 relevant for international contracts so far. The State does not issue the certificate of force majeure; it is possible to obtain such certificate in the Polish Chamber of Commerce *(Krajowa Izba Gospodarcza)*; after the entrepreneurs files the motion, his status and situation is considered and the certificate may be issued within a few days; its issuance is not automatic. The cost varies from PLN 600 to 1,200 (about EUR 130 – 260).

Since the commercial courts in Poland are closed, the court deadlines in the pending cases have been suspended. But it does not refer to the civil law deadlines, such as limitation of claim or e.g. the time limit for the agent to notify the goodwill indemnification claim.

PORTUGAL

In Portugal, there is no specific legislation issued under the state of emergency that is relevant to the international agreements referred to above.

No FM certificates are being issued.

ROMANIA

According to the provisions of military ordinances no. 1, 2 and 3 / 2020, the Ministry of Economy, Energy and Business Environment may issue certificates for emergency situations (CES). The following may apply to obtain a CES: (i) any economy entity covered by the provisions of the military ordinances mentioned above, which have totally or partially interrupted their activity, or (ii) economic entities which, following the initiation of the state of emergency, registered a reduction of their revenues / proceeds in March 2020 with at least 25% compared to average obtained in January – February 2020. The CES provides a presumption of force majeure for SMEs. Also, the SMEs holding CES may benefit from certain facilities or suport measures (such as, for instance, deferral for the payment of rent and/or utilities for the main and secondary headquarters).

RUSSIA

Russian Government, state agencies and courts have already adopted and will be adopting certain rules, recommendations and official guidance for businesses on dealing with and "surviving" during COVID-19, including with regard to contracts and transactions. International ones will not be an exception, especially when a lot of foreign businesses are present on the Russian market.

The Russian Chamber of Commerce and Industry (and its territorial divisions) are empowered to issue the official certificates of force majeure. Therefore, COVID-19-related certificates are highly expected at this time as evidence of force majeure that will apparently affect the performance of contractual obligations during this very difficult period.

SAUDI ARABIA

For the time being, there are no rules issued specifically with reference to Covid-19 in relation to international commercial agency, distribution or franchise agreements; there are no official certificates of force majeure in that respect, but the Saudi government has issued a couple of regulations and directives which indicate that it considers the pandemic an extraordinary event that requires adjustment of existing legal provisions, e.g. in relation to government contracts, employment relationships, or tax obligations.

SLOVENIA

In Slovenia no rules have yet been issued specifically with reference to COVID-19 that would be relevant for the international contracts discussed here.

The Chamber of Commerce and Industry of Slovenia issues certificates on the existence of force majeure. Such a certificate can only confirm verifiable official facts and thus cannot confirm that a specific event, e.g. delay in delivery in a concrete contractual relationship or failure to fulfil a contractual obligation resulted from a force majeure event.

SPAIN

In Spain, at least until these comments are written (April 20, 2020) no specific regulations regarding international contracts have been adopted. The State is not providing certificate of force majeure.

This said, there are some general rules applying to all situations that can have effect on the contracts and their consequences. For example, time-limit periods to claim have

been suspended during the period the Alarm Status is in force (at present, from March 14 to April 26 and announced until May 9). This means that, for example, the limit-period to claim goodwill compensation (one year from the termination of the agreement) has been suspended during that period and will restart after it officially terminates.

SWEDEN

At present, no rule with relevance for international contracts has been adopted in Sweden with reference to Covid-19.

The Swedish state does not issue certificates of force majeure.

SWITZERLAND

There are no such rules (yet). Switzerland is not issuing official certificates of Force Majeure.

THE NETHERLANDS

In the Netherlands not (yet).

TURKEY

There have yet not been any specific regulations issued applicable to international contracts. While the issuance of force majeure certificates has been made possible for public procurement contracts, again no such regulation has been issued regarding private contracts.

It may also be relevant to mention that certain major judiciary periods indicated in the law have been suspended until 30 April 2020.

UK

No. The impact of an event such as Covid-19 and governmental action flowing from it will be assessed by an analysis of the contractual terms – in particular the force majeure clause and legal concepts such as frustration and/or supervening illegality.

URUGUAY

In Uruguay, at least until April 24, 2020, no specific rules in relation to international contracts have been passed. Furthermore, the Uruguayan State is not issuing certificates of force majeure, until up to the date.

Nevertheless, several provisions have been passed in order to support companies. Namely, tax benefits, alternative mechanisms to present sworn statements before the Tax Authority, extension of deadlines, exemptions from personal and employer contributions from industry and commerce sector, authorization to import with a simplify regime some merchandise related to health care, among others.

What is more, some general rules are applicable to every situation, and hence for this type of contracts. For instance, judicial terms have been suspended from March 14 until April 30, so no new claims can be presented before the judiciary in that period of time, unless from some exceptions.

4.2 For the new agreements that are going to be entered during the emergency and after what kind of issues should be considered due to the fact that from now on a situation like the COVID-19 pandemic and the consequences for global trade are now well known and to some extent predictable to the parties of any sales transaction?

Force majeure and hardship clauses should expressly mention not only pandemics but also consequences deriving from pandemics. Depending on strategic perspective (buyer or seller), consequences should be listed which are included, or, expressly excluded.

Typically the seller should try to include in the clause typical situations arising out of the epidemics which may prevent performance, like reduction of personnel, problems with upstream suppliers, logistic issues, rules limiting economic activity, etc. and ensure in the relevant contractual clauses the maximum flexibility in deliveries and other typical obligations that may be affected by possible restrictions due to COVID-19.

The buyer may, in addition, focus on its right to rescind from any or all orders in case he cannot use or sell the ordered goods. At the same time he may try to exclude damages as far as legal under applicable law.

The party needing to defend against force majeure of its counterpart should insist on the timely notification of the impediment.

Framework supply agreements should be reviewed with respect to the impact of pandemics and its consequences for the right/duty to adapt prices agreed upon for a certain period of time. Framework supply agreements (from the perspective of buyers) should clearly state rules and procedures for orders already placed but not yet delivered before a comparable lockdown situation interferes with sales plans.

Beyond the delivery vs. payment issues parties should, where applicable, expressly agree in the contract what would be the consequences of such a situation, for example agreeing on what would happen with fix royalties, commissions for the agent (considering nevertheless that the Agency act is mandatory in its principles), minimum sales and what happens in these situations, etc.

4.3 Is there any other general recommendation that the affected parties could take into account in order to minimise the impact of this situation?

Now, few months have passed since the beginning of the pandemia. Several countries are starting to reopen after a Government shutdown and companies start facing a different scenario, thinking on how to reorganize their distribution networks and strategies, as a consequence of COVID-19.

In the immediate future, shops and outlets will have to be redesigned, in order to guarantee social distances; in some sectors home delivery will remain the most common solution; etc.

In the long term, companies will have probably to reconsider their distributive strategy, maybe rebalancing their omnichannel strategy, with a higher involvement of retailers in the online sales; home delivery will probably grow faster than it was already expected. It is also likely, unfortunately, that some members of the distribution network will not overcome the crisis; there may be an increase of litigation (in which all the issues we have dealt with in the previous sections will be brought in Court) and contractual terminations.

So, this paper wants to be an initial support to companies and lawyers, in dealing with COVID-19 issues.

However, IDI will closely follow the forthcoming developments and issues, and think of further ways to support and share ideas and strategies for facing and overcoming these current and future situations.

The above Q&A is intended to provide the readers with some general guidance on anticipated issues that are likely to emerge or have already emerged in the world of distribution with effects on existing distribution relationships.

In the upcoming period many other different questions in the field of distribution will arise and answers to existing questions may be provided by the Courts in various countries. As such the present Q&A and any future Q&A's to be issued by IDI are to be considered as a continuing work in progress taking into account all relevant legal developments in the field of distribution law. IDI shall follow developments closely and whenever appropriate issue updated additional versions of the present Q&A for the benefit of its members.

The answers provided in this Q&A and any future versions thereof are of an informative nature and not a substitute for legal advice. Accordingly, no liability is accepted in respect of it by any person or organization by or through which it may be provided.

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