

CORONAVIRUS (COVID-19)

WORLD IN
„UNCHARTED TERRITORY”

The current Coronavirus (COVID-19) crisis raised many important questions about our lifestyle, the world today and the future, the way business is being conducted, the medical system, our vulnerabilities and strengths. Many questions about Coronavirus still remain unanswered and will probably remain so for many years. However, while the crisis is still unraveling, companies have started to grasp the immediate risks for their business, clients and employees.

This global problem has a major social and economic impact and it is imperative to know locally the legal provisions and the measures that can and/or should be taken by the employers in order to protect the health and safety of their employees, of society and of their business.

Please find below 10 of the most relevant legal issues to take into account these days for your continuous planning and adjustment. We will update as appropriate.



1

Educate your employees about their obligations and assess the necessary protective measures to limit the spread of the virus

Quarantine

According to the information provided by the Romanian Ministry of Foreign Affairs, in the case of people who do not show symptoms specific to the virus, but who return from the red areas as indicated by the Romanian Ministry of Foreign Affairs, these **must comply with the quarantine rules for 14 days, in a specially arranged space.**

Self-isolation

Self-isolation at home is a must when a person who does not manifest the specific symptoms of the virus, has traveled in the last 14 days to other areas indicated or has been in direct contact with people who have returned from the red areas and who have been confirmed with the virus or who has a family member found to be in one of these situations

Sanctions

People who do not comply with the quarantine or isolation rules at home due to COVID- 19 may risk a criminal fine or even imprisonment. The Romania Criminal Code establishes specific penalties in the case of the criminal offence of frustrating disease control (in Romanian zădărnicierea combaterii bolilor (as per art. 352 of the Criminal Code).

Moreover, it is mandatory to report any case of COVID-19. Failure to do so is a minor offence penalized with a fine, unless the action may be considered a criminal offence (such as that detailed above).

Whilst all the above are clearly obligations for individuals, companies should assess which are the most appropriate measures to be taken in their specific case in order to limit the spread of the virus, to comply with applicable regulations and to avoid liability.

2

Business Continuity Plans

These are times when suppliers may fail to deliver on time, clients may start to delay payments, partners may change their approach, contractual and regulatory deadlines might be difficult to observe and employees may be reluctant to travel and work in the traditional way.

Crisis management and business continuity plans are essential; they should be your instruments in ensuring that you diligently take into account all implications and details whilst ensuring the minimum impact possible on the business.



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- 1 Educate your employees about their obligations and assess the necessary protective measures to limit the spread of the virus
 - 2 Business Continuity Plans
 - 3 Force majeure is an institution for this type of situation -make sure you can use it in the future and prepare your case if litigation comes
 - 4 Review your on-going contracts, include adjustment clauses in contracts to be signed now
 - 5 Identify your optimum employment arrangement
 - 6 Review your insurance policies and act accordingly
 - 7 Health data is a special category of personal data which shall be collected limitedly and with utmost care by companies
 - 8 Consider available alternatives before getting to default under any financing arrangements
 - 9 Timely and properly inform clients about any limitations as regards your products and services and be prepared to detect frauds that could affect your customers
 - 10 Observe regulatory deadlines and obligations

3

Force majeure is an institution for this type of situation -make sure you can use it in the future and prepare your case if **disputes** come

Facing the new COVID-19 disease, the global economy is now affected by the non-performance or/and the partial performance of contractual obligations which may lead to a **rise in the flow of litigation cases**.

Companies should pay close attention to any **contractual deadlines and notice periods, termination and suspension clauses**.

Considering the influence that the disease might have on the activity of companies, we recommend that the conditions of contracts should be analyzed with respect to **force majeure and the hardship clauses especially as regards specific terms to be observed or the obligation to mitigate the effects of such an event, if any. In this regard, careful interpretation of the contractual clauses must be made with the aim of evaluating the potential risks and implications of any delay or impossibility of performance**.

With regard to pending litigations, the activity of the courts is restricted to the necessary contact and sending documents or information requests by e-mail/fax is strongly encouraged.

On the recommendation of the Supreme Council of Magistrates, the courts will decide which cases will be heard and the hearings should be properly scheduled (with a specific timing for each court case) or held without public attendance, in order to limit access to the court rooms.

The Bucharest Tribunal and the Bucharest Court of Appeal at least have already announced actions to postpone hearings and to limit the number of the cases to be actually heard during the next few weeks.

4

Review your on-going **contracts**, include adjustment clauses in contracts to be signed now

Considering the unprecedented situation created by Coronavirus, now is a very good time to review your company's **contractual framework (clients, suppliers, employees and partners)**, in order to assess and mitigate any disruption that may occur during this crisis.

If you are in a ongoing negotiation you should consider stipulating specific rules on **force majeure, hardship, material adverse (MAC), termination, walk-away rights or adjustment clauses** covering not only the current crisis but also its potential development. If you are in the period between signing and closing, you should analyze if the deal is impacted by the crisis and give any necessary notice in due time or if the other party raises the clauses mentioned above, assess an alternative solution according to the agreement.

The legal impact caused by the Coronavirus crisis is not standard and the assessment should be made on a **case by case** even in court if necessary. If you are facing challenges deriving from a concluded agreement, it is important to assess if your contractual framework provides sufficient protection for force majeure and hardship and that the other contracting party does not abuse the opportunity created by the crisis and disregard its obligations.

Also, it is important to give the necessary **contractual notifications** to your clients, suppliers and business partners informing them of any disruption that may occur in this case.

If you have confidentiality and/or general damages clauses in your contracts you must take care of the information **disclosed** during the crisis in relation to the ongoing arrangements, but also you must be aware of any **reputational risks** that may occur and **social media** information that may propagate, especially in the case of large companies.



5

Identify your optimum employment arrangement

As an alternative for employees to be physically present at their place of work to carry out their job responsibilities, for the purpose of avoiding the current Coronavirus crisis and prevent any threats to the employees' health, **teleworking**, if not already implemented in companies, may be taken into consideration. For the purpose of adopting such a method of work organization, certain conditions should be met, as follows:

teleworking requires the consent of both parties of the employment relationship

employees' activity should involve the use of information and communication technology.

teleworking activity should be expressly provided for under the individual employment agreement (or addendum concluded to the individual employment agreement).

the individual employment agreement (or addendum, as appropriate) should provide for certain mandatory conditions (e.g. the express provision that the employee is working by teleworking, the period and/or the days in which the employee performs the activity in another place than the normal work place organized by the employer, the place where the teleworking is carried out etc.).

specific health and safety at work obligations are to be observed both by the employer and the employees.

According to a draft law, which is expected to be promulgated in the next few days, for the companies where work from home or teleworking is not possible, one of the parents / single parent / legal representative of children up to 12 years / 18 years in the case of children with disabilities and who are registered within educational units will be entitled to benefit

from free days for the period when such units are closed due to a decision by the authorities; the exact number of days must be decided in each of the above cases by government resolution. The free days will be granted based on the request of the respective person and under the condition that the other parent, as appropriate, will not benefit from free days. The employee will benefit from compensation of 75% of the base salary calculated for the free days, but no more than 75% of the gross average salary income used for the calculation of the social security budget. Furthermore, employers will be entitled to request the settlement of the relevant amounts from the Guarantee Fund for the payment of salary claims, and these amounts will be further reimbursed to the fund from the state budget.

If the economic activity of the company is affected by the Coronavirus crisis, the interruption or reduction of activity, without termination of employment relationships (the so called technical unemployment) could be considered as a temporary measure by the employer. In such a case compensation equal to 75% of the basic salary must be paid by the company, while the employment contracts are suspended, but the employees remain at the disposal of the employer. As alternative, the employer can reduce the working program from 5 to 4 days, with the corresponding reduction of the salary rights, under condition of prior consultation with the representatives of the employees / representative trade union, and if the duration of the reduction of the activity exceeds 30 working days.

In any case, neither the employer nor the employee is in default if, for reasons of maintaining health, the business or part of it must be shut down for a certain period of time. We believe that both the employer and employee should work together to find suitable options to best protect both the wages of the employees and the business of the company (which is directly hit by the cessation/reduction of activity).

1

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2

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8

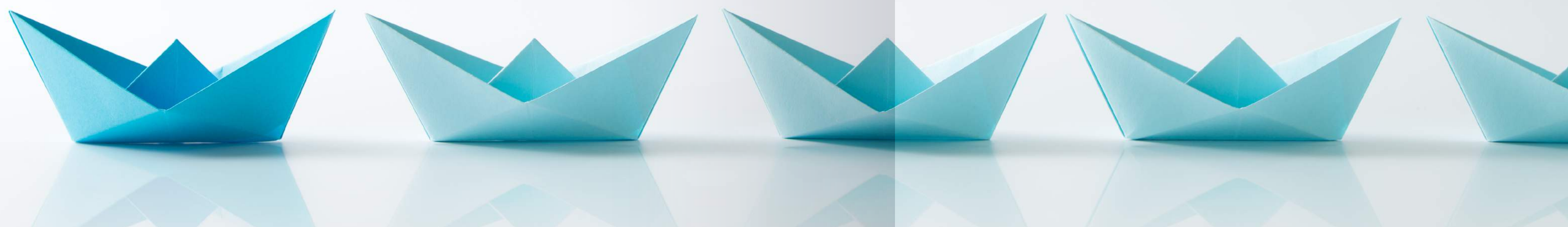
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10

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Review your **insurance policies** and act accordingly

You might have an insurance policy for **business interruption, property damage and cancellation of various events (e.g. sport events, concerts, public meetings, etc.)**.

In this context, we recommend a careful check of the wording of the insurance policy, to determine the extent of the coverage, as well as the application of **exclusions**.

7

Health data is a special category of personal data which should be collected in a limited manner and with the utmost care by companies

In your endeavors to prevent an outbreak of Coronavirus, you may **implement policies and introduce safeguards** for the protection of your own employees and others, whereby processing of personal data is needed. Even though GDPR provides lawful grounds for processing **special categories of personal data** (e.g. health data) for public health reasons, companies should not assume that any type of health data may be lawfully processed to achieve this goal (especially as the reporting obligations fall to the individuals and not to companies).

The categories of personal data processed in this context should be minimized and **special security and organizational measures** for the protection of the data should be implemented. Moreover, topics such as how long the information can be stored and where, who has access to it, and when the data should be eliminated after the crisis passes should be addressed beforehand.

8

Consider available alternatives before getting to default under any **financing arrangements**

As a matter of principle, financing agreements include representations on the financial standing of the company or covenants to provide notice of material events that could cause losses or material changes to the debtor's financial status which have been initially considered by a creditor when granting the credit.

Moreover, events such as **(i) an interruption of business, (ii) occurrence of negative major changes (which may include situations that could trigger loss of profits, and the occurrence of situations that may affect the capacity of the debtor to fulfill its payment obligations)** may constitute an event of default, either expressly or through its impact on covenants granted.

Consequently, a careful **review** of the financing agreements should be made and discussions with the creditor could be initiated.

In a context of various cash shortages faced by a company, it may consider various source of funding. Also, in a context in which various clients ask for supplementary time to pay invoices, operations such as factoring may prove a feasible alternative in order to mitigate **delay payment risks**.

Also, at the level of various groups of companies, **cash pooling arrangements** may be put in place in order to handle efficiently the cash resources/**availabilities existing at group level**.



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Inform clients in a timely and proper manner about any limitations as regards your products and services and be **prepared to detect** fraud that could affect your customers

In order to not cause additional stress but also to avoid liability, it is important to inform your clients in a timely and proper manner if you know that you will not be able to provide the services or the products in the normal, usual way. Also, as the entire situation could be used to derive illicit benefits, review your procedures where this is necessary to detect potential **fraud**.



10

Observe **regulatory deadlines and obligations**.

Whilst it is clear the dealing with this crisis will attract most of your focus and resources, still make sure that you have appropriate measures to avoid breaching regulatory deadlines or obligations especially when these would affect the possibility for you to continue your business or could attract other penalties.

There are no straightforward answers or standard solutions for the legal issues during the Coronavirus crisis. This is why a holistic view and an efficient and timely approach is needed.

This information does not necessarily deal with every relevant topic nor does it cover every aspect of the matters discussed. Moreover, it does not represent legal advice nor any other type of advice.

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