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Coronavirus and non-performance of contractual obligations in the Kyrgyz Republic

World Health Organization has characterized the outbreak of COVID-19 infection as a pandemic. More and more countries are closing borders, restricting people's movement, banning public gatherings, and controlling trade. Such measures have already hit hard tourism, air transportation, hospitality services. Other business sectors are expected to suffer in the coming weeks and months.

The Kyrgyz Republic has taken preventive measures too. On March 21, the government declared a nation-wide *emergency situation*, and four days later a *state of emergency* was declared in the cities of Bishkek, Osh, Jalal-Abad and some rural districts. The emergency regime imposes tight restrictions for operation of businesses and movement of people and cargo, and the business community is now facing a situation where running normal commercial activities, undertaking logistical operations, and fulfilling contractual obligations have become extremely challenging if not impossible at all. Under these circumstances, attention has focused on the outcomes of delaying or non-performing affected commercial contracts and on remedies available to mitigate the resulting legal risks.

The key question is whether or not the COVID-19 infection constitutes a force-majeure (FM) event. Pursuant to civil laws of Kyrgyzstan, unless otherwise provided by law or a contract, a person who breaches a commercial obligation shall not be held responsible if it proves that performance of the obligation was impossible due to an irresistible force, i.e. extraordinary and unavoidable circumstance (FM). The scope of FM events shall not encompass, among other things, third-party non-performance and lack of commodities or money required for performance of the obligation. Therefore, in order to qualify as a FM, the circumstance which has made performance of the obligation impossible must meet the criteria of extraordinariness and objective unavoidability.

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