

In view of the current COVID-19 pandemic some contractual obligations will undoubtedly be difficult to fulfil. Under these circumstances, we would like to touch briefly on whether or not a breach of contract caused as a result of the pandemic would make a party liable for damages, or whether this could be considered a *Force Majeure* event, in the context of the current situation.

Force Majeure and fortuitous events are considered to be grounds for exemption from civil liability under Dominican law. When they are configured, it implies that the party that has failed to comply with their contractual obligation does not incur in liability; in other words, they are exonerated from said liability.

Although their effect is the same—the exoneration of the liability of the party who has failed to comply—fortuitous events and *Force Majeure* are of a different nature, since the former is of internal origin, such as a factory fire or a boiler explosion, and the latter refers to events external to the contractual relationship, such as natural crises. In this case, speaking of the COVID-19 pandemic, we would be in the realm of *Force Majeure*.

For *Force Majeure* to be configured, three criteria must be met: external nature of the situation—mentioned above—unpredictability and irresistibility:

- **Unpredictability** refers to how foreseeable a given situation was when the parties entered into the contract—if the situation in question was foreseeable at such time, it does not constitute *Force Majeure*. If the situation was foreseeable at the time the parties entered into the contract, and it was not incorporated into the same, it is understood that the parties have waived this cause for exoneration.
- **Irresistibility** of the situation is analyzed at the moment the contract is being executed, as an objective impossibility to prevent the effects of the external situation. This is coupled with an assessment of the behavior of the defaulting party, whether they have taken all possible measures to reduce the effects of the situation.

If the conditions described above were met, in accordance with the prevailing view of the Dominican courts, the defaulting party would not be liable. There is already international jurisprudence from civil law jurisdictions, such as France—the birthplace of our civil system of law—in which it has been established that the current pandemic constitutes a *Force Majeure* scenario, so it is our opinion that the Dominican courts will probably adopt the same position. However, the assessment of whether or not a situation constitutes *Force Majeure* depends on the facts of each case.

If you require assistance on this matter, please do not hesitate to contact us to answer your particular questions.