

LEGAL NOTE

April 8, 2020

To: Clients and Friends
Re: COVID-19 –Act of God and *Force Majeure*

The current situation that Mexico and the world are facing as a consequence of SARS-CoV2 virus (COVID-19) outbreak, which has been classified as a matter of national priority by the Federal and Local Governments of Mexico, and the recent Declaration of Health Emergency published in the Official Gazette of the Federation on March 30, 2020, have direct implications and impact on the economy and the productive and labor activities of the public, private and social sectors.

Derived from the economic consequences that are anticipated will arrive due to the COVID-19 epidemic, it is important to consider certain legal hypothesis under Mexican law, that during this epidemic could be relevant for the commercial relationships of clients and suppliers. Below we describe certain hypothesis in which the breach in a legal relationship cannot be attributable to any of the contracting parties (noting that there are other recourses such as the so-called Doctrine of Unforeseen Circumstances, which may also be applicable).

In this order of ideas, Mexican legislation, mainly the Federal Civil Code and the Civil Codes of the States of the Mexican Republic, regulates act of God and *force majeure* events, considering both as a general and unpredictable event, whether derived from nature or human causes, which makes impossible to comply with obligations and which does not derive from the performance of acts by any of the parties. Although there is a theoretical distinction between the two concepts (act of God and *force majeure*), in practice the distinction is of little use, as they have the same legal consequences: to suspend or terminate obligations.

In such regard, the First Collegiate Court for Civil Matters of the Second Circuit¹ has specifically admitted that parties breaching obligations as a result of acts of God and *force majeure* shall not be liable, issuing the following criteria:

"Legal doctrine is unanimous in admitting that there are circumstances where the breach of obligations cannot be attributable to the debtor, because it is prevented from complying as a consequence of an external event that is not within the control of its will, which was not foreseeable or that even in case it was foreseeable, it could not be avoidable."

¹ *Epoch: Ninth Epoch Registry: 197162 Jurisdiction: Collegiate Circuit Courts Type of Thesis: Sole Source: Semanario Judicial de la Federación y su Gaceta Tomo VII, January, 1998 Area(s): Civil Thesis: II.1o.C.158 C Page: 1069*

ACTS OF GOD OR *FORCE MAJEURE*. WHEN THE ACT OR FACT IN WHICH IT IS SUPPORTED IS AN ACT OF AUTHORITY.

Additionally, the Civil Code for the Federal District (now Mexico City) and the Civil Codes of certain States regulate the Doctrine of Unforeseen Circumstances, applicable to those agreements with a contingent implication, whether they are subject to a term or condition or are of continuous compliance (e.g., lease, purchase and sale subject to a term or condition) and that within the term of such agreements extraordinary nation-wide events arise which are impossible to foresee and generate more costly obligations for any of the parties.

Based on the above, in case COVID-19 impacts a particular legal relationship, we suggest firstly to analyze the specific clauses and wording of those agreements in which a default or breach risk is identified, and secondly to explore the possibility of entering into discussions with their counterparts in order to negotiate new conditions (temporary or permanent) in the relevant agreements.

Likewise, it is relevant to consider that the referred to acts of God and *force majeure* caused by the Health Emergency and its related measures declared by the Mexican Government, may be interpreted by Mexican Courts as an exemption of liability provided for in the applicable civil, commercial and labor legislation.

The timely attention of these cases, will help you to legally comply with your company's contractual and labor obligations while providing legal certainty through the implementation of any required formalities and the appropriate surveillance of compliance with any new provisions adopted among the parties, and prevent any legal dispute arising once the declared Health Emergency concludes.

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