



WEBINARS

**THE IMPACT OF COVID-19
ON GREEK LAW
ARRANGEMENTS**

IN TOURISM, REAL ESTATE
AND OTHER SECTORS

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A. Declaration of Covid-19 and Emergency Covid-19 legislation

- Declaration of Pandemic by WHO: 11.3.2020
- First Emergency Measure in Greece: 27.2.2020
- Greek Covid-19 Legislation:
 - ✓ Temporary entrance ban of non-EU citizens and 14days house quarantine for Greek and EU citizens
 - ✓ Suspension of flights, ferry routes and closed land borders with certain countries
 - ✓ Closure of hotels, food service and other shops
 - ✓ Rent reduction, suspension of tax and other relief measures for affected businesses and employees
 - ✓ Cancellation of court hearings and suspension of statutory deadlines and enforcement proceedings

B. Impact of the pandemic and emergency legislation on arrangements

- Not the same impact in all sectors
- Not the same impact in all agreements

B. Impact of the pandemic and emergency legislation on arrangements

- Impossibility to perform, permanently or temporary;
- Delays in delivery;
- Defects;
- Disruption of the economic balance between consideration given and consideration received due to increased costs.

C. Sources for legal assessment of Covid-19 impact

- Special Covid-19 Legislation
- Contract
- General Provisions of Law

Covid-19 related contract disruption and legal institutions under Greek law

A. Sources of contract disruption

1. **Health crisis:** Sickness, hospitalisation, personal protection measures- social distancing
2. **Lockdown measures:** government measures aiming to contain the spread of the virus (Closing down of businesses, prohibition of travel and transport etc)
3. **Covid-19 recession:** Economic and financial crisis caused by the lockdown measures.

Covid-19 related contract disruption and legal institutions under Greek law

B. Overview of Greek law institutions

- 1. Contract interpretation and force majeure clauses:** Relevant for all kinds of Covid-19 related contract disruption (*pacta sunt servanda doctrine*)
- 2. Delay and impossibility of performance without fault:** Relevant for contract execution problems caused by the health crisis and lockdown measures (*force majeure doctrine*)
- 3. Unforeseeable change in circumstances and performance of the contract in good faith:** Relevant for issues related to the Covid-19 recession (*rebus sic standibus* and *good faith doctrine*)

Covid-19 related contract disruption and legal institutions under Greek law

C. Contract Interpretation

1. **Purpose:** To discover the meaning of the contract.
2. **Practical importance:** Does the contract include rules for handling Covid-19 related disruptions? In practice interpretation of force majeure clauses.
3. **Types of contract interpretation**
 - a. **Explanatory interpretation:** Discover the true and enforceable meaning of the contract clauses.
 - b. **Supplementary interpretation:** Fill in involuntary gaps in the contract
4. **Methods of explanatory interpretation:**
 - a. **Coincidence of text apprehension of both parties:** A matter of fact
 - b. **Divergence of apprehension of the parties:** A matter of law

Art. 173 GCC	Art. 200 GCC
<p><i>“When interpreting a declaration of will, the true intention will be sought without adherence to words”</i></p>	<p><i>“Contracts shall be interpreted according to good faith, after consideration of common usage (business practice)”</i></p>

Covid-19 related contract disruption and legal institutions under Greek law

D. Force Majeure clauses- Overview

- 1. Force majeure clauses:** They essentially free both parties from liability or obligation when an extraordinary event or circumstance beyond the control of the parties occurs. Relevant for health crisis and lockdown measures disruptions.
- 2. Hardship clauses:** They cover cases in which unforeseeable events occur that fundamentally alter the equilibrium of a contract, resulting in an excessively onerous performance for a party. Relevant for Covid-19 recession disruptions.
- 3. Material adverse change (MAC) clause:** They aim to give the buyer of a company the right to walk away from the acquisition before closing, if events occur that are detrimental to the target company. Relevant for Covid-19 recession disruptions.

Covid-19 related contract disruption and legal institutions under Greek law

E. Force Majeure clauses

1. **Usual criteria for force majeure :**
 - a. Inability to perform
 - b. Lack of control for impediment
 - c. Unforeseeability of impediment at the time of contract conclusion
 - d. Unavoidability of contract disruption
2. **Usual legal consequences:**
 - a. Temporary suspension of obligation to execute contract- No breach of contract
 - b. Obligation of the affected party to promptly notify counterparty
 - c. Right to terminate contract only if the contract has been permanently frustrated
3. **Assessment under Greek law**
 - a. Usually enforceable
 - b. First wave of Covid-19 pandemic and lockdown measures will usually trigger a force majeure clause
 - c. Legal consequences very similar to default Greek law rules for impossibility and delay of performance without fault
 - d. Advantage over default Greek law rules because of legal certainty and custom solutions

ICC force majeure clause March 2020 (short form)

1. Force Majeure means the occurrence of an event or circumstance that prevents or impedes a party from performing one or more of its contractual obligations under the contract, if and to the extent that that party proves: [a] that such **impediment is beyond its reasonable control**; and [b] that it **could not reasonably have been foreseen** at the time of the conclusion of the contract; and [c] that the **effects of the impediment could not reasonably have been avoided** or overcome by the affected party. »
2. In the absence of proof to the contrary, the following events affecting a party shall be presumed to fulfil conditions (a) and (b) under paragraph 1 of this Clause: (...) (iv) **act of authority** whether lawful or unlawful, compliance with any law or governmental order, expropriation, seizure of works, requisition, nationalisation; (v) plague, **epidemic**, natural disaster or extreme natural event; (...)»
3. A party successfully invoking this Clause **is relieved from its duty to perform its obligations under the contract** and from any liability in damages or from any other contractual remedy for breach of contract, from the time at which the impediment causes inability to perform, provided that the **notice thereof is given without delay**. (...) 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.

Covid-19 related contract disruption and legal institutions under Greek law

F. Hardship clauses

1. **Usual criteria for hardship:**
 - a. Excessively onerous performance
 - b. Lack of control for impediment
 - c. Unforeseeability of impediment at the time of contract conclusion
 - d. Unavoidability of contract disruption
2. **Usual legal consequences:**
 - a. Obligation to negotiate modifications to the contract
 - b. Right of termination
 - c. Request adaptation of the contract by the judge /or/ preclusion of request for adaptation of the contract by the judge
3. **Assessment under Greek law**
 - a. General preclusion of adaptation of the contract by the judge could be deemed unenforceable under Greek law
 - b. Covid-19 recession could trigger a hardship clause for contracts concluded *before* the outbreak of the pandemic
 - c. Greek law default rules also provide for adaptation of the contract by the judge

ICC Hardship clause March 2020 (short form)

A party to a contract is **bound to perform its contractual duties even if events have rendered performance more onerous than could reasonably have been anticipated** at the time of the conclusion of the contract.

2. Notwithstanding paragraph 1 of this Clause, where a party to a contract **proves that:** a) the continued performance of its contractual duties has become **excessively onerous** due to an **event beyond its reasonable control** which it **could not reasonably have been expected** to have taken into account at the time of the conclusion of the contract; and that b) **it could not reasonably have avoided** or overcome the event or its consequences, the parties are bound, within a reasonable time of the invocation of this Clause, to **negotiate alternative contractual** terms which reasonably allow to overcome the consequences of the event.

“3a. Where paragraph 2 of this Clause applies, but where the parties have been unable to agree alternative contractual terms as provided in that paragraph, the party invoking this Clause is entitled to terminate the contract, but cannot request adaptation by the judge or arbitrator without the agreement of the other party. OR 3b. Where paragraph 2 of this Clause applies, but where the parties have been unable to agree alternative contractual terms as provided for in that paragraph, either party is entitled to request the judge or arbitrator to adapt the contract with a view to restoring its equilibrium, or to terminate the contract, as appropriate. OR 3c. Where paragraph 2 of this Clause applies, but where the parties have been unable to agree alternative contractual terms as provided in that paragraph, either party is entitled to request the judge or arbitrator to declare the termination of the contract.

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G. MAC clauses

1. Criteria for MAC events:

- a. Usually include extended definitions of MAC events
- b. Carve in lists (positive definition)
- c. Carve out lists (negative definition)

2. Usual legal consequences:

- a. Right of termination/rescission for Buyer
- b. Adaptation of contract price

3. Assessment under Greek law

- a. MAC clauses compete with Greek law default rules (Art. 388)
- b. MAC clauses will be deemed enforceable under Greek law, provided that they are specific enough.

Typical MAC clause that would be deemed enforceable in Greek law

“This Agreement shall be closed pursuant to § [...] only if the following conditions (“Closing Conditions”) shall have been fulfilled or, in the case of lit. e) below, duly waived by the Purchaser in writing: e) No circumstances have occurred until the Scheduled Closing Date that have materially adversely affected, or are reasonably likely to materially adversely affect, the Target’s assets, business, financial condition, results of operations or prospects, provided that for the purposes of this Closing Condition any adverse effects on the Target’s assets, business, financial condition, results of operations or prospects shall be considered material only if their financial impacts exceed EUR [___] in any individual case or EUR [___] in the aggregate.”

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H. Non-performance without fault

1. Greek law default legal rules are mostly included in the **Greek Civil Code (GCC)- Civil law legal system**
2. GCC does not provide for a single instance of breach of contract, but provides for **specific types of non-performance**:
 - a. **Impossibility of performance**
 - b. **Delay of performance**
 - c. **Improper performance**
3. **Fault principle**:
 - a. **No contractual liability** for non-performance without fault
 - b. Fault is **presumed**
4. **Force majeure** in Greek law
 - a. Force majeure is defined pursuant to the subjective theory, i.e. any event which
 - i. could not be foreseen and
 - ii. could not have been averted even by measures of extreme care and prudence on the part of the debtor.
 - b. precludes fault
5. **Covid-19 and force majeure**
 - a. First wave of the Covid-19 pandemic and especially lockdown measures, can be safely considered as force majeure events
 - b. A causal link between lockdown measures and non-performance is always required
 - c. Force majeure ceases to exist as soon as the lockdown measures and/or the causal link are lifted

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I. Impossibility of performance without fault

1. Impossibility of performance exists only if a specific performance becomes **permanently** impossible.
2. **Types** of impossibility
 - a. Legal impossibility
 - b. Material impossibility
 - c. Economic difficulties do not fall under the category of impossibility
3. **Fixed date contracts:** delay equals impossibility
4. **Legal consequences** of impossibility due to force majeure
 1. **No fault**
 2. **Release** of the debtor from obligation to perform
 3. **No contractual liability**
 4. **Dissolution** of contract

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J. Delay of performance without fault

1. Legal consequences
 - a. Debtor continues to owe performance
 - b. Creditor is obliged to wait for execution of the contract
 - c. No contractual liability
 - d. Creditor may not seek interest, unless he files a lawsuit (litigation interest)
 - e. Contract must be executed as soon as the force majeure impediment ceases to exist; if not, debtor will be in default
2. Creditor has the right to dissolve the contract
 - a. In case the element of time has been agreed as an important aspect of the performance
 - b. The delay has rendered the performance useless or considerably less valuable for the creditor
3. Assessment for Covid-19 contract disruptions
 1. Relevant for health crisis and lockdown measures- Not for Covid-19 recession
 2. When the lockdown measures are lifted the debtor must perform; otherwise he will default

Covid-19 related contract disruption and legal institutions under Greek law

K. Unforeseeable change in circumstances

1. GCC includes express rule for supervenient hardship (Art. 388 GCC) (*rebus sic standibus principle*)
2. Conditions
 - a. **Reciprocal contract**
 - b. **Change in circumstances**, which were important for contract conclusion (subjective and objective criteria)
 - c. **Subsequent** change
 - d. **Unforeseeable** and exceptional change in circumstances
 - e. Debtor **must not be in fault** for the change in circumstances
 - f. **Excessively onerous** performance for one party
 - g. Contract must have **not** been already **executed**
 - h. **Causal link** between the change in circumstances and the excessive burden for the debtor

Art. 388 GCC

If, in view of requirements of good faith and common usages the circumstances upon which the parties mainly founded the conclusion of a reciprocal contract have subsequently changed for extraordinary reasons which could not be foreseen, and the performance, has as a result of the change become excessively onerous, the court may at the request of the debtor and according to its appreciation, adjust the debtor's performance to the appropriate extent of its non-performed part. If the dissolution of the contract has been decided upon, the obligation to perform arising therefrom shall be extinguished and the contracting parties shall be reciprocally obliged to return the performances they received according to the provisions on unjust enrichment.

Covid-19 related contract disruption and legal institutions under Greek law

K. Unforeseeable change in circumstances (cont.)

3. Legal consequences
 - a. **Adjustment** of the contract by the judge
 - b. Partial or total **dissolution** of the contract by the judge
 - c. The effects of contract adjustment or dissolution require a *res judicata*, i.e. a second instance or equivalent court judgment
 - d. Legal consequences are deemed retroactively effective, i.e. from the time the debtor served a lawsuit
4. Contractual exclusion of Art. 388 GCC?
 - a. A general waiver of Art. 388 would be deemed unenforceable
 - b. Concrete risk allocation is enforceable
5. Assessment for Covid-19 contract disruptions
 - a. Relevant for Covid-19 recession
 - b. Application of Art. 388 GCC probable for contracts concluded before the outbreak of the pandemic
 - c. The condition of unforeseeability makes the application of Art. 388 GCC less likely for new contracts

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L. Performance of the contract in good faith

1. Greek case law allows for judicial adjustment of the contract for change in circumstances, even if not all the conditions of Art. 388 GCC are met, pursuant to Art. 288 GCC (*good faith principle*)
2. Conditions
 - a. Permanent change in circumstances
 - b. Excessive onerous performance for the debtor
 - c. Causal link between the change in circumstances and the excessive burden for the debtor
3. Greek case law applies Art. 288 GCC to adapt contracts to changed circumstances even if:
 - a. The contract is not reciprocal
 - b. The change in circumstances was foreseeable
 - c. The parties had foreseen the change in circumstances, but they had not foreseen the extent of the change in circumstances

Art. 288 GCC

A debtor is obliged to perform pursuant to good faith, taking also into consideration common usages (*business practice*).

Covid-19 related contract disruption and legal institutions under Greek law

L. Performance of the contract in good faith (cont.)

4. Legal consequences
 - a. Adjustment of the contract by the judge
 - b. Partial or total dissolution of the contract by the judge
 - c. The effects of contract adjustment or dissolution require a *res judicata*, i.e. a second instance or equivalent court judgment
 - d. Legal consequences are deemed retroactively effective, i.e. from the time the debtor served a lawsuit
5. Greek case law has applied Art. 288 GCC for the judicial adaptation of the following contract types
 - a. Sale contracts
 - b. Construction contracts
 - c. Commercial lease agreements
6. Contractual exclusion of Art. 288 GCC?
 - a. A waiver of Art. 288 GCC is invalid. Good faith cannot be set aside by the parties.
 - b. However, a specific risk allocation can minimize chances for judicial interventions in the contract pursuant Art. 288
7. Assessment for Covid-19 contract disruptions
 - a. Relevant for Covid-19 recession
 - b. Application of Art. 288 GCC could be deemed applicable even for contracts concluded after the outbreak of the pandemic

Covid-19 related contract disruption and legal institutions under Greek law

M. Covid-19 pandemic and contract negotiation

1. Contracts under negotiation **before** the outbreak of the pandemic
 - a. Parties are basically free to abandon negotiations or renegotiate key terms
 - b. Liability for contract negotiations Art. 198 (*culpa in contrahendo*) is very unlikely
 - c. Preliminary contracts are legally binding- Same rules for full contracts apply

2. Contracts under negotiation **after** the outbreak of the pandemic
 - a. Different perspective- Second wave can be deemed foreseeable
 - b. Recommended use of specific force majeure clauses
 - c. Rules for impossibility and delay without fault may not apply
 - d. Art. 388 GCC (Unforeseeable change in circumstances) may not apply
 - e. Art. 288 GCC (Performance in good faith) can offer (limited) protection to debtor of excessively onerous performance

Art. 198 GCC

A person, who in the course of negotiations for the conclusion of a contract has through his own fault caused prejudice to the other party, shall be liable for compensation even if the contract has not been concluded.

IMPACT OF COVID-19 ON TOURISM SECTOR ARRANGEMENTS

A. Type of accommodation agreements under Greek law

- **Individual Accommodation:** individual's accommodation for a certain period
- **Accommodation Agreements with Tour Operators**
 - **Guarantee/Commitment Agreement:** agreement on certain number of rooms in consideration of a certain amount
 - **Allotment Agreement:** minimum number of rooms offered following request
- ✓ Final agreements under Greek law
- ✓ Distinction: commitment of the parties for certain number of accommodations

B. Impact of Covid-19 on performance of accommodation agreements

- **Hotel business' obligation to perform**

- **❖ Inability of a hotel to provide accommodation**

- Offer of similar accommodation plus transport costs (art. 10 of GNTO Regulation)
- Debatable as to whether similar accommodation should be offered in force event
- Similar accommodations not available for reasons not related to the hotel- both parties released from obligations

- **❖ Inability of a hotel to provide accommodation type or facilities agreed**

Release of liability if:

- Unavailable after execution of agreement
- For a reason not relating to hotel's fault

❖ **Inability of hotel to provide accommodation for the fee agreed.**

Modification:

- Increase of costs lead to serious disproportion
- Provided that performance has not taken place
- Reasons could not have been foreseen
- Onerous agreement

In case of non-agreement → legal action requesting equitable modification

- **Tour operator's/guest's inability to perform**

General Release Period(13 of GNT0 Regulation)

- ✓ the agreement may be terminated with a 21 days prior notice.
- ✓ Agreement no longer in force- any advance paid may be claimed back

Case Law: Application of Release Period provision is different in each type of accommodation agreement

- ❖ **Inability to perform an Individual Accommodation Agreement**
 - Release period is applicable to individual accommodation agreements.
 - Right to withdraw with a 14days prior notice for distance or off-premises agreements (Directive 2011/83/EU).

- ❖ **Inability to perform a Commitment Agreement**
 - Full fee paid unless operator withdraws 21 days prior to the arrival day.

- ❖ **Inability to perform an Allotment Agreement**
 - Operator is liable to pay half fee for the minimum number regardless of Release Period notification.

❖ **Non-show due to a Force majeure event**

- Usually liability assessed by a term of the agreement
- Release of liability to pay accommodation fee in case of force majeure event (article 8 par. 3 of the Regulation, 596 par. a of Greek Civil Code).

C. TOURISM BUSINESS CREDIT NOTES (VOUCHERS)

- ✓ **Reimburse customers with 18month vouchers instead of cash refunds for bookings cancelled due to Covid-19 pandemic**
- ✓ **Requirements:**
 - Existing agreement;
 - Termination by either party between February 25, 2020- September 30, 2020;
 - Notification about the refund by way of voucher within 30 days from the date of termination or from the date of the law (13.4.2020)
- ✓ Applicable on all agreements regardless of specific clauses and applicable law
- ❖ No new agreement until date of expiration → refund
- ❖ Air travels cancelled from 25 February to 30 September 2020 and ferry bookings cancelled from 25 February to 31 October 2020.

D. POTENTIAL LIABILITY IN CASE OF COVID-19 ILLNESS

Guest Liability

- ✓ Compensation for all damages paid or harm suffered by the hotel (article 21 of GNT0 Regulation).
- ✓ Early termination of accommodation (article 8 of GNT0 Regulation).

Hotel Liability

- ✓ Breach of health protocols even by negligence.- compensations for all damages/harm suffered
- ✓ Limitation of liability clause? Invalid in cases of infringement of health (article 332 Greek Civil Code)

❖ Sale and Acquisition of Real Estate in Greece

1. The impact of Covid-19 on the Greek real estate market
 - a. The awakening of the market
 - b. The pandemic uncertainties

❖ Sale and Acquisition of Real Estate in Greece

2. The impact of the Covid-19 (emergency) legislation on real estate transactions
 - a. Delayed closings as a result of the lockdown
 - b. Attempts to facilitate new real estate transactions

❖ Sale and Acquisition of Real Estate in Greece

3. The particularities of the real estate sale and purchase contracts in Greece
 - a. A sale, a transfer and a notary public → (article 1033 of the GCC)
 - b. Is it possible to make the effects of a real estate sale and purchase contract dependant on the occurrence of certain events? → (Suspensive / Dissolving conditions)
 - c. Is it a standard practice in Greece to insert force majeure clauses / hardship clauses in real estate contracts ?

❖ **Sale and Acquisition of Real Estate in Greece**

4. Covid-19 and its legal impact on real estate contracts

a. Pre-contractual negotiations: Can I discontinue the negotiations ?

- Yes ...
- ... as long as rules of conduct dictated by good faith are not breached (art. 197 GCC)



- Misconduct during the stage of the negotiations may give rise to a right to recover damages (art.198 GCC)

❖ Sale and Acquisition of Real Estate in Greece

b. Precontracts (art. 166 GCC):

- Do I need to close?
- The seller seems to have second thoughts Can I force him to close?

c. I have entered into a conditional contract; I have a deadline, but my counterparty does whatever is possible for me to miss the deadline (art. 207 GCC).

❖ Construction and development agreements

1. The impact of Covid-19 on construction sector
2. The impact of the Covid-19 (emergency) legislation on construction projects
3. Typical construction contract provisions

❖ Construction and development agreements

4. Covid-19 and its legal impact on real estate contract

- a) Delays in the progress of the construction works due to Covid-19 and Covid-19 (emergency) legislation
- employer's right to rescind the contract (art. 686 GCC)
 - employer's right of termination (art. 700 GCC)

❖ Construction and development agreements

- b) Increase of construction costs due to Covid-19 and Covid-19 (emergency) legislation
- In a construction contract with **indicative budget**:
 - The contractor has the right to ask for a budget increase (art. 697 par. b GCC)
 - ↓
 - The employer's defense: right to terminate (article 697 par. A GCC)
 - In a construction contract with a **guaranteed construction budget**
 - The contractor has the right to apply to court for a budget increase (art. 696, 288, 388 GCC)
 - ↓
 - The employer's defense: right to terminate (article 700 GCC)

Commercial Lease agreements and Covid-19 disruption

A. Special legislation and disruption in commercial lease agreements

1. Special legislation for commercial lease contracts (presidential decree 34/1995)
 - a. Minimum duration:
 - i. 3 years for new contracts (i.e. conclusion after 28.02.2014)
 - ii. 12 years for old contracts (i.e. conclusion before 28.02.2014)
 - b. Lessee protection
2. Covid-19 disruption in commercial lease agreements
 - a. Inability to use leased premises during lockdown
 - b. Onerous rent

Commercial Lease agreements and Covid-19 disruption

- B. Inability to use leased premises
 - 1. Emergency Covid-19 legislation
 - a. Only for affected businesses- definition of affected business by law
 - b. 40% reduction in rent
 - 2. Dismissal of rent obligation Art. 596
 - a. Only for the time of the lockdown measures
 - b. 100% dismissal of rent obligation
 - 3. Conflict between emergency Covid-19 legislation and Art. 596 GCC?

Art. 596 para. 1 GCC

The lessee shall not be exonerated from his obligation to pay rent if his unable to use the leased property for reasons concerning himself.

Commercial Lease agreements and Covid-19 disruption

C. Onerous rent

1. Rent reduction by the judge

- a. Unforeseeable change in circumstances (Art. 388 GCC)
- b. Performance of the contract in good faith (Art. 288 GCC)
- c. Factors taken into consideration by the judge
 - i. Reduction of business turnover
 - ii. Reduction in the value of neighboring leased properties

2. Other amendment to the contract by the judge

3. Termination by the Lessee without serious reason (?)

- a. Old contracts (conclusion before 28.02.2014): Yes, with three months notice and one rent compensation
- b. New contracts (conclusion after 28.02.2014): conflicting case law

4. Termination by the Lessee for serious reason (?)

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