

Approach to Force Majeure in Belarus

The exclusive right to attest to the existence of force-majeure circumstances in Belarus belongs to the Belarusian Chamber of Commerce and Industry (hereinafter - BelCCI).

The BelCCI considers that COVID-19 or the epidemic and pandemic that arose in connection with it are not force-majeure circumstances in themselves; however, if restrictive and other measures aimed to prevent the spread of COVID-19 and its consequences arose after specific contracts were concluded, such measures may be considered as force majeure circumstances.

Restrictive measures may include decisions of state and local authorities, government decisions, including those aimed at restricting the free movement of goods and labor or at closing borders. Moreover, if restrictive measures were taken on the territory of foreign states, documents confirming the presence of force majeure circumstances will include, among other things, certificates of force majeure issued by organizations authorized in these states.

Usually, the following are not considered as force majeure circumstances:

- change in exchange rates;
- a decrease in revenue from the sale of goods, works, services, including in connection with the suspension of activities;
- a decrease in the number of clients in cafes, restaurants, other catering organizations, casinos, hotels, cinemas;
- increase in transportation cost, including by sea;
- quantity reduction of ships on sea transport lines.

As the BelCCI explained, today attesting to the existence is carried out only concerning a specific contract (in Russian: https://www.cci.by/ru/content/fors_major_beltp).

If the contract is not a foreign economic one, for the procedure to be provided it shall contain a reservation on the right of the BelCCI to attest to the existence of force majeure circumstance.

Since force majeure circumstances are the ground for the release of entities from liability for non-fulfillment or improper performance of obligations under contracts, and not from the fulfillment of obligations themselves, the obligation to prove the presence of force majeure rests with a person who has not fulfilled or improperly performed an obligation under a specific contract.

Attestation to the existence of force majeure circumstances at the BelCCI is based on a written statement from an interested party to a foreign trade agreement signed by its director, which, among other things, shall state the chronology of the parties' actions in fulfilling obligations under the contract, as well as the event that caused the failure to fulfill or improper performance of obligations. The application must be accompanied by certified documents (copies of the contract, specifications, a certificate of the volume of fulfilled obligations under the contract and others), confirming the facts that are outlined in the application.

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