

Covid-19 impact on Greek construction industry

April, 2020

The construction industry having been hit and yet survived from a long-term financial crisis, is now called to face the new threat of Covid-19. In this context, representatives of the technical world in Greece urge the State to adopt new measures in order to address the pandemic and secure the safe and continuous operation of the construction sector. Furthermore, could corona virus be seen as an opportunity to reexamine the clauses of the contracts and rethink the concept of force majeure with regard to the contractor's performance?

Construction in Greece: still operating sector

Although the Greek Government has implemented a suspension of operation for most types of businesses and the effects of Covid-19 are felt in such business activities, the construction sector still remains in operation with the following few exceptions:

- For the period from April 6, 2020 to May 6, 2020 any kind of construction activity in the municipalities of Mykonos and Thira is prohibited to the extent that it involves building construction works on either

public or private work sites, notwithstanding some minor exceptions for the municipality of Thira.

- With regard to public procurement and tenders, Legislative Act dated 20.03.2020 provides for the possibility of: a) suspension of ongoing public tenders; b) extension of the deadlines for applications' or offers' submission; c) suspension of any deadline with regard to public procurement, regardless of the stage of assignment or execution thereof; and d) extension of any kind of public procurement deadlines, for a certain period. Until now, such measure has been implemented only to the public procurement procedures of the Ministry of Foreign Affairs, the Ministry of Infrastructure and Transport, the General Secretariat of Research and Technology, the Greek Parliament, as well as a few individual Greek contacting authorities.

Special construction legislation in Greece and extraordinary Covid-19 requirements

Although the construction sector itself is not highly regulated in Greece, construction works have always been subject to strict health and

safety regulations. The obligatory appointment of occupational doctors and safety engineers at the work sites (under certain conditions) are only some out of a great variety of safety measures.

The Covid-19 crisis added more, though temporary, safety rules. More particularly, the Legislative Act issued on 20.03.2020 provides for the possibility of additional hygiene and security regulations to be imposed on construction work sites for both public and private works, following the issuance of relative ministerial decisions. In this context, the National Council of Infrastructure and Construction Industry (ESBYK) submitted to the competent Ministries a draft of a Protocol (Guide) for the work sites' operation, along with other propositions for the effective operation of the work sites during the pandemic.

Furthermore, in order to facilitate ongoing construction works, the Greek Government has extended, under certain circumstances:

- the validity term of building permits, preapprovals and amendments of building permits;
- the deadlines for the engineers to perform certain acts;
- various deadlines related to the licensing process and operation for renewable energy sources ("RES") and other projects, so that the current lockdown of public services as well as construction delays not

to penalize projects with operating support (variable premium) agreements with fixed completion deadlines, or those with licenses and connection offers with deadlines which expire in the course of 2020.

COVID-19 impact on the construction industry

The consequences of Covid-19 are visible in many aspects of the construction business. In most cases at this stage, Covid-19 is not widely rendering construction projects altogether impossible to complete. But it is slowing them down, causing delay and disruption. Construction projects face many challenges, such as delays due to unavailability of work force (e.g. if all or the majority of the contractor's employees become ill or quarantined), disruption of supply chains and other difficulties in the delivery of materials (e.g. due to supply bottlenecks), as well as unavailability of subcontractors, difficulties in meeting the social distancing requirements in site etc. and therefore inability to perform under the terms of the contracts undertaken.

The State, having recognized that the construction sector is one of those which are struck by the spread of Covid-19, has included many construction activities (e.g. development of building plans, construction works for buildings to be used as houses, demolitions etc.) to the ones that are deemed to be affected by Covid-19. They are thus entitled to a series

of support measures, such as the extension of payments of tax obligations etc. For more details, please see the relevant sections of our [*COVID-19 pandemic checklist of measures currently adopted in Greece to support affected businesses.*](#)



Do the effects of Covid-19 constitute an event of force majeure or similar legal concepts? What are the price and time consequences?

Contracts prior to Covid-19 are unlikely to provide for Covid-19 as a force majeure, causing uncertainty among the parties.

In this direction, the European Construction Industry Federation, representing construction enterprises of all sizes in 28 countries (25 EU, Norway, Ukraine and Turkey), in its efforts to mitigate the impact of this crisis, has asked the European Commission, inter alia, to publicly announce that the Covid-19 pandemic constitutes an event of "Force Majeure" and has to be treated accordingly, in order to preserve jobs, avoid associated consequences and definitive stoppages. Furthermore it has

asked the European Commission to warmly recommend to the Member States to allow the possibility of suspending or reducing the activity on ongoing construction worksites, without penalties, for the necessary period, if the contractor is unable to comply with the requested health and safety measures for its workers and/or if the contractor is unable to undertake activities because of disruption in the supply chain or because of the shortage of workforce due to Covid-19.

Until such public announcement, any force majeure clause would be examined in the context of the general regulations in force. Similarly even in absence of a force majeure clause, general rules on force majeure according to Greek law would be examined.

Under the Greek law, the legal concept of force majeure is not explicitly defined. However it is considered to refer to any extreme, unforeseeable, inevitable event beyond the party's reasonable control, despite the reasonable endeavours of the affected party, either objective-external or subjective-linked to the party itself (art. 311, 330, 336, 338, 342, 390 of GCC), which makes the fulfillment of an obligation of the affected party impossible, either partially or wholly, either temporarily or permanently. The contractual obligations of the affected party, thus, may be suspended for as long as the event of force majeure and its consequences last. For more details, please see

our newsletter [*Contract Performance and Coronavirus: Does it constitute an event of Force Majeure?*](#)

In addition, article 686 GCC provides for the employer's **right of repudiation** if the contractor does not begin the execution of the project in time or if he decelerates the execution thereof in a way that breaches the contract and makes it impossible to complete the project on time. It is disputed whether for the exercise of the employer's right of repudiation a no-fault breach of the contractor's obligations under 686 GCC is sufficient or if the delay for the execution of the work should be due to the contractor's fault. According to the prevailing opinion of the legal theory and case - law, on the exercise of the right of repudiation no fault of the contractor is required. Therefore, even incidents that are random and outside the employer's sphere of influence are borne by the contractor even when they constitute force majeure (e.g. contractor's personnel strike) and if delays are caused the employer is entitled to repudiate the contract. However, the contractor could always invoke art. 281 GCC, which confines the employer's right for repudiation, so as not to exceed the limits imposed by good faith or good morals or the social and economic purpose of such right. Therefore, if such dispute is taken to court and it is judged that the employer exercises his right for repudiation abusively, in light of the repercussions of the current pandemic, then the repudiation

shall be considered illegal and thus invalid in accordance with articles 174 and 180 GCC. In any case, it lies upon the judge who will hear such case to decide, in view of the above, whether the employer could legally exercise his repudiation right or not.

Greek law also provides protection when the circumstances in which the parties entered into a contract have subsequently changed for exceptional and unforeseeable reasons and, due to the change, the performance of a contract by one party has become excessively burdensome and disproportionate vis-à-vis the obligation of the counterparty (art. 388 of GCC). Even when the **change of circumstances** is provided for in the relevant contract, art. 288 of GCC provides for a similar protection (obligations' rebalancing). For more details, please see our newsletter [*Contract Performance and Coronavirus: Does it constitute an event of Force Majeure?*](#)

Furthermore, article 700 GCC provides for the employer's right to terminate the contract prior to the completion of the project. For the legal exercise of the right of termination, the employer is not obliged to invoke a specific reason, nor is the contractor's fault required, whilst unjustified withdrawal suffices. Hence, the employer could terminate the contract in case of Covid-19 without reason. The results of the termination are activated ex nunc (for the future), without affecting the contract with

regard to its part that has already been completed. If the contract is terminated, the employer owes to the contractor the agreed fee, following the subtraction of the costs saved due to the termination of the contract (e.g. the value of the materials that the contractor didn't procure from the moment that the project stopped, the employees' salaries that the contractor didn't have to pay due to the termination of the contract etc.) and any lost profits. The contractor is obliged to deliver to the employer the part of the project that has been completed by the termination of the contract.

Practical steps

As the situation changes day by day, the parties shall seek other efficient ways to fulfill their future contractual obligations, for instance to avoid supplies from regions affected by disruption or travel restrictions or to avoid perceived risks of delay and price fluctuations. The parties shall also need to agree how risks with regard to the current outbreak should be allocated.

Regardless of how the impact of Covid-19 appears in a certain project, the parties should cooperate and communicate openly to mitigate any unnecessary adverse effects. Therefore, some practical steps should be taken in order for both parties to enjoy the best possible results deriving from the contract:

- Notification of the other party promptly, and in any case within any time limits provided for in the contract, about the fact that the contract has become impossible to perform, about the difficulties in performing the relevant obligation, or about the occurrence of force majeure.
- Suggestion of different options to the other party, after making a preliminary estimate of the parties' losses and expenses as a result of each option.
- Determination of whether the parties are interested in maintaining contractual relations, and, if such interest remains, to obtain written confirmation of this intention from the other party.
- Parties should take reasonable steps to mitigate their own and the other party's losses.
- It is advisable that parties retain evidence, in the event that any dispute has to be settled in court, especially if the circumstances involved are complex. Such evidence can include acts of Greek and foreign authorities, media news, notices from contracting partners, etc.

Future contracts

When new contracts are negotiated, it is advisable to agree specific clauses on force majeure and to classify the currently existing

effects of Covid-19 (or even a possible Covid-20) as force majeure, as clients and contractors are now aware of supply bottlenecks, price increases, work stoppages etc.

***Your Legal Partners** have already obtained qualified e-signatures and are actively advising clients in relation to the Covid-19 outbreak. Please do not hesitate to [get in touch with us](#) if your business has been affected.*

If you have questions or would like additional information, please contact the authors:

Anna Meletiou, Associate

anna.meletiou@yourlegalpartners.gr

Follow us

Linked 