



KINSTELLAR

RUSSIA'S WAR AGAINST UKRAINE: **FORCE-MAJEURE CONSIDERATIONS**

On 24 February 2022, the Ukrainian Parliament imposed martial law within Ukraine's constitutional boundaries in view of the unprovoked Russian military aggression against the country.

Under the constraints of the on-going war and/or temporary Russian occupation of some territories in Ukraine, a contracting party may become unable to perform its contractual obligations (whether domestic or international).

Under Ukrainian law, a party that is in breach of its contractual obligations can avoid contractual liability if it proves that the breach is a result of a force-majeure event. The contractual liability is alleviated regardless of whether or not it is explicitly set out in the contract.

Ukrainian law fails to provide for an exhaustive list of force majeure circumstances. Hence, they are subject to the open-ended interpretation depending on the factual circumstances.



Yet, Ukrainian law states what **does not qualify as force-majeure events**

- a breach by a contracting party of its own contractual obligations due to a default of a third-party supplier
- the unavailability of necessary products
- a debtor's inability to pay

Unless the contract provides otherwise, the Ukrainian Chamber of Commerce (UCC) must confirm a force-majeure event.



UKRAINIAN CHAMBER
OF COMMERCE AND INDUSTRY



The UCC is **obliged to confirm** a force-majeure event if:

- it is exceptional in nature and outside of the parties' control
- It was not foreseeable when the parties signed the contract and
- it makes it impossible to perform the contract.



Usually, the UCC confirms a force-majeure event by issuing individual certificates to specific applicants that can be used in court.

However, on 28 February 2022, the UCC issued a **blanket certificate** announcing that the Russian military aggression qualifies as a force-majeure event starting from 24 February 2022. Each interested party can rely on this document.



However, the certificate itself is not enough to avoid liability for a contractual breach. Each party concerned is additionally obliged to prove in court that there was a causal link between the force-majeure event and its contractual breach.



Usually, parties to a contract will regulate in the contract:

- the list of force-majeure events
- the notification rules to be followed in the event of a force-majeure event
- the legal implications of the force-majeure event in more detail than the general rules of Ukrainian law.

For instance, contracts frequently permit their parties to early terminate them if the force-majeure event persists. It is therefore necessary to carefully review each contract individually.

In this respect, the following aspects are generally worth considering, among others:

01

for contracts concluded before the outbreak of war on 24 February 2022, it can be generally stated that the parties could not have anticipated the Russian invasion, whereas for contracts concluded after that date, this circumstance needs to be individually demonstrated

02

the party relying on the force-majeure event is obliged to demonstrate in the specific context of the contract why and exactly how the military actions affect the performance of the contract — the mere reference to the war is not sufficient to support it

03

the party relying on the force-majeure event is obliged to demonstrate why it was unable to mitigate the impact of the war on its performance under the contract



In summary

Military operations are not a generic "blank cheque" for rescinding a contract. The effects of the war must be examined individually in the context of the specific contract and the applicable governing law. In addition to the force-majeure provisions in contracts, it is essential for affected companies to assess the situation and prepare for the necessary steps by reviewing the notification and dispute resolution provisions of their contracts.

For more information, please contact us



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