



# CONTRACT LAW IN THE CORONA CRISIS

Greater security of action in the event of service disruptions in national and international contractual relationships

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# THE CORONA CRISIS DISRUPTS CONTRACTUAL RELATIONS

Your company maintains numerous business relationships with customers, suppliers, banks, distribution partners and other stakeholders. These relationships are embedded in contracts under German or foreign law. Normally, these contracts guarantee a smooth flow of business.

The corona crisis, however, is considerably impairing these processes and has a profound impact on business relations, including the frequent breach of contractual obligations:

- Failure to deliver
- Interruption of services of any kind
- Lateness of payments
- Production stops with their consequences
- Failure to meet contractual objectives

# WHICH CONTRACTUAL REGULATIONS APPLY NOW?

Pacta sunt servanda – contracts must be respected. Even the corona pandemic does not change this in principle. Often the general **terms and conditions** underlying the respective contract contain binding regulations for exceptional circumstances. In addition, specific provisions are also laid down in the **German Civil Code (BGB)** that regulate the mutual obligations between creditor and debtor in the event of default. But what applies if the GTC are not effectively agreed? Or if the BGB is not applicable at all, but foreign law is?

The corona crisis has prompted legislators at home and abroad to develop special regulations to mitigate the consequences of the pandemic, particularly for the economy. The current **COVID-19 special legislation**, in Germany as well as in other European countries, creates numerous exceptions, which create a new and complex legal situation. Thus the corona follow-up law raises legal questions in many contractual relationships. Each case must be considered individually, but we would like to address questions that every company faces.



# CANCEL THE CONTRACT? ADJUST CONTRACT? HOW CAN AND HOW SHOULD YOUR COMPANY ACT?

If the fulfilment of a contract is at risk, an **agreement** should first be sought with the company's partners, who are often long-standing partners. This may be even easier to achieve in Germany than abroad, where over the course of the corona crisis, regulations may be in force that deviate from special German legislation and present unexpected obstacles. Even in this situation, **legal advice** to the contracting parties is recommended.

# WHAT HAPPENS IF YOU CANNOT REACH AN AGREEMENT WITH YOUR CONTRACTUAL PARTNER?

In this case, the first step is to examine which legal system underlies the contract. A distinction must be made here between contracts under domestic law and constellations in which foreign law is also or exclusively applicable.

## CONTRACTUAL RELATIONSHIP IN GERMANY

The following applies here: the contractual obligations must always be observed.

### **Exceptions:**

- If the contractual service can no longer be provided due to the corona crisis then the debtor is released from the obligation to perform due to impossibility (§ 275 BGB), but the obligation to provide consideration also ceases to apply (§ 326 BGB).
- In the case of a so-called relative transaction for delivery by a fixed date, in which compliance with the time for performance is so essential that the transaction should stand or fall with the timely performance, the creditor can withdraw without setting a deadline (§ 323 para. 2 no. 2 BGB).
- There is the possibility of adjusting the contract according to § 313 BGB (disturbance of the business basis).

In cases in which both parties to the contract are interested in establishing long-term business relationships, the possible adaptation of contracts according to § 313 BGB should take precedence.

# INTERNATIONAL CONTRACTUAL RELATIONS

Your customer, supplier or partner is located abroad or an important part of the contractual services is not provided in Germany. In these cases you should check:

- Does German law apply? If so, the above-mentioned regulations of the BGB are to be applied.
- Does foreign law apply? If so, it must be examined which regulations have been issued in the respective foreign legal system over the course of the corona crisis.

**Attention:** Almost every European country has issued **special regulations** over the course of the corona crisis. These regulations are often similar (e.g. suspension of limitation periods and other time limits), but the regulations are country-specific and may differ considerably in detail.

This examination must therefore be carried out on a country-specific basis and under no circumstances should one be subject to the presumption that the situation is 'probably similar' to that in Germany.

## **Additional difficulty:**

Even if German law is applicable to the contractual relationship, it is possible that mandatory provisions have been enacted in foreign legal systems that contradict German law.

In this case, it may be that your company's legal claim exists, but its enforcement before the foreign court becomes problematic or even impossible.

Numerous special situations must be taken into account, which can only be assessed in an individual audit.

# WE GIVE YOU SECURITY OF ACTION

As part of the leading German-speaking network of law firms in Europe, DIRO BUSINESS is a competent partner in the current cross-border crisis situation for medium-sized companies, but also for many small businesses. The main focus of our legal advice is on finding and communicating creative solutions. We check for you whether the disrupted contractual relationship is subject to German or foreign law, we examine your legal situation, including against the background of funding opportunities, and give you concrete recommendations for action.

## **We check for you in the respective legal systems (Germany or abroad):**

- Termination and adjustment rules in contracts and laws
- Avoidance of interest obligations
- Negotiation and drafting of moratorium agreements for creditors and debtors
- Adaptation of grant agreements
- Development of solutions for your business in consumer business
- Formulation of general conditions for several similar transactions
- Support in negotiations with contractual partners and authorities in the B2B sector
- If necessary, litigious enforcement of your legitimate claims, Europe-wide, with German, English or local-language communication



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# ABOUT DIRO BUSINESS

## **Medium-sized companies are DIRO BUSINESS. Europe-wide**

As one of the largest independent law firm alliances in Europe, DIRO has expanded its range of consulting services in the area of commercial law with a view to internationally active medium-sized companies. Since 1 July 2019, DIRO BUSINESS has been offering the owners of medium-sized companies access to a Europe-wide portfolio of established commercial law firms. A special feature of this service is the advice from entrepreneur to entrepreneur.

## **Consulting with responsibility. On an equal footing**

The common perspective on entrepreneurially responsible action ensures a quality of consulting that is second to none and is also guaranteed in cooperation with partners from the international DIRO BUSINESS network. The support of a case, whether national or cross-border, always takes place at the level of the owner.

## **Regional competence. Networked to international performance**

In their relationships with business partners at home and abroad, as well as in the internationalisation of their own business, medium-sized companies are faced with complex regulations and country-specific peculiarities. The law firms of the DIRO BUSINESS network offer both the professional expertise that entrepreneurs need in business law issues and a deep understanding of the respective markets and cultures.

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This information page is part of a series of DIRO publications on corona follow-up law. It does not replace legal advice.