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Rö War in Ukraine and its impact on construction contracts in Poland

The war in Ukraine has far-reaching economic consequences in the whole Europe, especially in the countries directly neighbouring Ukraine. The construction sector in Poland is affected in particular, as companies are struggling not only with a sudden outflow of Ukrainian workers, but also with supply chain disruptions and skyrocketing prices of building materials. Entrepreneurs are now facing many challenges that were impossible to predict or control. This raises a number of questions that our experts in law, with vast knowledge of the construction market, will help you answer.

Can the military operations in Ukraine be treated as force majeure?

The possibility to make use of the force majeure clause is important both for contractors and employers. The key issue is whether the circumstances related directly to the war can justify the exemption from liability for non-performance or undue performance of the contract.

- What steps should contractors take to minimize the risk of delays in the execution of contracts, higher costs, or being released from liability for breach of contract?
- What should employers do to support contract execution and, at the same time, avoid provoking a wave of claims?
- When should contractors' claims be treated as force majeure?
- What steps should be taken to make sure that contractors do not withdraw from construction projects?

What consequences does the war in Ukraine have for construction contracts in Poland?

In the age of globalisation, technological development and more open markets, military operations in the country so closely connected with Poland as Ukraine must have a major impact on the local economy. For the construction market this means, first and foremost, supply shortages and higher prices of building materials, such as aggregates, cement, wood, aluminum and steel products, as well as fuels and asphalt. Of crucial importance is also a significant increase of labour costs caused by the outflow of workers from Belarus or Ukraine. This, in turn, implies a number of risks such as:

- necessity to ensure financing of the contract execution due to the lack of or delays in the payment of due remuneration,
- failure to complete the contract on time and the risk of imposing contractual penalties for delays in contract execution,

- changes in guarantee and credit policies by financial institutions,
- additional costs (direct and indirect) related to the extension of the term of the contract,
- withdrawal from the contract or failure to complete it on time with all consequences,
- failure to settle the contract financing.

On what grounds can claims be pursued?

The first step is contract analysis with regard to the provisions that specify the possibility of making claims such as:

- valorisation clauses,
- clauses relating to force majeure – definition of force majeure,
- contract update or termination with the possibility of pursuing claims after the contract has been terminated.

The next step is the analysis of general rules of liability for non-performance or ill-performance of the contract resulting from binding provisions.

How to ensure the continuation of contracts and secure the interests of the parties involved?

One of the best practices in business relations is to start talks as soon as it becomes clear that timely contract delivery is severely jeopardized or impossible. A joint analysis of possible actions allows to minimize risks and losses for both contractors and employers. Nevertheless, it is necessary to collect relevant evidence and documents from the very start in order to demonstrate objective reasons of problems with contract execution. Withdrawal from the contract or filing a lawsuit are radical steps and last resort measures, as they always generate significant losses. It is good to check whether they could be avoided by proper verification of contract provisions and claim documentation.

Our lawyers have many years of experience in litigation and dispute resolution. We know the Polish construction market and carefully follow how construction contracts are performed and delivered. We carry out detailed analyses of the situation of individual entrepreneurs and the contracts in which they are involved. We find appropriate solutions and develop strategies that minimize losses and secure both current and future risks.

For further information, please contact us. We will find the best possible solutions and answers to your questions and doubts.