



Special Information: Building Law

The construction industry in Germany is also in a state of emergency at the moment, although this situation can still be described as reasonably comfortable in view of other sectors of the economy (one is at least allowed to work). One of the main problems, however, is, for example, that a large number of foreign employees are working on the construction sites who are no longer able to work in Germany due to travel restrictions. Enough of the general forewords, to the actual topic:

How do I deal with the various challenges that the corona crisis brings with it?

Some examples:

1. The contract was concluded before the corona crisis and the fulfilment of the contract is at risk or impossible because employees are in quarantine or subcontractors are not allowed to enter Germany.

Please notify your customer (not the architect, project controller or anyone else) in writing with proof of access of the **disability** on the grounds that it is a case of force majeure. Although the issue whether the current situation constitutes a case of force majeure is not clarified in case law, you should at least try to protect your rights.

2. The contract is to be or will be concluded during the corona crisis

Force majeure is generally considered to be an unforeseeable event. For this reason, the following will probably have to be assumed: Those who now conclude a contract with binding deadlines and dates, cannot invoke force majeure if they are unable to perform as a result of the corona crisis. Reason: The circumstance of the inability to perform was (probably) foreseeable. You should be aware of this and draft contracts accordingly.

3. Public tenders

In the case of public tenders, the principle applies that whoever makes changes to the tender documents must be excluded from the award of contract. Before submitting your bid to the awarding authority, you should therefore ask how to deal with dates and deadlines in the event of inefficiency as a result of the corona crisis, i.e. whether there is nevertheless an impediment in the form of force majeure. It then remains to be seen whether and how the



awarding authority will react.

We submitted a letter of inquiry to the Bavarian State Ministry for Building, Housing and Transportation about this question and received the following answer:

“If the awarding authority does not change the corresponding deadlines (after examination) in the procedure, they will apply initially. However, in our opinion, corona-related reasons which actually prevent or hinder the provision of services are (currently) generally grounds for force majeure and lead to an extension of contractual execution deadlines in accordance with § 6 Para. 2 No. 1 c VOB/B. In this respect, companies that are correspondingly handicapped do not need to fear any disadvantages.”

Please note: This is not a generally binding statement, but the answer to our question, for which we would like to express our thanks at this point. One thing is clear, however: legal certainty looks different.

4. Conclusion

Each case is to be examined on the basis of its individual character; generalisations are not permitted, even if this is suggested (especially on the Internet). You should know and observe this. Please act according to the motto that legal certainty cannot be replaced by anything else.



The above statements are only a non-binding compilation according to the current status. No liability is assumed for the correctness and completeness. We would be pleased to support you in checking and, if necessary, implementing the above measures in your company.

The contact persons of our law firm who are known to you are also available here. In addition, you will find the contact persons who have been particularly involved in the above-mentioned topics.

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Sonntag & Partner

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The respective project-related team composition as well as the interdisciplinary and integrated consulting approach aim at a precise solution development and solution implementation - according to the individual needs of the clients.

Our law firm profile is rounded off by family office services, asset management and IT consulting.

Concluding remarks



You can find further information about our law firm and our consulting services at <https://www.sonntag-partner.de/>