BMA ADVOGADOS

Force majeure and re-establishing economic and financial balance

31.03.2020 2 min read

Authors

Ana Cândida de Mello Carvalho

José Guilherme Berman

Unforeseen events related to COVID-19 that upset the economic and financial balance between the parties, and consequently performance of government contracts, are triggers for requests to re-establish the balance under the contract, as provided for in article 65(II)(d) of Law 8666/1993.

Unforeseen events related to COVID-19 that upset the economic and financial balance under the contract are triggers for requests to re-establish the balance between the parties, as provided for in article 65(II)(d) of Law 8666/1993.

Article 393 of the Brazilian Civil Code defines force majeure as follows: "A fortuitous event or event of force majeure is an inevitable event, the effects of which were not possible to avoid or prevent."

It is very unlikely that that status of the COVID-19 crisis as an event of force majeure would be questioned in any request to re-establish the economic and financial balance under government contracts. The central issues are likely to be: (i) the existence of a causal nexus between the pandemic and/or state of emergency, and the economic/financial impact on the contract which caused it to become more onerous to the supplier; (ii) the terms on which the request is made, and (iii) the quantification of the impacts.

Aside from authorizing revision of the terms of the contract, events of force majeure can also trigger termination of the contract, without liability, or a temporary suspension of its effects, in part or in whole, depending the severity and duration of the event.

Have a look at our content hub

Image: Freepik

› PROFESSIONALS

Professionals who combine legal insight and market perspective

Ana Cândida de Mello Carvalho

José Guilherme Berman