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# LEGAL CHALLENGES IN THE TIME OF COVID-19 PANDEMIC



# TABLE OF CONTENTS

<b>1. GENERAL</b> .....	<b>4</b>
<b>2. EMPLOYMENT RELATIONSHIPS</b> .....	<b>7</b>
<b>2.1 EXCEPTIONAL CIRCUMSTANCES ACCORDING TO EMPLOYMENT RELATIONSHIP ACT (»ZDR-1«)</b> .....	<b>7</b>
<b>2.2 POSSIBLE MEASURES FOR EMPLOYERS ACCORDING TO ZDR-1</b> .....	<b>7</b>
2.2.1 WORKING FROM HOME .....	9
2.2.2 PERFORMANCE OF OTHER WORK.....	9
2.2.3 TEMPORARY REDISTRIBUTION OF WORKING TIME.....	10
2.2.4 WAITING FOR WORK AT HOME .....	10
2.2.5 REFERRAL HOME FOR PREVENTATIVE REASONS .....	10
2.2.6 SPECIAL UNPAID LEAVE .....	10
2.2.7 COLLECTIVE LEAVE .....	11
2.2.8 USE OF ANNUAL LEAVE .....	11
2.2.9 TERMINATION OF EMPLOYMENT CONTRACT DUE TO BUSINESS REASONS.....	11
2.2.10 SALARY REDUCTION .....	12
2.2.11 PART-TIME EMPLOYMENT .....	12
2.2.12 TERMINATION OF THE CONTRACT BY OFFERING A NEW ONE.....	12
<b>2.3 EMPLOYER'S OBLIGATIONS UNDER HEALTH AND SAFETY AT WORK ACT (»ZVZD-1«)</b> .....	<b>13</b>
<b>3. STATE MEASURES AND AIDS TO SUPPORT THE ECONOMY</b> .....	<b>15</b>
3.1 BENEFITS PROVIDED FOR BY TAX LEGISLATION .....	15
3.2 POSSIBILITY OF PAYMENT OF THE CONTRIBUTIONS FOR SELF-EMPLOYEES.....	16
3.3 OPTION TO SUBSIDIZE WAITING FOR WORK AT HOME .....	17
3.4. FULL SUBSIDIZATION OF SALARY COMPENSATION IN THE EVENT OF A QUARANTINE ORDER ..	18
3.5 COMPENSATION FOR SICK LEAVE DURING THE EPIDEMIC.....	18
3.6 COMPENSATION FOR PARENTS AND EMPLOYEES WHO CANNOT WORK BECAUSE OF FORCE MAJEURE.....	18
3.7 PAYMENT OF ALL CONTRIBUTIONS TO THE PENSION SCHEME .....	18
3.8 ENFORCEMENT PROCEEDINGS, FINANCIAL MANAGEMENT OF COMPANIES, INSOLVENCY PROCEEDINGS AND PROCEEDINGS DUE TO COMPULSORY WINDING-UP .....	19
3.9 OTHER MEASURES UNDER THE "MEGALAW" .....	20

3.10 MEASURES TO ENSURE CORPORATE LIQUIDITY .....	20
3.11 BANK LOANS .....	20
3.12 MEASURES OF THE SLOVENE ENTERPRISE FUND .....	21
3.13 SUBSIDIES OF SLOVENIAN TOURIST BOARD .....	21
3.14 PROVISIONAL MEASURES CONCERNING JUDICIAL AND ADMINISTRATIVE PROCEEDINGS .....	21
<b>4. CONTRACTUAL ISSUES.....</b>	<b>23</b>
4.1 FULFILLMENT OF CONTRACTUAL OBLIGATIONS AND CONSEQUENCES OF NON-FULFILLMENT 23	
4.2 »FORCE MAJEURE« .....	23
4.3 CHANGE IN CIRCUMSTANCES .....	24
4.4 INABILITY TO FULFIL OBLIGATIONS .....	24
4.5 FULFILMENT OF OBLIGATIONS IS UNCERTAIN .....	24

# 1. GENERAL

Due to the increasing number of COVID-19 cases, Slovenia declared an epidemic on 12 March 2020 and activated a national protection and rescue plan. The basis for declaring the epidemic is the expert opinion of the National Institute of Public Health (hereinafter »NIJZ«). In doing so, Slovenia followed the declaration of a pandemic by the World Health Organization (WHO).

From the moment the first infection was detected in Slovenia, the country has gradually taken steps to limit the spread of COVID-19 infections. The most important measures that have been implemented so far are listed below.

Measures in connection with restriction of movement, public gatherings and traffic:

- Prohibition of gathering people in educational establishments, universities and independent higher education institutions, which is currently in force from 16 March 2020 until further notice - the institutions are closed;
- First the government have banned the gathering of more than 100 people at indoor events and banned events in public places if the number of people exceeds 500, than a currently applicable temporary general ban was issued on the movement and gathering of people in public places and areas in the Republic of Slovenia and prohibition of movement outside the municipality of permanent or temporary residence, with some exceptions where maintaining a safe distance between people is obligatory (arrival and departure to work, access to pharmacies, grocery stores, etc.);
- Ban on public transport, including passenger air transport in the Republic of Slovenia;
- Establishment of four checkpoints for entry into the Republic of Slovenia on road connections with Italy, while other border crossings with Italy are closed. Persons who are not citizens of the Republic of Slovenia are allowed to enter Slovenia only under certain conditions.

The most important measures in health sector:

- Limitation of certain health employees' rights of, in particular the prohibition of movement outside the country and withdrawal of the right to strike;
- Discontinuation of preventive health services, unless the suspension would have a negative impact on the patient.

The most important measures in regard to consumerism:

- Prohibition on the supply and sale of goods and services applicable to all shops, except grocery stores, including the sale of agricultural produce on the farms, pharmacies, medical and orthopedic shops, the garden and agriculture program in shops, agricultural shops, service stations, banks, post offices, delivery services, shops and kiosks for the sale of newspapers and magazines, and other essential services for ensuring public safety and health;
- Change of opening hours of grocery stores, post offices and other service providers.

Measures in the judiciary sector:

- Since 16 March 2020, all courts have held hearings and ruled only in urgent cases; until the revocation of special measures adopted due to COVID-19 the procedural deadlines do not run and the court documents (except in urgent cases) are not served. If the court document has been served, the procedural deadlines shall begin to run on the first day following the revocation of the special measures;
- During the temporary measures, the time limits for the exercise of the rights of parties in the court proceedings established by law do not run. The suspension of the time limits applies to both procedural and material deadlines;
- Suspension of administrative deadlines and deadlines in other public law matters that are not of an administrative nature. Furthermore, suspension of deadlines for the performance of parties' procedural actions and the fulfillment of their substantive obligations. Moreover, the interruption of the deadlines for performing administrative actions for administrative authorities, beyond which the deadlines for the exercise of substantive rights in administrative matters, which will expire while carrying out the measures under the Intervention Acts, shall be extended and will expire on the eighth day from the date of the suspension of the taken measures (except in urgent cases).

Adopted legislation:

On 19 March 2020 the National Assembly of Republic of Slovenia has adopted the first package of Interevent laws, namely:

- **Act Regulating the Intervention Measure to Reimburse Salaries and Contributions (ZIUPPP)**, its main purpose is retention of jobs, thus it provides legal basis for partial reimbursement of the salary for temporary waiting for work, the reimbursement of the full salary for the quarantined period, and the deferral of payment of contributions for the self-employed;
- **Act Regulating the Intervention Measure of Deferred Payment of Borrowers' Liabilities (ZIUPOK)**, which provides for the possibility to defer credit obligations.
- **Act Regulating Intervention Measures in Public Finance (ZIUJP)**, which extends the deadlines for fulfilling tax obligations, provides simplified conditions for changing the preliminary prepayments and facilitates the enforcement of deferral or installment payment of tax liabilities;
- **Act on provisional measures for judicial, administrative and other public matters to cope with the spread of infectious disease SARS-CoV-2 (COVID-19) (ZZUSUDJZ)**, which introduces measures concerning deadlines, measures for service and measures in relation to the operation of the authorities;
- **Act on Emergency Measures in the field of agriculture, food and forestry (ZIUPKGP)**, which regulates the possibility of state influencing the market with food and other measures in agriculture, forestry, human and veterinary medicine.

The measures under the above laws were partially amended, and in particular supplemented by the Intervention Measures Act to curb the COVID-19 epidemic and mitigate its consequences for citizens and the economy ("**Megalaw**") which provides, inter alia:

- reimbursement of employees' compensation to employers who are temporarily unable to provide work, reimbursement of compensation for those who are unable to work due to force majeure, and exemption from contributions for such workers,
- exemptions from pension and disability insurance contributions for employees receiving their salary,
- exceptional assistance in the form of a monthly basic income for the self-employed and farmers,
- exemption from contributions for the self-employed and farmers,
- temporary compensation for those who became unemployed during this crisis,
- the introduction of compensation for sick leave, which will be covered by compulsory health insurance,
- the introduction of a one-off solidarity allowance for pensioners and other vulnerable groups of persons,
- exceptions in the area of exercising rights from public funds, in the field of social security benefits and regard to exercising rights in accordance with Parental Protection and Family Benefits Act,
- exemptions from the payment of the preliminary prepayment of personal income tax and the instalment of preliminary prepayment of personal income tax from the performance of corporate activities, and
- reduction of the taxable amount of the income from basic agricultural and forestry activities, whose income is determined on the basis of a flat-rate tax base,
- introduction of an additional insolvency position, deferral of management obligations, postponement of deciding on a creditor's bankruptcy petition, employees' rights arising from a guarantee fund and suspension of time limits.

The measures will apply at least until 31 May 2020.

The "Megalaw" was adopted by the National Assembly on 2 April 2020, however some measures will apply from 13 March 2020.

In the coming weeks, it is expected that the government will propose additional measures, which will in particular try to prevent chain illiquidity of the companies, regulate the guarantee scheme and the measures of SID Bank.

As a result of the current situation, companies are facing an increasing number of legal challenges. These currently relate primarily to employment relationship issues, measures taken by the Republic of Slovenia to mitigate the consequences, and business contractual relationships, especially in connection to failure to fulfil obligations. In order to assist our clients when coping with these exceptional circumstances, we have prepared an overview of the most important information related to abovementioned legal topics.

The document will be updated and adjusted on a regular basis in the light of additionally introduced measures.

## 2. EMPLOYMENT RELATIONSHIPS

### 2.1 EXCEPTIONAL CIRCUMSTANCES ACCORDING TO EMPLOYMENT RELATIONSHIP ACT (»ZDR-1«)

Pursuant to Employment Relationship Act (»ZDR-1«) exceptional circumstances apply in the case of natural disasters or other disasters, if such disaster is expected or in other exceptional circumstances where the life and health of the people or the property of the employer is endangered.

According to the Protection Against Natural and Other Disasters Act, natural disasters are earthquake, flood, landslide, avalanche, high snow, strong wind, hail, ice, frost, drought, fire in the natural environment and other disasters caused by natural forces. The said Act also explicitly mentions the mass incidence of infectious human, animal or plant disease. Taking into account the fact that Slovenia declared an epidemic on 12 March 2020, it can be considered that the current situation in the country corresponds to the concept of exceptional circumstances.

Due to exceptional circumstances an employer may unilaterally assign an employee to another type of work or another place of work (including work from home). Such measure can only last for the duration of exceptional circumstances. In addition, employers may invoke some other options provided by ZDR-1.

### 2.2 POSSIBLE MEASURES FOR EMPLOYERS ACCORDING TO ZDR-1

<b>Measures for the cases where the employees are still working</b>	
<b>Measure</b>	<b>Main characteristics</b>
Work from home	<ul style="list-style-type: none"><li>- can be ordered unilaterally by the employer</li><li>- temporary measure</li><li>- mandatory notification to the inspectorate</li><li>- 100% payment – covered by the employer</li></ul>
Performance of other work	<ul style="list-style-type: none"><li>- can be ordered unilaterally by the employer</li><li>- temporary measure</li><li>- 100% payment – covered by the employer</li></ul>
Temporary redistribution of working time	<ul style="list-style-type: none"><li>- can be ordered unilaterally by the employer</li><li>- temporary measure</li><li>- 100% payment – covered by the employer</li></ul>
<b>Measures for the cases where the employees are not working</b>	
<b>Measure</b>	<b>Main characteristics</b>
Instructing employees to wait for work at home due to inability to provide work	<ul style="list-style-type: none"><li>- the employee is at home and he/she is NOT working</li><li>- can be ordered unilaterally by the employer</li><li>- temporary measure</li></ul>

	<ul style="list-style-type: none"> <li>- compensation in the amount of 80% of the average salary over the last three months</li> <li>- no obligation to pay the commuting allowance</li> <li>- under the new Intervention Act, 60% of the compensation is paid by the employer, 40% by the Republic of Slovenia</li> </ul>
Referring employees to stay at home for preventative reasons	<ul style="list-style-type: none"> <li>- the employee is at home and he/she is NOT working</li> <li>- can be ordered unilaterally by the employer</li> <li>- 100% payment – covered by the employer</li> <li>- no obligation to pay the commuting allowance</li> </ul>
Special unpaid leave	<ul style="list-style-type: none"> <li>- only upon agreement with the employees</li> <li>- unpaid</li> <li>- contribution agreement (employer remains obliged to pay contributions)</li> <li>- possibility of an agreement that the contributions will be borne by the employee</li> </ul>
Collective leave	<ul style="list-style-type: none"> <li>- conditional and not for the entire leave of an individual employee</li> <li>- can be ordered unilaterally by the employer</li> <li>- 100% payment – covered by the employer</li> </ul>
Use of the annual leave	<ul style="list-style-type: none"> <li>- upon agreement and not for the entire annual leave of an individual employee</li> <li>- certain collective agreements regulate a minimum of days when the decision of the use of annual leave is left to the employee</li> <li>- 100% payment – covered by the employer</li> </ul>
Termination of employment contract due to business reasons	<ul style="list-style-type: none"> <li>- unilateral measure</li> <li>- in accordance with the notice period</li> <li>- obligation to severance payment</li> <li>- consideration in connection to the protected categories of employees</li> </ul>
<b>Measures taken in agreement between employer and employee</b>	
<b>Measure</b>	<b>Main characteristics</b>
Salary reduction	<ul style="list-style-type: none"> <li>- on the basis of an agreement</li> <li>- temporary or permanent</li> <li>- can be agreed with an annex</li> </ul>
Part-time employment	<ul style="list-style-type: none"> <li>- on the basis of agreement</li> <li>- temporary or permanent</li> <li>- can only be agreed with a new employment contract</li> </ul>
Termination of the contract by offering a new one	<ul style="list-style-type: none"> <li>- with the purpose of securing the employment</li> <li>- the possibility of offering another workplace depending on the needs of the process</li> <li>- the possibility of offering a lower wage (not lower than the minimum wage or as provided for in a collective agreement)</li> <li>- suitable workplace</li> </ul>

### **2.2.1 WORKING FROM HOME**

An employment contract for work at home is a form of flexible employment for which specific legal requirements must be met. However, in exceptional circumstances the employer may order his employees to work from home unilaterally. In exceptional circumstances, the type of work or place of work may be changed, regardless of the provisions of the employment contract and also without the consent of the employee. Nevertheless, working from home must be feasible considering the nature of the work.

When implementing an option for the employees to work from home, the following aspects must also be considered:

- the suitability of the workplace, so that the employee who works from home only performs work that corresponds to the employer's activity or that is necessary for the pursuit of his activity,
- arrangement of working time in a manner that respects safety and health at work provision and ensures adequate breaks and rest periods;
- keeping a record of the use of the working time – the employee must report daily to the employer the number of working hours,
- providing employees with material, equipment and compensation for the use of employees' own resources,
- obligation of professional secrecy and other sensitive information; and
- safety and health at work in order that the employer may issue appropriate instructions for safe and healthy work at home.

The employer is obliged to inform the Labor Inspectorate about initiation of work from home as soon as possible. This can be performed also via email: [prijave.irsd@gov.si](mailto:prijave.irsd@gov.si).

### **2.2.2 PERFORMANCE OF OTHER WORK**

In accordance with Article 33 of ZDR-1, an employer may temporarily order an employee to perform other suitable work. The employer must be aware that the new workplace must correspond to the type and level of education of the individual employee as well as his working time and place for which the employment contract was concluded.

In exceptional circumstances the employer may impose performance of other work to the employees in a simpler way, but only as a temporary measure. Thus, it can be imposed only for the time of exceptional circumstances. Moreover, the employer must assure the suitability of the workplace, working time, provide work resources, obligation of professional secrecy and safety and health at work.

### **2.2.3 TEMPORARY REDISTRIBUTION OF WORKING TIME**

One of the options for employers in this time of crisis is the temporary redistribution of working time. It is intended as a change in the organization of work that occurs due to objective circumstances, which indicate the need for adjustments of the work process and cannot be planned in advance.

Accordingly, the employee can be asked to work longer than the contractually agreed period of time, if such period of longer working time is subsequently balanced by a period of shorter working time (or vice versa). During the later, the employee should ideally align the working hours – i.e. “use up” the excess hours gained in the time of exceptional circumstances. When the temporary redistribution of working time is imposed, the employer must still comply with the prescribed limits on maximum working time and mandatory rest periods.

The employer must notify the employees about the imposed measure in writing at least one day before the working time is redistributed.

### **2.2.4 WAITING FOR WORK AT HOME**

One of the measures, that can be taken when the employer is temporarily unable to provide work to his employees (due to reduced demand, interrupted supply chains, etc.) is to refer an employee in writing to wait for work at home. A written referral can be sent electronically via employee's email address.

The employee is entitled to a compensation of 80 percent of his monthly salary. According to the Act on the Interim Measure of Partial Reimbursement of Wage Compensation (which is not adopted yet) the employer will be able to claim partial reimbursement of such compensation.

### **2.2.5 REFERRAL HOME FOR PREVENTATIVE REASONS**

If there is a suspicion that, for example, the employee may endanger health and safety of other employees, the employer may refer such employee home for preventive reasons. This constitutes a position where the absence from work and consequently not performing work is caused by reasons on the employer's side. The employer is obliged to pay an employee 100% compensation, but he is not obliged to pay the commuting allowance.

### **2.2.6 SPECIAL UNPAID LEAVE**

Absence from work in the form of unpaid leave is also one of the options that can be considered in the event of extraordinary circumstances. It is only possible upon agreement between the employer and employee. Slovenian legislation does not provide any provisions in connection to this option, but the rules included in collective agreements or internal acts of the employer must be respected. It should be noted that certain collective agreements stipulate that the employee and the employer must agree upon the obligation to pay contributions in the event of absence of more than 30 days at the same time as agreeing to exercise an unpaid leave. As a rule, the employer remains obliged to deduct and pay contributions.

Nevertheless, it is permissible to conclude an individual agreement with the employee and agree that the contributions are borne by the employee himself.

### **2.2.7 COLLECTIVE LEAVE**

In general, the determination of collective leave arises from the needs of the work process and it is introduced by the employer when there is no work to be performed, or when he faces problems with providing work process. However, it is essential that the employer also allows the employee to take an adequate part of his annual leave and uses it for rest, recreation and family responsibilities, thus achieving the purpose of the right to annual leave.

According to the Court of Justice of the European Union, the right to paid annual leave is a fundamental social right and an important principle of Union social law. When deciding whether to impose a collective leave, it is therefore necessary to consider if it corresponds to the purpose of the right to annual leave, and, in any case, it is advisable to discuss this possibility with employees in advance.

### **2.2.8 USE OF ANNUAL LEAVE**

The use of annual leave should, as a rule, be agreed with the employee. In doing so, the employer must take into account the primary purpose of annual leave, that is the possibilities for rest and recreation of the employee and the fulfilment of his family responsibilities. In order to inform the employee or his representatives in advance about the possibilities of the use of the annual leave and the requirements, which he must consider when taking annual leave, the employer must ensure an appropriate mean of communication.

### **2.2.9 TERMINATION OF EMPLOYMENT CONTRACT DUE TO BUSINESS REASONS**

As a result of exceptional circumstances and extraordinary measures taken, it is expected that the need for many work posts will cease. In this event, the reasons for termination (economic, organizational, technological, structural, etc.) arise on the employers' side. In this connection, the employer may regularly terminate the employment contract due to business reasons.

When performing this measure, the employer is obliged to duly explain the reason for termination in writing. Furthermore, the legal provisions on minimum notice periods and severance pay will have to be respected and attention should also be paid to the protected categories of employees (older employees, pregnant women and parents, disabled people, employees under the age of 18).

In an event, where it will be necessary to terminate the employment agreements for business reasons to a larger number of employees, the employer should take into account certain legal specifics, including the adoption of a dismissal program for redundant employees.

### **2.2.10 SALARY REDUCTION**

One of the options, which can be agreed between the employee and the employer for the purpose of maintaining liquidity of employers and retain work posts, is salary reduction. Such measure may be of a permanent or temporary nature. The basic salary is determined in consideration to the complexity of the work post for which the employee was contracted and it can be changed with the annex to the initial employment contract. It is one of the alternative measures, which could be applicable in the current situation to all non-public sector entities.

The salary reduction agreement may be regulated by an annex to the employment contract.

### **2.2.11 PART-TIME EMPLOYMENT**

Another option, which may be arranged upon an agreement with an employee, is a transition to part-time employment. This can be achieved by concluding a new employment contract, as the annex will not suffice for this purpose.

### **2.2.12 TERMINATION OF THE CONTRACT BY OFFERING A NEW ONE**

In the event that the need for certain workplace will cease to exist due to economic reasons on the part of the employer, the employer can (if feasible) offer employees new workplaces in order to retain their employment.

It should be noted that to the extent that an employee accepts an employer's offer for suitable employment for an indefinite period of time, he has no right to severance pay but retains the right to legal protection before a competent court. On the other hand, if an employee accepts an offer for inadequate employment, he is entitled to a proportionate part of the severance pay in the amount agreed with the employer.

## 2.3 EMPLOYER'S OBLIGATIONS UNDER HEALTH AND SAFETY AT WORK ACT («ZVZD-1«)

The employer is obliged to organize the work process in such a way that employees are guaranteed safety and health at work. Employer's obligation, arising from Employment Relationships Act (ZDR-1, Article 45) and regulated more in detail by the Health and safety at work act, is permanent. The employer must guarantee safety and health at work for employees in all circumstances and working conditions. He must therefore take the measures necessary to ensure the safety and health of employees and other persons present in the work process, including the prevention, elimination and management of occupational hazards, information and training of employees, with appropriate organisation and the necessary material resources. Particular care should be devoted to ensuring the safety and health of categories of employees who enjoy special protection. When selecting measures for their protection, the specific risks to which these employees are exposed must be taken into account.

Measures provided by the employer in the normal situation on the basis of a risk assessment are not sufficient in the current situation. Employers should therefore adopt and implement additional measures that reduce exposure to the lowest levels of infection and, to the maximum extent possible, ensure safe and healthy work in given circumstances. Decrees and instructions issued at the national level and within the framework of local communities should be obeyed. If the employer fails to fulfil his duties, the employee may, under certain conditions, refuse to perform the work.

Specific measures must be adjusted to the particularities of each work process, and the recommendations of the National Institute of Public Health (NIJZ) and other competent institutions may be helpful in planning and implementing measures aimed at ensuring the safety and health of employees.

In general, NIJZ recommends that employers instruct employees who are sick to stay home and follow the instructions. It is our opinion that for the purpose of checking compliance with the instructions, it is also permissible to perform temperature measurement. The NIJZ further advises to organise work from home whenever possible. All non-urgent business trips are explicitly discouraged.

Employers must provide their employees with adequate instructions regarding the measures to be taken at work. The instructions should therefore cover daily hygiene measures (washing and disinfecting hands, coughing and sneezing hygiene, avoiding contact with eyes and nose, avoiding contact with people with signs of infection, ventilating rooms, regularly cleaning and disinfecting objects and surfaces that are often touched...), which should be carried out at all times, as well as guidance on other measures aimed at preventing the spread of infections – that is maintaining distance from other people, self-isolation and other comparable measures, banning business trips to risky areas, and the obligation to inform the employer of any infection or contact with an infected person.

Taking into account the specifics of the particular work process, it is advisable to introduce and implement other measures that are considered appropriate to reduce the risk of infection, such as:

- organization of the work process in such a way as to increase the distance between the employees present,
- reducing the number of employees present on the employer's premises,
- regular ventilation of the premises,

- providing disinfectants for hands and for work surfaces,
- organisation of work process in such a way as to increase the distance to customers or to minimize contact with customers,
- limiting of the number of customers present on the premises.

If, depending on the characteristics of the work process, the risk of infection is assessed to be particularly pronounced, whereas the continuation of the work process is necessary, the employer should provide employees with adequate personal protective equipment and give them adequate instructions on the mandatory use of such equipment.

If possible, given the content of the work process and the nature of the work, it is advisable that the employer also introduces technical safeguards (such as additional plexiglass on store counters) which reduce the possibility of infection within the work process. Where the work process necessarily involves contact with the client requires a particularly careful assessment of the measures and activities that the employer is required to undertake.

The employer is obliged to formulate and to give adequate instructions to the employees, and they are obliged to consistently and fully follow those instructions. Any failure to comply with the employer's instructions may be penalized as a violation of the employment agreement.

If there is a suspicion that a person, infected with COVID-19 was present in the work process, urgent steps need to be taken to limit / prevent any potential further contacts. It is important to protect the remaining employees and prevent the possibility of spreading the infection. Such a person should be moved to a separate area or should maintain a distance of at least 1.5 meters from other people and should consult a health care service for follow-up measures. At the same time, it is necessary to provide the disinfection of premises in which the person was present, and to dedicate special attention to waste management. According to the latest explanations from the competent ministry, the waste generated by a person showing signs of COVID-19 disease should be disposed of in a tightly sealed plastic garbage bag. The bag should then be placed in another plastic bag, which must also be tightly bound and kept separately for at least 72 hours. After the minimum recommended period, the bag should be disposed of in an external container for the disposal of mixed municipal waste. The same treatment is required with regard to disposable material used by the sick person and their caregivers or by medical staff, such as gloves, handkerchiefs and masks.

With regard to training for the safe work of workers in the case of a new employment, the obligation of the employer to train workers for safe work remains, but in a way that the guidelines and recommendations of the medical profession (distance maintenance, individual training, etc.) are taken into account. It is still necessary to carry out periodic tests of the qualifications of workers for safe work carried out in workplaces with a higher risk of accidents and occupational diseases. Work equipment which can be dangerous or harmful for workers should also be regularly inspected.

Employers who are currently not doing business, will have to fulfill their obligations - regarding training of workers and regarding professional tasks related to the working environment and means of work - immediately after the end of this extreme situation. Following the end of this state of emergency, periodic investigations into the harmfulness of the working environment will also be carried out.

# 3. STATE MEASURES AND AIDS TO SUPPORT THE ECONOMY

<b>Benefits in tax legislation</b>
Tax payment in up to 24 monthly installments or deferral for a period of 24 months Payment in installments or deferral of tax with insurance Payment in installments in the event of preventive financial restructuring or simplified compulsory settlement Request to change the amount of monthly or quarterly installment of tax prepayment Extension of the deadlines
<b>Measures arising from the intervention laws</b>
Measures to assist the self-employed Subsidized waiting for work at home Subsidized salary compensation in the event of ordered quarantine Compensation for sick leave during the epidemic Compensation for parents Deferral of loan payments Extension of the deadline for submission of tax returns and payment of taxes Payment of all contributions to the pension scheme Measures to ensure corporate liquidity
<b>Other measures and aids</b>
Loans of SID Bank Measures of the Slovene Enterprise Fund ( <i>»Slovenski podjetniški sklad«</i> ) Subsidies of the Slovenian Tourist Board ( <i>»Slovenska turistična organizacija«</i> ) Suspension of judicial and administrative deadlines

## 3.1 BENEFITS PROVIDED FOR BY TAX LEGISLATION

In order to help entities that are facing financial difficulties in the current situation, the Financial Administration of the Republic of Slovenia ("FURS") presented 4 benefits provided for by tax legislation to entrepreneurs and companies. These are:

- Tax payment in a maximum of 24 monthly installments or deferral for a period of 24 months, which is allowed if the taxpayer is threatened with serious economic damage (due to more permanent illiquidity or loss of earning capacity) and deferring the payment or installment payment of tax would enable him to prevent serious economic damage.
- Payment in installments or deferral of tax with insurance (maximum of 24 monthly installments or 24 months deferral of payment), without determining the criteria for causing serious economic damage, whereas it is necessary to submit the appropriate security instrument or allow the lien to be entered in the appropriate register.
- Payment in installments of tax in the event of preventive financial restructuring or simplified compulsory settlement (maximum of 60 monthly installments), the basis for which is the court's

final decision approving the financial restructuring agreement or the order on approved simplified compulsory settlement.

- Request to change the amount of monthly or quarterly installment of tax prepayment due to decrease of the tax base in the current year from the previous period because of lower expected business result of the current year, by which the taxpayer can ensure that he / she will pay the income tax prepayment every 3 months, and not every month.

The above measures are possible in connection with the payment of an annual tax return, the calculation of VAT, inspection decisions, but they are not allowed for tax prepayment, withholding taxes or social security contributions.

For the time for which tax is deferred or paid in form of instalments, 2% interests per annum for deferred taxes or unpaid taxes (including default interest) are generally charged.

On 19 March 2020, the Act Regulating Intervention Measures in Public Finance (ZIUJP) was adopted which introduces some additional measures to support corporate entities. The Act regulates extension of the deadline for submitting tax return for the prepayment of business income taxes and the corporate income tax return, as well as the deadline for declaring the tax base with flat rate expenses from 31 March to 31 May 2020. The setting of a new insurance base in 2020 is also postponed to May. Furthermore, formulation and submission of the indicative calculation of personal income tax for the year 2019 can be submitted in June.

Article 62 of the Intervention Measures Act to curb the COVID-19 epidemic and mitigate its consequences for citizens and the economy ("Megalaw"), provides for the exemption from payment in regard to instalments of preliminary prepayment of personal income tax from the performance of corporate activities and instalments of prepayments of tax from the income of legal persons for 2020, which are due during the legal validity of this act (at least until 31 May 2020). Unpaid instalments are not considered accrued.

### 3.2 POSSIBILITY OF PAYMENT OF THE CONTRIBUTIONS FOR SELF-EMPLOYEES

A self-employed person is entitled to a deferred payment of contributions, if:

- he or she is included in compulsory insurance on the basis of the pursuit of activity,
- he or she does not qualify for compulsory inclusion in compulsory insurance on any other insurance basis,
- he or she does not have other employees.

The beneficiary is entitled to **deferral of payment of contributions due in April, May and June 2020** directly by law. Since this is only a deferral and not exemption, the outstanding contributions must be paid by the beneficiary by 31 March 2022 at the latest.

Based on the new intervention measures, self-employed persons who are unable to carry out their business or are unable to carry it out fully, will be **exempt (under certain conditions) from the payment**

**of contributions for April and May 2020 and entitled to extraordinary assistance in the form of a monthly basic income** of EUR 350.00 for the month of March and EUR 700.00 for April and May 2020.

### 3.3 OPTION TO SUBSIDIZE WAITING FOR WORK AT HOME

Subsidizing compensation in the event where the employee is instructed to wait for work at home is one of the measures presented in the Intervention Measure of Partial Reimbursement of Payment Compensation Act («ZIUPP»). By partial reimbursement of payment compensations to employers who, due to deteriorating business conditions, are temporarily unable to provide work to employees, it seeks to temporarily prevent redundancies for business reasons and thus limit the adverse consequences of this exceptional event.

The respective issue is also included in the new Intervention Measures Act to curb the COVID-19 epidemic and mitigate its consequences for citizens and the economy (“Megalaw”), which in regard to subsidizing compensation replaces the provisions of the ZIUPPP during the validity of the measures provided by the “Megalaw”. Accordingly, **during the period of validity of measures under the “Megalaw” (i.e. from 13 March 2020 to (at least) 31 May 2020) social security contributions for employees who were ordered to temporary wait for work at home or who cannot work because of force majeure, will be paid by the state** (up to the amount of the average salary in the Republic of Slovenia), and no longer by the employer. Under the new “Megalaw”, **the state will also cover the full cost of salary compensation** (80% of the salary base) up to the amount of the average salary in the Republic of Slovenia. In no case the salary compensation can be lower than the minimum wage. Furthermore, **at the request of the employer, the employee is obliged to return to work for up to seven consecutive days** during the current month.

To receive reimbursement for the abovementioned contributions, an employer must estimate that in the first half of the year 2020, revenue will decline by more than 20% in comparison to the same period in 2019 and in the second half of the year 2020 they will not achieve more than 50% revenue growth over the same period in 2019. If this condition is not met when submitting the Annual Report for 2020, the employer will have to return the received aid. Furthermore, the direct and indirect budget users whose share of public sources revenue in 2019 was higher than 70 % and employers pursuing financial or insurance activity are excluded from these measures.

Employer can request the reimbursement of salary compensation by filing an application with Employment Service of the Republic of Slovenia within 8 days after the employee is instructed to wait for work at home, but no later than on 31 May 2020. In case the employees were already waiting for work at home before “Megalaw” was enforced, the employer will be entitled to reimbursement of salary compensation also for the previous period (from 13 March 2020 on). In such case the employer must file the application within 8 days after “Megalaw” enters into force.

Measures under the “Megalaw” are expected to be valid until the end of May 2020 (with a possible extension until the end of June 2020). After this period, the institute of waiting for work at home will again be subject to the provisions of the ZIUPPP (if not otherwise regulated by the subsequent state measures). In such case the state will borne the salary compensation in a proportion of 40%, while the remaining 60% will be borne by the employer.

With regard to the measure of subsidizing waiting for work, the measure of exemption from the payment of contributions (points 3.2 and 3.7) and extraordinary aid in the form of basic income (point 3.7), it should be further emphasized, that the aid beneficiary will have to repay such aid (together with interests), if he will share profit or pay salary premiums related to business performance or rewards to the management in 2020.

#### 3.4. FULL SUBSIDIZATION OF SALARY COMPENSATION IN THE EVENT OF A QUARANTINE ORDER

Quarantine may be ordered by the decision of Minister of Health. The confirmed Act allows employers to claim reimbursement of full salary compensation in these cases as well, and employees will be entitled to **salary compensations at the same rate as employees who are waiting for work at home, i.e. 80% of the salary, which will be fully borne by the state.** The employer will only be able to claim the right to reimbursement of paid salaries once and for the maximum period specified by the decision of the Minister of Health.

#### 3.5 COMPENSATION FOR SICK LEAVE DURING THE EPIDEMIC

**Compensation for all sick leaves during the epidemic will be covered by the Health Insurance Institute of Slovenia** and not by the employer.

#### 3.6 COMPENSATION FOR PARENTS AND EMPLOYEES WHO CANNOT WORK BECAUSE OF FORCE MAJEURE

One of the measures taken by the state is the closure of kindergartens, schools and other educational institutions, which in some families has caused parents to stay home and look after their children. According to the "Megalaw", those who are absent from work because of parental obligations are **equated with the status of workers who are waiting for work at home** (point 3.3.).

The same applies to other employees who are unable to perform work because of "force majeure".

#### 3.7 PAYMENT OF ALL CONTRIBUTIONS TO THE PENSION SCHEME

**All contributions to the pension scheme that are due in the time of the validity of the "Megalaw" for those employed in the business sector (employers and employees), who are working in these exceptional circumstances, will be the paid by the state.** Employees and employers will retain all the rights and incomes from this scheme. The direct and indirect budget users and employers pursuing financial or insurance activity are excluded from this measure.

Employees who remain at work during this period are entitled to a **"crisis allowance" of EUR 200.00** during this period. The crisis allowance is paid by the employer monthly to all employees who work and whose last paid wage did not exceed three times the minimum wage (EUR 2,821.00 gross).

### 3.8 ENFORCEMENT PROCEEDINGS, FINANCIAL MANAGEMENT OF COMPANIES, INSOLVENCY PROCEEDINGS AND PROCEEDINGS DUE TO COMPULSORY WINDING-UP

The package of intervention measures included in the new “Megalaw” also provides for certain solutions in the field of enforcement proceedings, in regard to the rules governing the financial management of companies, and in insolvency and compulsory winding-up proceedings. In addition to the proposed legislative measures, which are described below, this topic has already been radically affected by an order issued by the President of the Supreme Court. According to it, the already narrow set of procedures, which qualify as emergency procedures and are ongoing at the time of the declared epidemic, is further narrowed. The order of 30 March 2020 suspended (with certain exceptions) the security proceedings when the personal contacts of executors, participants and other entities are required, as well as bankruptcy and compulsory settlement proceedings. The order also interfered with proceedings in connection to bills of exchange and checks.

According to the new “Megalaw”, the **enforcement of the decisions issued in proceedings under the Claim Enforcement and Security Act (ZIZ) is suspended and the enforcement of the orders of execution issued in tax enforcement proceedings under the Tax Procedure Act (ZdavP-2) is withheld**. The exemption from suspension of enforcement applies only in regard to executions arising from child support cases and cases connected with the compensation for lost child support due to the death of the person who was paying it.

Furthermore, the “Megalaw” provides that, at the time of the COVID-19 epidemic and three months after the cessation of measures (after 31 May 2020), the management of the companies will be **relieved of their duty to file a compulsory settlement or bankruptcy against the company** if the insolvency occurred as a result of the COVID-19 epidemic. Moreover, the deadlines for the implementation of other actions and measures that should be implemented by the management in the event of the company's insolvency are extended. To facilitate the use of the new rule, the “Megalaw” provides the presumption, that the insolvency of a company is the result of declaring an epidemic if the company pursues an activity that has been temporarily suspended or substantially restricted by a compulsory regulation or act.

In addition, the “Megalaw” introduces a conclusive presumption regarding the insolvency of a legal person, entrepreneur or private individual, which is included in the scheme of national aid in the form of reimbursement of salaries and contributions under the laws governing interventional measures. If such entity is more than one month late (the deadline starts when the employer receives the reimbursement from the state) with the payment of salaries and contributions to its employees, the act provides for the conclusive presumption of long term illiquidity and consequently insolvency of the company. Such presumption will apply from when the law enters into force and 4 months after the expiry of the measures.

The “Megalaw” also regulates the possibility of postponing the decision on the creditor's petition for bankruptcy and extends the period during which the debtor must justify his request for postponement. The proposed 4-month deadline is important if the insolvency of the company is the result of the epidemic. The described measure is intended for use in connection with bankruptcy proceedings arising from the creditors’ request, which is filed no later than two months after 31 May 2020.

### 3.9 OTHER MEASURES UNDER THE “MEGALAW”

The new "Megalaw" proposes that the **deadline for payments** of direct and indirect users of the state budget to private entities is temporary **reduced to 8 days**.

Furthermore, it establishes the possibility to extend the payment period to 60 days if the creditor acts on behalf of a public authority. The abovementioned change will apply for the duration of COVID-19 outbreak and one year after the end of the epidemic.

In regard to the public procurement, the “Megalaw” proposes the **increase of the limit above which the rules of Public Procurement Act (ZJN-3) apply**. This measure will be valid until 15 November 2020. In connection to the public contracts concerning products, services or design contests, the new threshold is EUR 40.000 or more and EUR 80,000 in the field of public works contracts.

During the epidemic, the contractual penalties for the delays in connection with deadlines for fulfillment of obligations arising from contracts for the supply of goods, services or the execution of works concluded between private entities and public authorities, self-governing local communities or other public law entities, shall not apply. However, the contractually agreed deadlines shall be extended from the time limit set for the fulfillment of the contract until the announcement of the end of the COVID-19 epidemic.

### 3.10 MEASURES TO ENSURE CORPORATE LIQUIDITY

In order to deal with liquidity, the Government is expected to propose additional measures to establish a guarantee scheme and to facilitate the purchase of claims of Slovenian companies. In addition, the State is expected to provide sufficient funds for recapitalization or a guarantee for implementation on the basis of this measures.

### 3.11 BANK LOANS

Old and new clients of SID Bank will be offered loans from SID Bank's own funds at a favorable interest rate and a *de minimis* scheme for the purpose of liquidity financing for companies, with a program quota of EUR 50 million and possibility to use it for six months.

Within the framework of loan funds, where they, in cooperation with the Ministry of Economy, offer direct financing to companies of all economic sectors, SID Bank will expand the implementation of programs aimed at abandoning the maximum capitalization of companies, which will enable SMEs to obtain a loan for financing tangible and intangible assets as well as working capital or business. The amount of each loan will be from one hundred thousand to five million euros with a favorable interest rate, which will mean *de minimis* aid, a credit period of between two and 12 years, and the possibility of appropriate necessary moratoriums on the repayment of the principal value.

As part of indirect financing, banks and savings banks, as intermediaries, can also offer SID Bank funds on tailor-made terms to companies facing the negative effects of COVID-19 and to companies requiring liquidity to provide for supply of products and services.

At the same time, the introduction of portfolio guarantees is being prepared, which the participating banks and savings banks will be able to use to finance SMEs' investment and day-to-day operations.

Companies will thus be able to improve their access to financing sources, even under more favorable borrowing conditions, as under the Fund of Funds, managed by SID Bank, the latter will primarily provide to given companies coverage for the risk of loss on loans under the terms of the instrument.

The Government of the Republic of Slovenia has also prepared a proposal of an intervention Act Regulating the Intervention Measure of Deferred Payment of Borrowers' Liabilities (ZIUOPOK), which was approved by the National Assembly of Republic of Slovenia on Thursday, March 19, 2020. The Act provides the possibility of deferred payment of loans for companies, cooperatives, natural persons who employ other people, self-employed and any agricultural holdings, which are established or domiciled in Slovenia and have loans at banks, branches of the bank and savings institutions of Republic of Slovenia. Borrowers will agree to reschedule the payment with the bank after proving that they will not be able to pay the installments due to the effects of the coronavirus epidemic.

The state offers debtors of credit or other obligations made under the Act Governing Rescue and Restructuring Aid for Companies and Cooperatives in Difficulty (ZPRPGDZT) and the Act Governing the Rescue and Restructuring Aid for Companies in Difficulty (ZPRPGDT) the possibility of deferring the payment of liabilities from a credit or other contracts for a period of 12 months, if the individual obligations under the credit or other contract for which the debtor requests a deferral of payment have not yet been paid before the virus epidemic was declared. The competent ministry and the debtor may also agree on a different deferral and other conditions in terms of the maturity of claims, which are more favorable for the latter, if the debtor is threatened with insolvency and its existence due to the consequences of a virus epidemic.

### **3.12 MEASURES OF THE SLOVENE ENTERPRISE FUND**

According to publicly available information, the Slovene Enterprise Fund is about to launch new calls for proposals to mitigate the effects of the spread of coronavirus, with one already published. Some measures are adjustments to existing financial incentives and instruments, and a new liquidity facility has been introduced. A total of € 115 million is currently foreseen for the package of measures.

### **3.13 SUBSIDIES OF SLOVENIAN TOURIST BOARD**

In order to mitigate the effects of the new virus COVID-19, the Slovenian Tourist Board has launched a call for proposals for co-financing the promotion of the Slovenian tourist offer, which this time is also available for promotion on the domestic market and not only on foreign markets.

A total of EUR 430,000 is tendered under the call for tenders for tourism companies, and an individual applicant may receive a subsidy of EUR 10,000 to EUR 15,000.

### **3.14 PROVISIONAL MEASURES CONCERNING JUDICIAL AND ADMINISTRATIVE PROCEEDINGS**

As of 16 March 2020, the Slovenian courts only rule in urgent cases. On Sunday, 29 March 2020, a new Intervention Act on provisional measures for judicial, administrative and other public matters to cope with the spread of infectious disease SARS-CoV-2 (COVID-19) (ZZUSUDJZ), which sets out additional measures for the protection of rights in judicial proceedings, and provides for similar measures also in administrative proceedings. The provisional measures adopted are expected to last until the reasons for them cease, which shall be decided by the Government, but no later than 1 July 2020.

### **Measures in judicial proceedings**

Pursuant to the ZZUSDJZ, statutory time limits for exercising the rights in court proceedings (material deadlines) and procedural deadlines, except in urgent cases, do not run during emergency measures. In addition, there is no deadline for lodging a constitutional complaint during this period. Judicial documents are not served during this period. The time limits for judicial documents that had already been served begin to run the first day after the provisional measures cease to apply.

Further on, the ZZUSDJZ granted the President of the Supreme Court the power to further restrict the list of cases deemed necessary by the Courts Act (ZS), which he did with the Order on Special Measures on the Occurrence of the Conditions referred to in the first paragraph of Article 83a of the Courts Act and Grounds referred to in Article 1 of ZZUSUDJZ, dated 31 March 2020. Courts are thus currently ruling only on the most urgent cases, with all hearings and sessions in urgent cases being conducted via videoconference, if possible. Also, all hearings in cases that are non-urgent shall be canceled.

### **Measures in administrative procedures**

Further on, material and procedural deadlines in administrative procedures do not run for the duration of the epidemic, except in urgent matters (for example, if there is a danger to human life and health, to law and order, to public safety, etc.). The party in the administrative procedure must be informed separately that the time limit in a particular case is ongoing. The deadlines for the exercise of material rights that expire during the validity of provisional measures shall be extended to expire on the eighth day from the date of termination of such measures.

It is in principle not possible to file applications and make personal statements with the administrative authority, however it is possible to file electronically even without an electronic signature, if the identity of the applicant can be determined in another reliable manner. In these cases, documents affecting the legal situation are served on the applicant's permanent or temporary residence address. Oral hearings and other procedural acts where participants may be in direct contact with each other are conducted only in urgent matters and the public is excluded from all procedural acts. Except in urgent cases, personal service of documents is also not provided. In accordance with the provisions of the ZZUSDJZ deadlines, with some exceptions, do not run also in misdemeanor cases.

## 4. CONTRACTUAL ISSUES

Based on current state of events and their development in the last few weeks it can be expected that the spread of virus as well as the measures for its prevention will significantly impact fulfilment of contractual obligations. Companies have therefore already started questioning whether epidemics in Slovenia and pandemics all over the world represent sufficient reason for change, interruption or even termination of contracts.

The best solution in such cases is to reach a mutual agreement between the parties. If the parties have an opportunity to discuss the situation and their mutual expectations and succeed in reaching an agreement on appropriate amendments, temporary delay or other changes to the contractual relationships, they will most likely avoid future disputes, which could potentially be very costly.

Taking into account that amicable solution is not always an option, we are presenting you a few institutes of general contractual law, which will become especially relevant in such situation. Nevertheless, the applicability of these institutes will be different from case to case and will mostly depend on the concrete contractual agreements.

### 4.1 FULFILLMENT OF CONTRACTUAL OBLIGATIONS AND CONSEQUENCES OF NON-FULFILLMENT

One of the basic rules of contractual relationships is duty of participants to fulfill their obligations and to be liable for their performance. On the one hand this rule constitutes a right of the creditor to demand that obligation is fulfilled, while on the other hand it requires from the debtor that he/she fully fulfills his/her obligation. If the debtors fail to perform their obligation or is late in performing it, the creditor shall also be entitled to demand the reimbursement of damage incurred thereby. In the worst case scenario, non-fulfillment can also result in termination of the contract. The obligations of the parties prior to the effectiveness of the termination differ in relation to the question whether the timely fulfillment was essential element of the contract or not.

As a rule, the scope of the obligations, the manner of fulfillment and the consequences of the default of contracting parties are agreed in the contract. In case such provisions are not included in the contract, provisions of the applicable law shall apply. For relations between Slovenian parties, this law will usually be Slovenian, while in the case of international contractual relations, there is a possibility that foreign law may be used to interpret the contract.

### 4.2 »FORCE MAJEURE«

Notwithstanding the principal duty of debtors to fully fulfill their obligations, there are certain exceptions that may exempt a debtor from some obligations. In such cases, the provisions on termination of the contract for failure to fulfill and its consequences will usually not be applicable either. For example, a debtor is free from liability for damages if he proves that he could not fulfill his obligation or that he failed to fulfill his obligations due to circumstances arising after the conclusion of the contract, which he could

not prevent, eliminate or even avoid. This situation is often described by legal theory and case law as a "force majeure".

The spread of COVID-19 virus could potentially be considered as such circumstance. In assessing individual cases, it will be particularly important whether a contract in questions regulates a force majeure situation. If the contract does regulate such situation, it will be necessary to rely primarily on it. Nevertheless, the timing aspect could also be important - meaning, whether a specific situation occurred before or after the World Health Organization announced the pandemic or when the Slovenian government declared an epidemic. Under Slovene legislation, the debtor is also liable for partial or full inability to fulfill, if the "force majeure" situation occurred after he was already in delay with fulfilling obligations.

#### **4.3 CHANGE IN CIRCUMSTANCES**

The general rules of Slovenian contract law also stipulate that in case the circumstances, which significantly complicate fulfilment of party's obligations, arise after the contract was concluded, such party has an option to request rescission of the contract (through court). The fulfilment of obligation must be made difficult to such an extent that the contract clearly no longer meets the expectations of the contracting parties and it would therefore be unfair to maintain it as it is. A party entitled to seek a rescission due to changed circumstances must notify the other party of his intention to seek a rescission as soon as he becomes aware that such circumstances have arisen.

Similarly as in case of "force majeure", a time aspect should be deemed important. A party requesting the rescission of a contract will generally not be able to do so if the party was already in delay when the change in circumstances occurred.

#### **4.4 INABILITY TO FULFIL OBLIGATIONS**

Taking into account some of the harshest measures to prevent the spread of COVID-19 virus, such as closing borders, closing down bars and restaurants, banning direct sales to consumers, the current state of affairs may lead to situations where the fulfilment of a contractual obligation by one or both of the parties will become effectively impracticable. For the cases where so called "inability to fulfill" occurs, the Slovenian Obligations Code provides that in such circumstances the other party should be resolved of its obligation as well. The law also imposes for specific rules for cases where the other party has already fulfilled part of its obligation.

#### **4.5 FULFILMENT OF OBLIGATIONS IS UNCERTAIN**

Currently there are also a lot of cases where the clients are questioning whether they are obliged to fulfill their obligations, if they know or seriously doubt that the counterparty will be able to fulfill its part of the obligation. It is expected that sooner or later several companies will face liquidity problems. In such cases, the Obligations Code prescribes a right of a suspected party to defer fulfilment of its obligation until the affected party has fulfilled its obligation or provided adequate insurance. All of this, of course, also requires proper communication between the parties so that there is no misunderstanding as to which of the parties was the first to delay the fulfilment and which of the parties is in delay only because of the failure to perform by the first of the parties.

Based on the fact that situations can in practice be very different and usually require individual approach, we remain available to you for any further questions and assistance with solving concrete matters.

Please feel free to contact us at:

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