



Contracts in the Time of Corona Frequently Asked Questions

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Frequently Asked Questions – Contractual issues

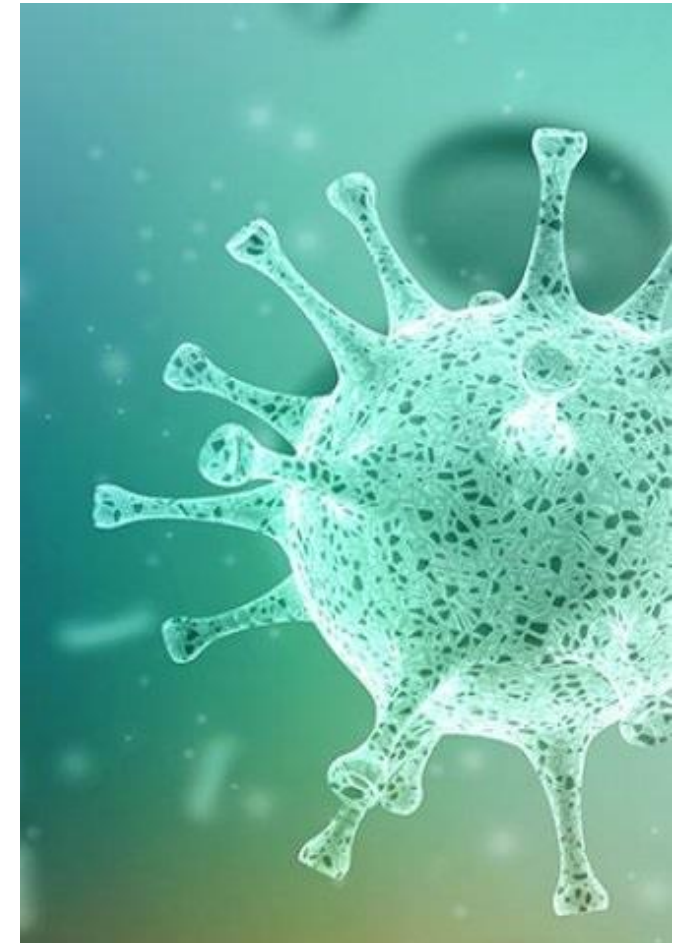
The emergence of the new type of coronavirus (SARS-COV-2) and the resulting governmental measures pose serious challenges to a number of economic sectors. In recent weeks, businesses have been facing serious and unexpected problems with regard to the performance of their contracts, which have called for the application of legal institutions previously only mentioned in the news (such as force majeure) and special rules applied once every leap year.

In Hungary, the legal challenges come with the additional difficulty that the Civil Code does not contain a general force majeure rule that would suspend contractual obligations while their performance is hindered. This means that parties principally remain bound to their contracts despite the extraordinary circumstances. To be sure, there are exceptions to this principle, but these are scattered all over the Civil Code and relevant case law. Fortunately, we have collected them here.

In the following Frequently Asked Questions, we will attempt to review in a systematic, yet practical way, the most important legal issues raised by the emergency in light of general and special rules of contract law. We hope that the review will help you navigate the myriad of rights and obligations even under the current extraordinary circumstances.

When assessing legal problems, of course, one must take into account all the circumstances of the individual case. With regard to contractual relations, special attention should be paid to the fact that in many cases individual contracts deviate from the general rules of civil law, in which case, first and foremost, the specific rules of the contract shall prevail.

Therefore the FAQ does not replace a detailed review of individual cases and does not constitute legal advice.



Frequently Asked Questions – Contractual issues

Keyword	Question	Answer
Applicable rules		
The primacy of the contract	<i>What rules apply to existing business relationships in the current crisis?</i>	The rights and obligations of the parties are mostly determined by the contract concluded between them, even in the current crisis situation. If, for example, the contract regulates which party bears the risk of extraordinary events, this is likely to be applicable in the present situation as well.
The Civil Code as underlying law	<i>What should I do if my contract does not contain provisions for the current situation?</i>	A problem arising from a legal relationship must be resolved primarily on the basis of the special provisions contained in the contract. However, it is possible that the contract remains silent on how the rights and obligations of the parties are affected in the event of a material change of circumstances or extraordinary events, and even if rules can be found to that effect, their current applicability is rather questionable. In such cases, the rules of the Hungarian Civil Code (Civil Code) provide guidance - unless the contract excludes their application.
„Force majeure”		
The epidemic as force majeure	<i>There is a lot of talk these days about force majeure. What is that exactly?</i>	Interestingly, the Civil Code does not explicitly mention force majeure. Judicial practice, however, is familiar with this term. According to a decision adopted in 2014 by the supreme court of Hungary (Curia), force majeure is ‘an irresistible force, meaning such a force or event that no human can resist and cannot be avoided by anyone. These can be certain natural disasters, but also human activities that include irresistible, elemental force (...for example, war, revolution)’. Changes in the economic situation, on the other hand, cannot in themselves be declared force majeure according to the Curia.
	<i>Does the current epidemic situation really qualify as force majeure as invoked by many?</i>	Based on the above definition by the Curia, an epidemic sweeping unstoppably around the world may be considered force majeure. Ultimately, however, only the circumstances of the individual case can determine whether the performance of a given contract is affected by the current epidemic situation in such an irresistible way.

Frequently Asked Questions – Contractual issues

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	<i>How can force majeure impact my contract?</i>	<p>Under Hungarian law, events considered force majeure or similar can principally have four consequences:</p> <ul style="list-style-type: none">• If the performance of a contract has become permanently impossible due to the event, the contract is terminated (this legal consequence was attributed to force majeure by the Curia in its decision cited above).• If the performance of a contract has only become temporarily impossible or extremely difficult due to force majeure, it may relieve the obligor from liability for damages.• In the event of delay, force majeure may result in the extension of the final deadline for performance, during which the other party may terminate the contract only in particularly justified cases.• In case of a long-term contract, the party adversely affected by a force majeure event can request the court to modify the contract.
	<i>Does force majeure relieve me of my duty to perform?</i>	<p>As a general rule, only if performance has become permanently impossible. However, certain contracts are subject to special rules which may, where appropriate, provide for a temporary exemption from certain obligations without terminating the contract itself. So for example</p> <ul style="list-style-type: none">• the tenant may be released from his obligation to pay rent• the lessee under a financial leasing agreement may be released from its lease payment obligation <p>for the time during which he is unable to use the object of the contract due to - for example - force majeure.</p>

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	<i>Can a force majeure clause relieve me of my duty to perform?</i>	Contracting parties may agree that pursuant to their contract the delay caused by extraordinary events specified by them shall not be considered a breach of contract (i.e., during the occurrence of the force majeure the consequences of breach of contract shall not be applied). In case the contract contains such a force majeure clause, this shall govern the rights and obligations of the parties.
Withdrawal from a planned or an already concluded contract		
Withdrawal from entering into a contract	<i>Can I withdraw from a planned contract on the grounds of the current epidemic situation?</i>	Yes, unless I have previously made - in agreement with the other party - a specific promise to conclude a contract from which even the current epidemic situation does not provide an exemption. Depending on the exact wording, such a promise could even be made by way of signing a mutual letter of intent. An impending economic crisis due to the epidemic is likely to relieve parties from the above promise, but this may be questionable, particularly if the epidemic or the crisis alone does not make the performance of the contract more burdensome (because, for instance, it concerns a sector less affected by the crisis), or if the crisis was already foreseeable at the time the promise was made.
	<i>What are the consequences of withdrawing from a proposed contract?</i>	In the absence of a promise to conclude a contract, it is not possible, in principle, to claim damages based only on the failure to conclude the contract, even in spite of extremely advanced negotiations. In this case, each party shall bear its own damages. The situation is different, however, if the parties have made a mutual promise to enter into a contract: In such a case, the legal consequences depend on the degree of the specificity of the promise. If the agreement containing the promise to conclude the contract includes all the essential elements of the contract to be concluded, the contract might even be established by the court; if the promise is less specific, for example in case of a typical letter of intent, the party unduly withdrawing from the contract may be liable for damages.

Frequently Asked Questions – Contractual issues

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Withdrawal from already signed contracts	<i>Can I withdraw from a contract that has already been concluded, invoking the impending economic crisis caused by the epidemic situation?</i>	In principle, no. Hungarian law only allows for withdrawal due to economic changes in a few types of contracts. This does not include, for example, one of the most common contracts, the individual sale and purchase agreement, therefore the sale of a real estate property or company cannot normally be rescinded on the grounds of the threatening economic crisis.
	<i>What types of contracts can I withdraw from on the grounds of the impending economic crisis?</i>	<ul style="list-style-type: none">• The buyer may withdraw from a supply contract (i.e. the future sale of goods defined by type and quantity) until the date of delivery of the goods.• The employer may withdraw from a work contract (such as construction or installation contracts) until the handover of the work.• The consignor may withdraw from a contract of carriage prior to the commencement of the carriage.
	<i>What are the consequences if I legally withdraw from a contract?</i>	In every case, the other party shall be reimbursed for the damages (costs) actually incurred as a result of the withdrawal. The contractor may also claim the commensurate part of his fees for the work performed.
	<i>How can I withdraw from other contracts on the grounds of the economic crisis caused by the epidemic?</i>	If the economic crisis has such a severe impact on the contract that its performance would be completely unreasonable, it could be argued that the contract was terminated due to 'economic impossibility' (see below).

Frequently Asked Questions – Contractual issues

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		Impossibility
Physical and legal impossibility	<i>What happens if epidemic measures render it completely impossible to perform the contract?</i>	If the possibility of performing the service has permanently ceased (i.e. not only temporarily impeded) due to objective reasons, the contract is terminated and the parties are obliged to settle accounts with each other.
	<i>What could be considered a reason for impossibility in the current situation?</i>	This may be the case if either the epidemic itself (such as the illness of a speaker invited to an event) or an epidemiological measure (such as a ban on the import of the ordered goods) directly renders it impossible to perform.
Economic impossibility	<i>Can I invoke impossibility if the economic difficulties caused by the epidemic impede performance?</i>	Case law knows the concept of economic or 'interest-based' impossibility. Accordingly, it can be established that a contract has become impossible even if there is no physical or legal obstacle to performance, but due to unforeseeable circumstances the performance of the contract would require a disproportionate sacrifice or unreasonable expenses that cannot be expected from the obligor. The conditions of such a finding are quite strict, but it is conceivable that in the present situation economic impossibility may, in some cases, come into play.
	<i>What are known cases of economic or 'interest-based' impossibility?</i>	Judicial case law has established impossibility, among others, where the buyer has become unable to pay the agreed purchase price due to his worsened financial situation; when the utilization of the leased real estate property for the contractual purpose has completely and permanently failed; or when, due to the economic difficulties of the other party, a consideration for the services could no longer be reasonably expected.
Consequences of impossibility	<i>Can I be relieved of my duty to perform the contract on the grounds of impossibility?</i>	Yes. In this case, only the monetary value of the services already provided must be paid, or the consideration granted as an advance and ultimately not covered by the service must be reimbursed.

Frequently Asked Questions – Contractual issues

Keyword	Question	Answer
		Breach of contract
Delay	<i>Does it constitute a breach of contract if I am unable to perform the contract on time due to the epidemic situation?</i>	Yes. If you do not meet any of your obligations arising out of a contract, you will principally be in breach of contract. However, the legal consequences of delay may be less severe because of the epidemic situation.
	<i>What are the legal consequences of a delay in performance due to the epidemic situation?</i>	The aggrieved party can still require performance. He may also withdraw from the contract, but only if his interest in contractual performance has ceased. The obligee may also claim damages, however, exemption from the payment of damages in view of the current epidemic situation, subject to certain conditions, is a possibility.
	<i>Can a long-term contract be terminated in the event of a delay due to the epidemic situation?</i>	Yes, if the obligee's interest in contractual performance has ceased. This can also be established if the performance (e.g. delivery, payment) does not take place even within an appropriate additional deadline determined by the obligee. In the current situation, it is likely that the 'appropriate' additional deadline could be up to 1-2 months, but it is questionable if it could be extended until the crisis is completely over, as in the event of longer-term delivery or payment difficulties, the obligee is probably no longer interested in maintaining the contract.
Duty to warn about obstacles	<i>Should the customer be warned that delivery will be delayed due to roadblocks and restrictions?</i>	The parties have a mutual duty to warn even without a specific contractual term to this effect. Although under the Civil Code this is not explicitly required, it is advisable to put the notification in writing and to present the circumstances that impeded performance in detail (e.g. which border crossing was affected by the restriction, exactly how many hours of delay it resulted in) in order to avoid subsequent difficulties in terms of burden of proof. In the event of failure to warn, damages shall be paid even if the supplier is ultimately relieved of liability for the delay itself.

Frequently Asked Questions – Contractual issues

Keyword	Question	Answer
Refusal of performance	<i>Can I refuse to comply with a contract in case I deem it advisable to protect employees or to reduce the risks arising from the crisis?</i>	No. If you fail to meet any of your obligations under a contract, you will principally be in breach of contract. Business decisions with the aim of mitigating risks do not generally constitute an excuse from the legal consequences of a breach of contract. Indeed, it is worth being careful when implementing preventive measures leading to a breach of contract, as the resulting damages could be regarded as deliberately caused.
	<i>Can I suspend contractual performance on the grounds of the epidemic situation or the related governmental measures?</i>	Generally no. However, we can find some exceptions in legislation, such as the tenant being exempted from the payment of rent in certain cases, or government decrees adopted in response to the state of emergency implementing a payment moratorium on retail and on most corporate loan agreements.
	<i>What are the consequences if I unlawfully refuse to perform?</i>	In this case, the aggrieved party may still require contractual performance, such as the delivery of goods or the payment of rent but may also withdraw from the contract. In both cases, the other party can claim damages as well. If the refusal was deliberate, the damages can amount to full compensation.
Refusal of acceptance	<i>Can I refuse to accept the goods if I have no chance to resell or use them?</i>	No. The buyer can only rescind the supply contract until delivery is offered. If the supplier has already started the delivery of the goods, the buyer is obliged to take delivery of them. In case of refusal to do so, the seller may claim damages in addition to the agreed purchase price.
	<i>Can I refuse to accept the completed work if I have no chance of using it?</i>	Yes, but this does not release you from your payment obligation. The customer may rescind the work contract at any time before fulfillment but is obliged to pay the commensurate part of the contract price and the damage caused by the withdrawal.

Frequently Asked Questions – Contractual issues

Keyword	Question	Answer
Damages		
Exemption from liability	<i>Can I be released from liability for damages with regard to the epidemic situation?</i>	In certain cases, yes. Although breach of contract principally leads to damages even if the breach was caused by a change of circumstances, the law allows for a narrow exception if (1) the breach of contract was caused by a circumstance that was outside of the scope of control of the obligor, (2) it was not foreseeable at the time of concluding the contract, and (3) the obligor could not be expected to avoid the circumstance or mitigate the damages.
	<i>Are the conditions for exemption in the current epidemic situation fully met?</i>	This cannot be established on a general level. The law classifies epidemics and compulsory governmental measures as traditional cases of circumstances that are outside of the scope of control of the parties, but this still does not mean that everyone is automatically released from liability for damages due to the national epidemic situation. Very few judicial decisions have been adopted in this regard, but they mostly attach importance to whether the invoked circumstance directly and unavoidably led to the delay or impeded performance.
	<i>How can we distinguish a breach of contract caused by an external, unavoidable circumstance from the performance of the contract becoming impossible?</i>	If the performance of a contract has become severely burdensome due to unavoidable external circumstances but does not become objectively and permanently impossible, the contract shall be maintained and, in the event of non-performance, performance can still be required of the obligor, even if he is released from liability for damages. However, if a change in external circumstances makes the performance objectively impossible, both parties will be released from the contract and shall settle accounts with each other.
Scope of control	<i>What may qualify as a circumstance outside of the scope of control in the present situation?</i>	Exemption from liability can be established if the epidemic itself (such as excessive labour shortages due to mass illness) or the resulting governmental measures (such as roadblocks) directly render performance severely more difficult. The delay of suppliers due to the epidemic situation or the adverse economic impact of the measures alone are not likely to provide an appropriate ground for exemption.

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Keyword	Question	Answer
Unavoidability	<i>When can it be established that a circumstance outside the scope of control was unavoidable?</i>	In order to avoid external circumstances, economic operators are required to implement any and all measures which, in light of the current scientific and technical knowledge, involve a reasonable - and therefore not excessively disproportionate - cost. Depending on the circumstances, this may be a measure adopted to protect the health of employees or in the event of transport difficulties choosing a different route or supplier, even at additional costs. Exemption can be established only if the impeding circumstance could not be avoided without incurring unreasonably high additional costs.
Foreseeability	<i>Is there a time requirement for exemption from liability?</i>	An unavoidable circumstance beyond the scope of control can still only be invoked if it was unforeseeable at the time of concluding the contract . In the case of contracts concluded before the coronavirus outbreak in January this year, this is likely to be the case, since there has been no example of such a serious epidemic for decades. The situation may be different in case of contractual relationships entered into after January 2020, as at the time of concluding these contracts a deterioration in the epidemic situation and the introduction of restrictive measures could already be expected. However, the rigor of the measures were quite surprising even when they were introduced, so even in the case of contracts concluded in recent months, the possibility of exemption may arise if the specific circumstance that led to the breach of contract was not foreseeable at the time of conclusion.
Amount of damages	<i>What are the damages I have to compensate for?</i>	Damages caused directly by the breach must be compensated in full. When it comes to damages caused indirectly to the other party's property or future income, however, compensation is payable only to the extent the damages were foreseeable at the time of concluding the contract. Under the current circumstances it sounds plausible that the previously unforeseeable economic crisis may increase the impact of a certain breach of contract on the other party's business compared to the same breach under normal circumstances. This would mean that these unforeseen part of the damages may not have to be compensated. Damages caused by a deliberate breach, however, must be compensated in full.

Frequently Asked Questions – Contractual issues

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	<i>Can I expect the other party to mitigate the damages?</i>	Yes. The aggrieved party is obliged to do everything possible to control, prevent and mitigate the damages that can reasonably be expected in that particular situation, otherwise he shall bear the part of the damages resulting from his failure to do so. Disproportionate, extremely onerous measures are not required, but one can be expected, for example, to replace the delayed raw material from elsewhere or use the existing equipment to produce other products.
Contract modification due to material changes in the circumstances		
Agreement on modifying the contract	<i>Can I request the modification of the contract because of the epidemic situation?</i>	Yes, but the other party is not obliged to agree to the modification of the contract. Of course, if there are serious obstacles to the performance of the contract in accordance with the original terms in the present situation, modifying the contract by mutual agreement may ultimately be in the best interest of both parties.
Contract modification by the courts	<i>Can a contract modification be legally forced?</i>	In case of a long-term legal relationship (such as a lease), it is in principle possible to request courts to modify the contract. However, according to case law, judicial contract adaptation is not meant to address the effects of difficulties that affect the economy as a whole. In addition, judicial contract adaptation can only be applied in the event the balance between the parties has been upset in the long-term, and it is currently difficult to anticipate the long-term effects of the current crisis on individual contracts. Furthermore, a contract adaptation by the courts is not exactly suitable to resolve acute problems in connection with the current epidemic situation, as litigation can be rather lengthy.

Frequently Asked Questions – Contractual issues

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Special contractual provisions		
Limitation of liability	<i>Can liability for damages be limited in newly concluded contracts to cover breaches related to the coronavirus?</i>	In principle, it is possible for contracting parties to deviate from rules of the Civil Code on liability and clarify the exact limits of their liability for damages. However, this only applies within certain limits, so for instance liability for breaches of contract caused deliberately or to the detriment of human health cannot be legally excluded. One method for limiting liability may be to maximize the amount of damages or to provide an exhaustive list of the reasons for the exemption.
Force majeure clause	<i>Is it advisable to include a force majeure clause in newly concluded contracts?</i>	Yes. Although unforeseen and unavoidable events that are beyond the control of the parties justify the exemption from liability even without a force majeure clause, such a clause may be appropriate to <ul style="list-style-type: none">• clarify that the parties will deem the subsequent effects of the current epidemic as such unavoidable events and will not claim that they were already foreseeable at the time of the conclusion of the contract;• specify the legal consequences of unavoidable events. Thus, depending on the interests of the parties, an extraordinary right of withdrawal or right to rescind may be stipulated, or an automatic extension of the deadline to perform may be provided for.
Right to rescind	<i>How can we ensure a possible withdrawal from the contract in view of the uncertain circumstances?</i>	The Civil Code itself grants the right of withdrawal only if, in consequence of a breach of contract, the other party no longer has an interest in performance in accordance with the contract, or an extended deadline has also elapsed without proper performance. As it can be quite difficult to prove the loss of interest, it may be worth laying down in the contract an objective right of withdrawal, i.e. one that requires no specific justification. The exercise of the right of withdrawal may also be linked to the payment of a certain amount of money (retention money). The retention money is given, in essence, as the purchase price for the right of withdrawal.

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Some specific types of contracts		
Supply contracts and contracts for work	<i>What is the effect of a change of circumstances on supply contracts and contracts for work?</i>	As opposed to most contracts, supply contracts and contracts for work can be rescinded by the customer at any time, also for a change in the economic circumstances. The costs and proportionate fees of the vendor needs to be reimbursed, however.
Lease agreements	<i>Can tenants refuse the payment of rent in the present situation?</i>	Pursuant to a rarely applied rule of the Hungarian Civil Code, the tenant is not obliged to pay rent for the time while it is unable to use the premises for a reason „outside of its sphere of interest”. According to available case law, natural catastrophes can be deemed as such reasons, but normal (e.g. market) changes that are part of the tenant’s usual business risks cannot. The current pandemic situation limits the usability of the given premises in different ways and to a different extent. It can only be assessed based on the specific circumstances of the given individual case whether using the premises has become impossible, and whether the limitation fell under the usual business risk of the tenant.
	<i>Can tenants request the proportional reduction of the rent?</i>	In a few previous cases courts have ordered the proportional reduction of the rent where a reason outside of the tenant’s sphere of interest partially limited the usage of the premises. Based on this, it is possible that a court would reduce the rent if usage of the premises is directly and substantially limited by the epidemic situation.

Frequently Asked Questions – Contractual issues

Keyword	Question	Answer
Sale and purchase agreements	<i>Am I entitled to reclaim the earnest money in case, as a result of my financial situation or the worsening of the outlook of the general economic situation, I no longer wish to purchase the real estate?</i>	This depends on whether I am entitled to withdraw from entering into the contract based on the change of circumstances. For example, if the payment of the agreed purchase price under the circumstances of the impending economic crisis would foreseeably cause severe difficulties that I could not expect at the time of giving the earnest money (for instance because I wished to finance the purchase from a bank loan, but my livelihood has become uncertain), I am entitled to refuse the conclusion of the contract, and the earnest money shall be repaid. Otherwise, withdrawing from the contract qualifies as a breach of contract. In this case, the party loses the earnest money given, and can also be obliged to pay damages.
	<i>Can I get out of a signed sale and purchase agreement based on the impending economic crisis due to the pandemic?</i>	Rescinding the contract is usually not an option. The purchaser can, however, in theory „get out” of the contract arguing economic or „interest-based” impossibility of the performance of the contract. The conditions of doing so are rather strict: for economic impossibility, for example, it would have to be shown that under the changed circumstances the purchaser could not, in any reasonably expectable way – for example by way of taking out a loan or selling its other assets –, pay the purchase price. Arguing „interest-based” impossibility is also an option, if the prospect of the buyer utilizing the property under the changed circumstances is lost to such an extent that the performance of the contract cannot be expected of her.

Frequently Asked Questions – Contractual issues

Keyword	Question	Answer
Bankruptcy as last resort		
Payment difficulties	<i>What are my obligations in a situation of impending insolvency?</i>	If the leader of a business enterprise can recognize that the company will foreseeably not be able to settle its outstanding debts in time, the enterprise is in a situation of impending insolvency. In this situation, the leader of the business enterprise is obligated to make its business decisions with the creditors' interests in mind. This means that she shall refrain from entering into „riskier“ deals.
	<i>What are my options if my business is entirely unable to perform its payment obligations?</i>	You can attempt to agree with your business partners on delaying the payment deadline and – should this prove unsuccessful – you can request bankruptcy protection.
Bankruptcy procedure	<i>Is it obligatory to initiate bankruptcy proceedings in case I am unable to meet my payment obligations?</i>	Initiating bankruptcy proceedings is only a possibility, not an obligation. In case of payment difficulties it can, however, serve as a practical solution for bringing the debtor's financial situation into order, as in the course of the procedure a payment moratorium is granted to the debtor to enable it to reach a settlement with its creditors. During the bankruptcy procedure it is moreover prohibited to unilaterally terminate the contracts of the debtor, thereby making it possible for the company to weather the time of the pandemic and to ensure its survival in the long-run.
	<i>How much time do I have to reach a settlement with the creditors in the bankruptcy proceedings?</i>	The settlement with the creditors needs to be concluded within 120 days of the arrival of the request for bankruptcy procedure to the court, however, in case the creditors agree to this, the court may prolong this deadline. In case of a failure to reach a settlement, a liquidation procedure may be commenced against the debtor.
	<i>When does my business become insolvent?</i>	Insolvency can only be established by the courts, e.g. in a liquidation procedure.



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