

Covid – 19 update

Covid – 19 as a force majeure event in the natural gas market

9 April 2020

Background

The Covid – 19 outbreak continues to evolve from a local issue affecting one country to a global crisis that has shown its negative impacts on every sphere of global economy and businesses. The businesses operating in the natural gas sector under natural gas market licences (the **Licence Holders**) are also among those that are impacted by the outbreak. In our earlier Covid – 19 update dated [2 April 2020](#), we have discussed the consequences of Covid – 19 on the electricity market licence holders' obligations under the applicable legislation. We note that the Energy Market Regulatory Board (**EMRB**) has also started taking actions to relieve licence holders' obligations through extension of certain deadlines that the electricity market licence holders need to comply with.

We expect to see similar specific measures targetting natural gas licence holders' obligations. However, in the absence of these measures, the Licence Holders may still benefit from the force majeure provisions set out under the Natural Gas Market Licence Regulation (**Natural Gas Licence Regulation**).

Force majeure mechanism under applicable legislation

Under the Natural Gas Licence Regulation, the obligations of the Licence Holders may be postponed or cancelled to the extent that they are affected from a force majeure event. Unlike the electricity market legislation, which provides for more detailed provisions in relation to treatment of force majeure events, the Natural Gas Licence Regulation does not provide for a list of Events that may constitute a force majeure event. In the absence of a list of force majeure events, a Licence Holder may still benefit from force majeure relief as a result of the Covid – 19 outbreak if it proves that the following conditions are satisfied.

According to Article 46 of the Natural Gas Licence Regulation, in order for an event or circumstance to be considered as a force majeure event, it must be:

- (a) unforeseeable, unavoidable and inevitable even though the Licence Holder has taken all necessary cautions; and
- (b) prevent the Licence Holder from fulfilling its obligations under the applicable legislation.

However, the mere occurrence of a force majeure event does not automatically result in the suspension or cancellation of the regulatory obligations. In order for a Licence Holder to lawfully avoid its obligations, the EMRB must adopt a decision upon the Licence Holder's individual application.

Application to EMRB

In order to benefit from the postponement or exemption remedies, the Licence Holders are required to notify EMRB in writing within 15 days following the occurrence of the force majeure event.

The Licence Holder must set out the following details in its notification:

- (a) the date of occurrence and nature of the force majeure event;
- (b) the effects of the relevant force majeure event on the Licence Holder's obligations;
- (c) if possible, an estimated timeline for mitigating the effects of the force majeure event.

Upon this notification, EMRB is required to make a decision regarding the relevant Licence Holder's obligations.

Consequences of force majeure

According to the Natural Gas Licence Regulation, following remedies may be applicable to the Licence Holders, depending on the effect of the outbreak on their regulatory obligations:

- (a) In the event of a temporary impossibility to perform obligations: If the Licence Holder would be able to perform its obligations after the end of the Covid – 19 pandemic, EMRB may postpone its obligations until the effects of the force majeure event are eliminated.
- (b) In the event of a permanent impossibility to perform obligations: If it becomes impossible to perform certain obligations for the Licence Holder, EMRB may exempt that Licence Holder from having to perform these obligations. However, natural gas transmission and distribution activities are exempt from the scope of this remedy.

Conclusion

Considering the negative impacts of the Covid – 19 on the natural gas market, Licence Holders in search of a relief for performance of their regulatory obligations may consider benefitting from the force majeure provisions under the Natural Gas Licence Regulation.

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