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Impacts of Covid-19 as a force majeure event in the petroleum market

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Background

As the Covid – 19 pandemic sweeps across the globe, businesses have started to struggle finding sustainable solutions to keep their organisations afloat. Businesses operating in the petroleum market under petroleum market licences (the **Licence Holders**) are among those, which are also impacted by the increasing effects of the outbreak.

In our previous Covid – 19 update dated 2 April 2020, we have discussed the conseqences of the outbreak on the regulatory obligations of the electricity market licence holders. Similar to the electricity market legislation, the Petroleum Market Licence Regulation (the **Petroleum Market Licence Regulation**) also sets out force majeure provisions which pave the way for postponement or cancellation of the regulatory obligations of the Licence Holders, depending on the impacts of the outbreak on the performance of their obligations.

Force majeure events under applicable legislation

Under the Petroleum Market 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. In order for an event or circumstance to be considered as a force majeure event, such event or circumstance must (a) be 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, including the Petroleum Market Licence Regulation.

However, the mere occurrence of a force majeure event does not automatically cause the regulatory obligations to be suspended or cancelled. In order for a Licence Holder to lawfully avoid its obligations, the affected Licence Holder must individually apply to the Energy Market Regulatory Board (**EMRB**) in order to obtain a decision in this respect.

Application Process

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 occurance 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

According to the Petroleum Market 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.

Conclusion

Althoug EMRB has already taken certain measures in respect of the electricity market licence holders, we expect to see measures from the government specifically targeting natural gas and petroleum markets in order to minimise the negative effects of the Covid – 19 outbreak on the petroleum market. However, for the time being, License Holders may consider to benefit from the remedies already set under the Petroleum Market Licence Regulation.

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