Due to Coronavirus forced slow down in the global production, can a contractor terminate existing agreements with suppliers or sub-suppliers on the grounds of "supervening impossibility" ("impossibilità sopravvenuta") or force majeure event under Italian law?

Roma
via di Porta Pinciana, 34
tel. +39 06 454 954 70
fax +39 06 454 954 76

Milano
via S. Pietro all'Orto, 17
tel. +39 02 87199502
fax +39 06 454 954 76

info@cmplaw.it
www.cmplaw.it

Fabrizio Proietti
fabrizioproietti@cmplaw.it

written by Fabrizio Proietti

Due to the spread of *Coronavirus*, many Italian companies are facing a significant reduction in the demand for their products, both locally and globally. This entails an inevitable situation of *production surplus* which may force companies to seek termination of existing commercial relationships with their suppliers and/or sub-suppliers.

The relationship between the spread of *Coronavirus* and the termination of commercial contracts can be analyzed from different legal standpoints, including the application of the Italian concept of *supervening impossibility ("impossibilità sopravvenuta")* regulated by articles 1256 and 1463 of the Italian Civil Code which provide that the obligation is extinguished when, for a supervening cause not attributable to the debtor, the **performance of the contractual obligation becomes impossible**.

However, in many cases, the spread of *Coronavirus* does not itself entail a situation of impossibility for a party to perform its contractual obligation. In fact, with the exception of cases where one of the parties cannot perform its contractual obligation due to the pandemic event (e.g. in case of extensive contagion of employees that forces the supplier to stop the supply process) the parties are usually able to perform their relevant contractual obligations. For example, in a subcontracting agreement, the client is able to make the payment and the sub-supplier is able to supply the goods.

On this regard, Italian case law has recently confirmed a principle according to which, the termination of a contract due to a *supervening impossibility* may be invoked not only if the performance of the contractual obligation of the debtor becomes impossible, but also if, due to a supervening event, **it becomes impossible for the creditor to use the obligation of the debtor** and the creditor loses his interest in receiving the performance of such obligation (Italian Court of Cassation no. 8766/2019).

In conclusion, following such case law, if it is proven that the spread of *Coronavirus* (the supervening event) has caused an objective and significant reduction in the demand for its products, a manufacturer may terminate the contractual relationship with its supplier/sub-supplier due to the impossibility for the manufacturer to use the performance of supplier's services (due to the significant reduction in the demand for the products).