

## Legal Implications of the Coronavirus in Israel

### April 2020

The Israeli market is significantly impacted by the spread of the Coronavirus. Recent public discourse has focused on the measures taken by the State of Israel, as well as those taken by other countries, to curb the spread of the virus and protect public health. Rising limitations on civilian movement, public gatherings, and other constraints have taken center stage, adding to mounting fears of recession and economic crises.

We at Agmon & Co. Rosenberg Hacoen & Co. are prepared to provide counsel throughout the duration of these troubled times and will continue to stand at your side until the conclusion of the crisis.

Below are some updates on the measures taken by the Israeli authorities and a number of legal issues arising out of this situation.

### Extensions and Delays of Regulatory Approvals, Authorizations and Certificates

Any regulatory approval set to expire between March 10<sup>th</sup>, 2020 and May 10<sup>th</sup>, 2020, including any authorization or certification needed by law for any activity or action or the exemption thereof, is automatically extended by two months beginning at the original expiration date. The extension is automatic and requires neither request nor payment.

### Competition Authority

On March 16<sup>th</sup>, 2020 the Israeli Competition Authority published clarifications regarding business conduct during the period of Coronavirus emergency measures .

1. Cooperation – Cooperation between competing businesses could be considered as cooperation that is beneficial to competition over the long term if it can be shown that the cooperation is meant to enable the continuation of business activities throughout the duration of the crisis (and is not for the purpose of limiting competition in the market). Regardless of the above, the regular anti-trust conditions still apply.

2. Mergers – If the waiting period for the approval of a merger by the Israeli Competition Authority (when such is necessary) causes irreparable damage to the businesses involved, they can approach the Israeli Competition Authority to receive assistance in finding intermediate solutions for the duration of the crisis.

## Privacy Protection

On March 23<sup>th</sup>,2020, the Israeli Privacy Protection Authority (“**IPPA**”) published a Q&A document for the public regarding privacy protections during the Coronavirus period. The view of the IPPA as expressed in the Q&A document is that even during a state of emergency, when there is an apparent justification for privacy infringements of civilians, the principles of privacy protection must be observed, and any violation of the right to privacy must be necessary and proportionate under the circumstances.

The IPPA also clarified that employers may inform their employees and other relevant persons regarding an employee who has contracted coronavirus (or the risk thereof). If possible, the identity of the employee should be protected, and only individuals who may have been in contact with the employee in the relevant period should be notified.

On March 24<sup>th</sup>,2020, the IPPA published an additional document which emphasizes certain policies and safety measures with regards to remote work. Below is a short brief highlighting several central policies and measures:

1. On an Organizational Level: Use of remote access by employees must be incorporated into existing organizational risk assessments, and security procedures may need to be adjusted and/or established in light of technologies which are used by each organization to enable remote access to its systems. Employees should use personal computers (rather than public computers), refrain from saving organization related files on their personal devices and refrain from using potentially insecure and/or unsupported programs.
2. On a Technical Level: Organizations should block access of insecure personal devices to their systems.

Each organization should enhance measures and allocate resources towards the organizational regulation of remote access, strive to inform employees of the importance of security measures through designated briefings, use two-or multi-factor authentication for remote access of the network, and automatically disconnect remote access sessions after a period of inactivity. Personal devices used for remote access should have updated antivirus programs, firewalls, and password protected SSID.

3. Limiting Use of Public Servers: Remote access may result in employees using private email servers and other messaging programs which are not properly secured to transfer privileged organizational data. Care must be taken to avoid the risks arising therein. The necessity of transferring personal data over a public network should be considered and if indeed necessary, should be limited.
4. Meetings Over Public Platforms: Holding video or audio meetings on public online platforms may expose information shared during these meetings to video and audio recording without the knowledge of the participants. The IPPA is of the view that these platforms often request access to other files and programs and store collected data in foreign servers that may not meet the Israeli Protection of Privacy Regulations.
5. Cybersecurity: The IPPA alerts the public of a recent rise in organizational cyberattacks and attempts at 'phishing' for personal data, later used for illicit purposes of fraud. Therefore, the IPPA urged the public to take the following precautions: (a) open emails and files only if the recipient recognizes the identity of the sender; (b) be aware and cautious of requests to provide information by entities who should already hold the requested information, and (c) access websites by manually entering the website address and not through links.

## Remote Transactions

The spread of Coronavirus, quarantine requirements and the prohibition of gatherings are likely to increase the use of remote transactions. Accordingly, we have compiled a list of important regulatory matters regarding remote transactions.

1. Duty of Disclosure – The key is to provide full and wide disclosure of the transaction details. The name of the business provider, qualities of the service or product, price, terms of payment, method of delivery, warranty and cancellation policy are some of details the business is required to disclose.
2. Realization of the Transaction – Customers must be provided with written documentation in Hebrew (or the language the transaction was made in), which includes the main details of the transaction.
3. Cancellation Policy – Customers have 14 days to cancel transactions, counted from the day of the product's arrival or the arrival of terms of service documentation. Transactions of products that cannot be resold cannot be cancelled; transactions of accommodation, travel, vacation or recreation must be cancelled at least seven days in advance; transactions of products created for a particular customer, transactions of products that can be replicated or copied or whose packaging has been opened, and transactions of certain computer data, cannot be cancelled. If the cancellation is due to a defect, late shipping or other discrepancies, the customer is entitled to a full refund. Otherwise a cancellation fee may be required.
4. Flights, Vacations and Tourism – Business selling tourism services outside of Israel can offer customers an option of either the service provider's foreign cancellation policy or the cancellation policy in Israel. Purchasing a flight from Israel to another state, does not count as tourism services outside of Israel. Flight cancellation fees for remote transactions can be up to 5% of the cost of the transaction, for every individual ticket, even if these were ordered jointly.

## The Implications of the Coronavirus on Contractual Obligations in Israel

A basic principle of contract law is *pacta sunt servanda* – agreements must be kept. However, current events bring this principle into question. What are the effects of the widespread implications of the coronavirus outbreak on contractual obligations? While it is possible to expect parties to an agreement to consider some forms of public emergencies (such as military hostilities, which are faced by Israel regularly), the coronavirus might not be a risk the parties took upon themselves in their contractual commitments. What then are the legal implications of the outbreak on contractual obligations?

A party to a contract could be released of contractual obligations in case of impracticability. Israeli law states that claims for impracticability can be made even if the contract under review does not include a specified clause that incorporates it. To be released of contractual obligations, a party must prove two cumulative conditions:

1. A lack of knowledge and foreseeability of the circumstances that made the performance of the contract impracticable.
2. An inability to avoid the extraordinary circumstances that made the performance of the contract impracticable.

Such circumstances may include any circumstance which make the contract physically or legally impossible to perform; which fundamentally change the performance of the contract; or makes the contract impractical to perform.

Case law in Israel tends overwhelmingly to rule against the party which violated the contract, typically finding that the circumstances that made the performance of the contract impracticable were foreseeable. Despite this, courts have held the position that parties to a contract consider not only the foreseeability of the extraordinary event itself (for example – a war), but the foreseeability of the resulting effect of the event on the contractual relationship (for example – the fiscal consequences of the war).

A ruling in favor of an impracticability claim does not mean that the contract is void, but that the violating party is released from its obligations and protected from claims of compensation and enforcement.

Once impracticability is identified, the court is qualified to balance between the parties to the contract and can require that each party retribute the other. Only the violating party can be required to indemnify.

It is possible that a court may find a contract partially affected by the circumstances that made the performance of the contract impracticable, thus allowing the violating party release only from specific clauses which are directly affected by the extraordinary event.

It should be noted that *force majeure* provision can be incorporated in a contract, with parties specifying circumstances or events which would or would not affect their obligations. Therefore, each contract must be reviewed carefully to identify clauses which may affect the interpretation of general impracticability doctrines.

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The above review is a summary, provided for informative purposes only and does not constitute legal advice. For more details please contact us directly.

**For any further information please contact:**



**Mattan Meridor, Adv.**

Head of Competition Antitrust department  
[meridor@agmon-law.co.il](mailto:meridor@agmon-law.co.il)