

## "Iron Swords" War: Effect on Contractual Obligations Client Update – December 2023

Dear Clients,

The current situation of war in Israel may affect the performance of contractual obligations.

One of the main questions that arises is under what circumstances parties may deviate from a contractual provision?

Under Israeli law, this question may be addressed in several ways:

1. **Postponement of Deadlines**. The Law on Postponement of Deadlines (Temporary Order – Iron Swords) (Contract, Legal Ruling or Payment to Authority) 5784-2023 was enacted in October 2023 in connection with the Iron Swords war and, for certain groups (such as soldiers, hostages, or those displaced from their homes), permits postponement of contractual obligations for up to 60 days, or until December 31, 2023, whichever is earlier, to the extent that the original date for performance of such obligation occurred in the period between October 7<sup>th</sup> 2023 and December 7<sup>th</sup> 2023 (as such period may be extended).
2. **Mutual Agreement**. As always, the best way to revise a contractual obligation is by mutual consent. It's important to note that under Israeli law parties to a contract are obligated to exercise their contractual rights in good faith, which could mean that in certain circumstances a party may be obligated to agree to adjust certain contractual provisions.
3. **Force Majeure**. A force majeure clause in a contract will be interpreted in accordance with the terms of the contract, the principles of interpretation under Israeli law, and applicable precedents. The absence of a force majeure clause in a contract cannot assure that changes in contractual obligations due to force majeure will not occur. Legal precedent shows that it may be determined that certain contractual provisions should be adjusted to reflect changed circumstances.
4. **Doctrine of Frustration of Contracts**. The doctrine of frustration under Israeli law applies in a situation of extreme changes in circumstances that are not the fault of the parties. The remedy provided to the non-breaching party is limited to the right to terminate the contract, with no other remedies. Israeli law sets out three cumulative conditions for the application of the doctrine: (i) lack of knowledge or expectation of the frustrating circumstances;

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(ii) inability to prevent the frustrating circumstances; and (iii) the fulfillment of the provisions of the contract becoming impossible, or different in a manner that undermines the material principles of the contract. However, it is important to note that this doctrine is rarely applied and is interpreted by Israeli courts in a narrow manner (for example, the prevailing attitude of Israeli courts regarding condition (i) above is that almost everything is 'expected').

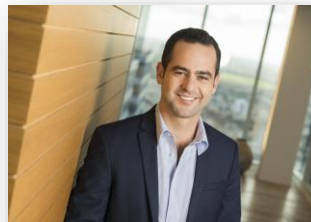
5. **Judicial Intervention; Interpretation of Contracts.** Israeli courts have the power to "complete" missing details in a contract based on the parties' past practices or, in the absence thereof, according to accepted norms in similar contracts. This is only one aspect of the interpretation of contracts under Israeli law. In general, the model for interpretation of contracts applied by Israeli courts is one of purposive interpretation, taking into account the context, circumstances and parties' behavior, and will always prefer interpretation that enable the execution of the contract than its termination. The general principles of contract interpretation includes other avenues to justify certain contractual adjustments (other than termination) based on the terms and circumstances of the agreement between the parties, such as illegality of actions that were expected to be permissible, lack of economic viability due to unexpected changes in public behavior, or financial inability to perform actions that were expected to be financially viable.
6. **Specific Arrangements.** Certain laws set out specific legal arrangements that may be applicable. For example, Section 15 of the Rental and Lending Law, 5731 - 1971 stipulates that In certain circumstances, tenants may temporarily suspend payment of rent if the property cannot be used for the rental purpose, and after a certain period the owners of the property have the right to terminate the lease by reasonable notice.

The information provided above does not, and is not intended to, constitute legal advice; all information, content, and materials above are for general informational purposes only.

We at Agmon with Tulchinsky are happy to assist with any questions you may have in this regard.



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