



## **HFDA Academy: New View**

# **The fulfilment of contracts during the state of emergency due to the coronavirus crisis**

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The pandemic has created uncertainty in all areas of life, including contracts in the creative industries. It is now perhaps even more important than ever before, for the contracting parties to be aware of their rights and obligations and the impact of the virus situation on them. Although referencing force majeure under disaster situations is accepted in most cases, there are some exceptions.

### Contract types in the creative industry

The most commonly used contract and agreement types in the field of fashion and design are business, commission, collaboration, manufacturing, and distribution contracts.

The main feature pertaining to business contracts is that they are concluded in order to create a specific result (e.g. design process, material processing). The result of the contract (e.g. a design sample) is always protected by intellectual property rights. In contrast, in the case of a commission agreement contract, a so-called “duty of care” also appears, i.e. the contractor is obliged to carry out the work in order to achieve a goal, however, the customer also has a broader instructional power (such contracts can be signed for example in marketing activities). There is also a difference in the remuneration regarding a business or commission fee. While in the case of a business contract the fee depends on the performance of the result, in the case of a contractual arrangement via an outsourced service, it can be stipulated that the fee is paid only if the given goal is achieved, in this case, the client works with a so-called success fee.

We can talk about a collaboration agreement when two or more companies work together in reaching the same goal and purpose. It is important to specify the time period this contract covers and in which cases the other party may use, for example, pieces from the collection. It is worthwhile to decide on the fate of any remaining products, and it is an essential element of such a contract that each party undertakes a guarantee for its own work, i.e. to assure the other participants that they will implement their own ideas and plans.

If a company does not have production capacity, it can entrust another company for support in the framework of a contract. In this case, the brand usually also provides material to the manufacturer in addition to its plans. It is important to emphasize that in this framework, the factory does not acquire ownership of the products, as this belongs exclusively to the client, i.e. the brand.

One of the most commonly used forms of contracts in the creative industry is the distribution contract. In this form of contract, the owner of the product, i.e. the brand, gives permission to the distributor to resell the products it receives. There is no obligation regarding profit, i.e. it does not constitute a breach of contract if the distributor is

unable to sell the products. Here, the customer (owner of the product) has the right to instruct how the products should be sold, for example, in what style or colour the shops should be designed to fit their product (eg. most department stores have the same design).

### The fulfilment of contracts in times of emergency

Contracting parties typically wish to be relieved of their contractual obligations in times of emergency by invoking force majeure. Force majeure is a common clause in contracts when an extraordinary event or circumstance beyond the control of the parties takes place, that is an “irresistible force” of natural or human origin that is absolute in nature, and cannot be prevented by available human means.

Epidemics typically fall into the category of force majeure, but an important aspect to take into consideration is the date the contract was signed. If this took place before the current epidemiological situation, then the contracting party may be able to successfully invoke an exemption of being under the rules of force majeure. If the contract between the parties does not contain a system of rules in line with the above stated, the provisions of the Civil Code will prevail.

### The termination of leases in the case of emergency

In accordance with the Government Decree 47/2020. (III.18.), leases on non-residential premises cannot be terminated by the landlord until 30 June 2020, in respect of the tourism, catering, entertainment, gambling, film, performing arts, event organization and sports services sectors. In addition to the prohibition on termination, rent may also not be increased during the state of emergency. However, at the same time, the measures to ease the situation do not apply to the leases of retail stores selling clothing, given that the retail sector is not listed in the relevant Government Decree. Therefore, in these sectors, it is proposed to modify the contract in accordance with the Civil Code, within the framework of the Housing Lease Act, if difficulties are encountered regarding performance under the contract.