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COVID-19 – Potential Effects on Contractual Obligations

As the effects of COVID-19 pandemic continue to be felt across the globe, many governments have implemented measures aimed at preventing the spread of the disease. Such measures may have significant impacts on the ability of parties to perform their obligations pursuant to international commercial contracts. Many of those impacts may, in turn, have consequences on persons doing business in Mexico and with respect to the rights and obligations of such persons with their Mexican and international counterparties.

Although the Mexican government has not yet declared a state of national emergency that could be argued to clearly constitute an event of force majeure, the recent measures published by the Mexican Ministry of Health on March 24, 2020 in addition to the several measures requiring Mexican government agencies to suspend non-essential government activities, as well as other measures that may continue to be implemented as the epidemic spreads across Mexico, may further impact the ability of Mexican companies to comply with their contractual obligations or to exercise their contractual rights.

The general principle under Mexican law is that contracts should be performed pursuant to the letter of such contracts. As such, parties to contracts are bound to observe and comply with the express provisions of such contracts, provided that they will also be obligated to comply with the consequences that may arise in good faith, by operation of law or on the basis of commonly accepted practices, from the nature of such agreements. Consequently, in the evaluation of the impact of the COVID-19 pandemic on the obligations of the parties, along with any potential relief granted to the parties with respect to such event, the express contractual provisions agreed among the parties shall be the basis for any analysis regarding the rights and obligations of the parties in a scenario such as the one posed by this unprecedented pandemic.

Notwithstanding the general principle stated above and, importantly, where contractual provisions are unclear, insufficient or non-existent, provisions of Mexican law may be argued to protect parties from liability resulting from their inability to perform their contractual obligations by virtue of unforeseeable events that are beyond the control of and which cannot be overcome by, such affected party.

In addition, there are a number of legal provisions and judicial precedents in Mexico that may serve, by way of exception, as a basis for parties to commercial agreements to seek a rebalancing or renegotiation of their obligations. This potential right may arise in the event the situations that were in force upon execution of the relevant contracts change substantially and in a manner that performance of the original obligations become more burdensome or onerous than upon execution of the contract.

The principles described above would need to be interpreted strictly and applied cautiously considering that they are exceptions to the general rule under Mexican law regarding the requirement for parties to fulfill their contractual obligations as stated in the contract. In addition, the relief available will largely depend type of obligations and whether each contract is governed by the federal law of Mexico or the law of any of the 31 Mexican federal entities or Mexico City. Consequently, a case-by-case assessment is encouraged in order to confirm the potential rights and obligations of a commercial party in any given scenario.

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Our team of professionals is available to review any potential impact of the COVID-19 pandemic on contracts entered into across our several practice groups. We encourage you to reach out to your ordinary Ritch Mueller contacts to discuss any such issues so we can assist you in determining the most appropriate course of action.

Otherwise, feel free to reach out to us at contacto@ritch.com.mx so we may direct your query to the appropriate team members.

We trust you and your families are safe during these challenging times.

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