The contractually unforeseen renegotiation

Pascale Accaoui Lorfing

[...]

It implies a dynamic behaviour of the parties all along the contract execution. It means that they could not demand the strict execution of the contract based on its terms but they have to be more respectful of its spirit. They also should be tolerant with each other in case of difficulties during the execution whatever the hardship is. They should work in common to avoid what could be harmful or disturbing for the execution of the contract.

[...]

The obligation to inform as a means to prevent the fundamental change of circumstances

The obligation to inform which derives from contractual good faith, and constitutes a duty to the contracting parties, has a preventive consequence on the fundamental change of circumstances.

The obligation to inform is accessory to other contractual obligations, because it is not foreseen in the contract but “is created and imposed by the judge”, and “is applied more specifically to long-term contracts”, and has the contractual good faith principle as a legal foundation, which allows the judge to extend it to all similar contracts. Thus, “recognizing this kind of obligation to inform implies enriching the contract's content”. During the contract execution, the obligation to inform plays an important role when it is an accessory to an obligation of means, “because the debtor contractual responsibility could be engaged due to his reluctance to inform”. And it is this information that is of interest for us.

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[...]

[...]

The obligation to limit the damage, a way to manage the fundamental change of circumstances.
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The obligation to limit the damage, as a corollary to the good faith obligation in the contract's execution, even if not expressly foreseen by a number of judicial systems, is widely recognised by both national laws and international commercial law, as well as by the doctrine and is applied by the arbitral tribunal who considers it as “the most well established material rule”.

Referring Principles:

I.1.1 - Good faith and fair dealing in international trade
IV.6.9 - Duty to notify / to cooperate
VII.4 - Duty to mitigate