

FORCE MAJEURE AND COVID-19

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EDITOR COMMENT

Force majeure is a common clause in contracts that essentially frees both parties from liability or obligation when an extraordinary event or circumstance beyond the control of the parties occurs, such as a war, strike, riot, crime, **epidemic** or an event described as act of God, prevents one or both parties from fulfilling their obligations under the contract. In practice, most force majeure clauses do not excuse a party's non-performance entirely, but only suspend it for the duration of the force majeure.

Force majeure has become the most successful concept because it has gained a stable footing in courts and contracts compared to others. Moreover, it is mostly applicable when the obligations to an agreement of the parties become impossible due to unavoidable circumstances, such as natural disasters. Force majeure is a civil law concept that has no relation with the common law. However, force majeure clauses are used in contracts because the only similar common law concept is the doctrine of frustration which has limited application, because for it to apply the performance of a contract must be radically different from what was intended by the parties.

Force majeure is based on the concept that it is fair to allow a party to escape contractual obligations without fault when satisfaction of those obligations is made impossible. The occurrence of the act or incident of *force majeure* which the contractor objected to during the implementation of the contract shall exempt him from the implementation of his contractual obligations. The administration cannot impose any penalty for the administrative penalties prescribed for non-implementation or delay. Exemption from execution can only be achieved if implementation becomes impossible due to force majeure and during the time that this situation has taken place. If the force majeure event is temporary, the force majeure effect shall be suspended for the period in which it is in place and the execution shall be prevented. If the force majeure event fails, the contractor's obligation to implement shall be returned.

The use of the concept of is important in the current atmosphere of COVID-19. Moreover, its use globally has built confidence to parties to enact it, if it fits their scenario. Furthermore, the concept is an easy way of determining cases of a business contract, which are affected by a supernatural catastrophe. In all honesty, the cases are well solved using the force majeure than the civil law to avoid frustration among the involved parties.

Apart from the devastating impact that COVID-19 continues to unleash on human beings and countries worldwide, its outreach has also reached commerce and business. COVID-19 has resulted in lockdowns or restricted movements in countries. Consequently, businesses have been impacted and so have operations and consequently contracts and obligations under contracts are being revisited to assess these impacts. The term that has assumed relevance in contractual context today for businesses today and heard most often is “force majeure” and how will this term be construed in a contract in the background of COVID-19.