

## **[Contract] – Do you need to perform your contractual obligations during the Coronavirus Pandemic? A quick look at the force majeure clause.**

Carrying out business as usual has been made difficult for everyone during the Coronavirus (COVID-19) Pandemic. It may also have affected your ability to perform contractual obligations.

In this article, we will look into *force majeure* clause and see if it can protect you in the current situation. A force majeure clause is a contract provision which allows a party to the contract to suspend or terminate the performance of his or her contractual obligations when circumstances beyond the person's control arise. Typical elements addressed in the clause include: definition of force majeure events, what happens when one of the events defined occurs and how to successfully invoke the clause.

So, does the clause protect you from the coronavirus situation? **IT DEPENDS!**

**First thing you need to do is to read through your contract thoroughly.**

### **1. Take a look at how “force majeure” is defined in your contract.**

See if it expressly covers pandemics, epidemics or other similar crisis situations. If not, does it mention events which are beyond the parties' reasonable control? Even though the word referring to the spread of disease is not mentioned, governmental restrictions in response to the COVID-19 outbreak, such as travel bans and quarantine requirements, may be covered under the clause.

### **2. What kind of failure of performance does the clause cover?**

Does it cover non-performance in whole or in part? Or does it also cover delays in performance?

### **3. What does the clause say about the procedures to invoke the clause?**

This point is something you need to pay close attention to. The occurrence of a force majeure event itself does not free you from contractual obligations and thus it is important to follow the steps agreed in the contract (If not, you may be held in breach of contract). See if you need to establish the cause and effect of the event and your failure to perform. Also, if written notice to the other party is required, are there time limitations? In addition, you need to see if there are any mitigation measures specified in your contract that you need to look into and carry out before you rely on the force majeure clause.

### **4. Finally, check other parts of the contract to see if there are any clauses providing alternative ways of performance.**

So what if the force majeure clause is successfully invoked? It also depends on what is agreed in the contract. It may suspend your contractual obligations and excuse you from liability for non-performance or delay related to the force majeure event. In addition, it may give you the right to renegotiate the terms of the contract with the counterparty and even further, the right to

terminate the contract. For example, commercial real estate tenants might in light of the current situation rely on the force majeure clause in their leases to renegotiate with their landlords for rent reduction or (as the case may be) lease termination.

Based on this, review your contract carefully and contact the counterparty to discuss a possible renegotiation, or postponement of contractual duties, as appropriate. If you need help doing that, the Corporate & Commercial lawyers located on LegalClarus may be able to assist.

***This article was prepared by HKU student Lianne Kim (Kim Mul Kyeol) in collaboration with LegalClarus.***

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