

## *Understudying* FORCE MAJUERE

A "force majeure" clause (French for "superior force") is a contract provision that relieves the parties from performing their contractual obligations when certain circumstances beyond their control arise, making performance inadvisable, commercially impracticable, illegal, or impossible. In the absence of a force majeure clause parties to a contract can take help of common law contract doctrines of "impracticability" and "frustration of purpose". A Force Majeure situation does not include any local restrictions or restricted faced by the organization or something's which can be avoided or common to the place, such as local strike, machine breakdown or extreme weather (unless it is so extreme that it does have occurred in the history),etc.

A Force Majeure, situation has to be invoked by the party suffering from such event by informing other Party, in a reasonable time period after the situation has arisen. A Force Majeure communication should always backed up a notification from Govt. Authority declaring the situation in the area, without which the Party is not relived from performing its obligations.

Because of the different interpretations of force majeure across legal systems, it is common for contracts to include specific definitions of force majeure, particularly at the international level. There are number of judgements where the Court has rejected the relief under Force Majeure on account of not acceptable in the test of impossibility. However an Epidemic / pandemic situation is regarded as Force Majeure situation and Party can get the relief.

In the absence of force majeure clause, a party which is unable to perform its obligations due to an unforeseeable event outside its control should try to rely on the doctrine of frustration if it is to avoid liability for non-performance of the agreement.

A proper invoking of Force Majeure saves the organization from delay / default of the ongoing contract.

*This briefing note is for general information. For advice in applying this general information to your specific circumstances, please contact us on following details.*

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