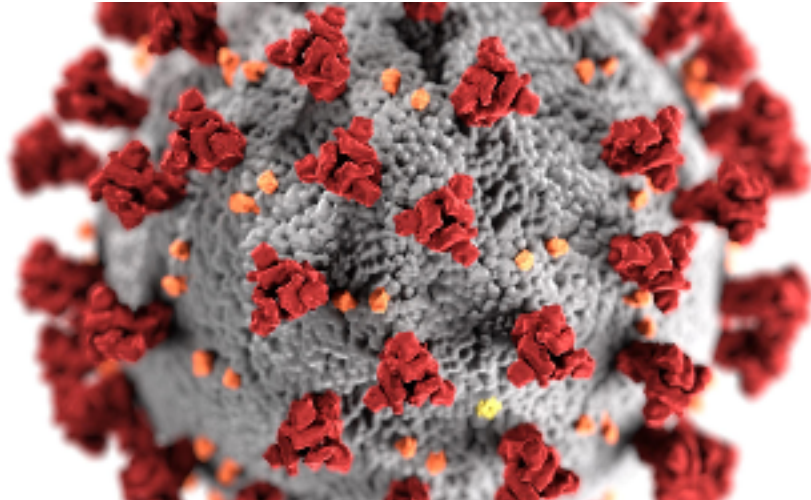




Impact of COVID-19 and handling of events that are beyond the control of parties to a contract

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Some contracts include a 'force majeure clause' which provides that on the happening of a specified event that is beyond the control of the parties' to the contract, either of the said parties has recourse to:

- I. terminating the contract (or in some instances the contract may be terminated automatically)
- II. being excused from performance of the contract, in whole or in part
- III. suspending performance of the contract or claiming an extension of time for performance.

Examples of force majeure events may include:

1. war
2. strikes
3. legislative or administrative interference
4. an embargo
5. the refusal of a licence
6. abnormal storm or tempest
7. flooding that inhibits shipment to river ports
8. interruption of the supply by rail or raw material
9. the accidental breakdown of machinery
10. pandemics

However, it will be necessary to check and see if the definition of force majeure in your specific contract is wide enough to cover the impact of COVID-19.

Moreover, a party wishing to trigger a force majeure clause should consider the following:

- I. Whether the contract defines the occurrence of a pandemic as a force majeure event.. Ordinarily a contract will list a series of circumstances with some common characteristic that will be considered force majeure events.
- II. It must be apparent that the force majeure event has an impact on the performance of the contract. The party seeking to rely on the force majeure event must prove that performance has been prevented being physically or legally impossible, not merely more difficult or unprofitable
- III. The need for a party seeking to rely on force majeure to give notice to the other party to the contract in order to activate it. It is prudent for the notice to provide supporting details of the force majeure event and how it will affect performance of the party seeking to rely on the event.
- IV. The need for the party seeking to rely on the event to mitigate the impact of the force majeure event on the unaffected party. In many instances the affected party would be wise to pursue alternative ways of performing its obligations.