

## COVID-19 & CONTRACTS

With the continuous rise of coronavirus (COVID-19) cases and with no sight of this epidemic ending anytime soon, it is certain that businesses will face difficulty in fulfilling contractual performance due to newly imposed regulations which prohibits certain mass gathering events or quarantine measures or even travel ban restrictions which might render unwarranted delay or might even result any contract obligation to be literally impossible to perform in which it is said that the contract to be frustrated.

In most well written contracts, there will be boilerplate clauses such as the *force majeure* clause. A *force majeure* essentially means unforeseeable circumstances that prevents the performance of a contract such as an Act of God or Act of Government or any other circumstance beyond the parties' control. Therefore, a *force majeure* clause essentially allows parties obligations in the contract to be suspended or be absolved from liabilities for non-performance or delay in discharging performance in the contract as well as enabling parties to terminate the contract wholly. In the event, there is an absence of a *force majeure* clause, this will then depend on whether there is a frustrating event which makes the contract to be impossible to be performed which will allow the contract to be void.

Additionally, if a contract is deemed to be frustrated, the Court has an extensive discretion in determining the parties' interests including but not limited to restoration of parties to their original position prior to the frustration of the contract such as restitution of any monies paid and any expenses incurred.

Lastly, despite that coronavirus might be regarded as a *force majeure* event, other circumstances will have to be taken into account in determining whether the contract is to be frustrated such as there must not be a foreseeable event prior to the coronavirus outbreak that might have frustrated the contract and that there must be a causation link between the coronavirus epidemic that causes the contract to be frustrated as well as parties have taken necessary steps to mitigate its losses by creating a win-win situation for both parties as opposed to immediately ending all contractual relationships.

Consequently, all businesses are advised to review all previously signed contracts and making sure that the contracts incorporate force majeure clause or any other clause in the contract which might be able to be relied upon. Alternatively, parties should renegotiate by entering into a new contract and carefully incorporating all the right terms and covering all possibilities which might arise in future. There is no definite solution as all parties' contractual relationships are distinct from each other and will be dependent on the nature of the contract and parties' obligations to the contract as well as foreseeability of changes in this vulnerable economy.

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