

# Is COVID-19 still considered a force majeure event under Qatar law?

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COVID-19 continues to disrupt businesses globally. They have struggled to adjust to the new way of operating amid COVID-19 restrictions. Many have also found it increasingly difficult to perform their contractual obligations. Force majeure has become an increasingly popular form of relief sought by struggling businesses because of the impact of COVID-19.

This article discusses whether COVID-19 can still be considered a force majeure event, given the availability and increasing supply of COVID-19 vaccines.

## Is COVID-19 a force majeure event?

The starting point for parties is to review their contracts to ascertain whether there is a force majeure clause and if the definition of "force majeure" is broad enough to cover COVID-19 and its effects. For example, "force majeure" is defined in the standard FIDIC contracts typically used in the Middle East. The force majeure clauses also include a non-exhaustive list of events or circumstances that could be considered force majeure, but a pandemic is not on that list. The extent to which COVID-19 could be considered a force majeure event under a standard FIDIC contract would depend solely on the facts and the effect COVID-19 has on the performance of a party's obligations.

For a party to be entitled to relief for force majeure under a standard FIDIC contract, the event must have prevented the affected party from performing its obligations. If a party can perform its obligations but the performance would become more difficult or expensive, this would not constitute force majeure.

## Force majeure under Qatar law

In the absence of a force majeure clause, Qatar law will apply. Whilst there is no express definition of "force majeure" under Qatar law, the concept of force majeure is recognised under Article 188 of the Qatar Civil Code. Force majeure is described under Article 188 as an event that is beyond the control of a contracting party and makes the carrying out or completion of a contractual obligation impossible to perform. A similar principle is also recognised under Article 402 of the Qatar Civil Code. Qatar law does not provide specific examples, nor does it define "pandemic" as a force majeure event.

Notwithstanding the above, in order for an event to qualify as force majeure under Qatar law, the event must make the performance of a party's obligations impossible. The test for an event to qualify as force majeure under Qatar law is impossibility, not whether the event made it difficult for the party to perform its obligations. COVID-19 and its effects, including the restrictions on businesses and movement of goods and persons, could qualify as force majeure if they make it impossible for a party to perform its contractual obligations. If, for example, COVID-19 restrictions have forced a party to perform its obligations remotely or made performance more difficult, this would not amount to force majeure

because it is not impossible for the party to perform the obligations.

## Relief for COVID-19 as a force majeure event

Under a standard FIDIC contract, the affected party is not required to perform the obligations affected by force majeure. A contractor could also be entitled to an extension of time and additional cost because of force majeure.

The relief for force majeure under Article 188 of the Qatar Civil Code is that the contract will be automatically terminated. The affected party will not be liable for its failure to carry out or complete the contractual obligations that are impossible to perform. If only part of the obligations are impossible to perform due to a force majeure event, the unaffected party can either enforce the other obligations that can be performed or demand termination of the contract.

Termination of contracts might not be the ideal relief for contracting parties if COVID-19 is a force majeure event because the effect of COVID-19 could be temporary and termination of contracts could adversely affect the parties' businesses. For this reason, contracting parties are often reluctant to rely on the relief provided under Qatar law.

## Is COVID-19 still a force majeure event?

With the development of various vaccines and their respective roll-out globally, the question arises as to whether COVID-19 could still be considered a force majeure event. Due to the limited supply of vaccines, countries around the world continue to struggle with new waves and strains of COVID-19. The restrictions and negative impacts caused by COVID-19 continue to affect businesses around the world and global supply chains remain under pressure.

We have recently seen contracting parties dealing with the consequences of COVID-19 and its effect in their contracts. To avoid relying on Qatar law, force majeure clauses should be amended to address the issue of COVID-19. In doing so, it should be noted that contracting parties are expected to mitigate the effects of COVID-19 when performing their obligations.

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