

The Force Majeure Clause and COVID 19 in Pakistan Jurisdiction

The outbreak of Coronavirus is having a significant impact of the global economy, as it has severely disrupted the demand-and-supply balance of the world and continues to paralyse businesses and economies worldwide. In light of this, this article will discuss the impact of Coronavirus on contracts and contractual arrangements between parties, with special emphasises on how it is viewed under Pakistani Law.

Due to the rapid spread of Coronavirus in Pakistan, the country is drifting towards a complete lockdown. It is foreseen, that the pandemic will have significant effect on businesses, workplaces, supply and distribution channels, labour and demand in the country. Therefore, it is important to discuss the impact, which the pandemic will have on contracts and the application of the *force majeure* clause in such contracts.

It is interesting to note that the term *force majeure* does not have a statutory definition in Pakistan but it has been defined and given a shape through case law, as the laws of Pakistan and its legal system finds its roots from the Common Law. The Islamabad High Court discussed the definition of *force majeure* in: *Atlas Cables (Pvt.) Limited vs. Islamabad Electric Supply Company Limited, 2016 CLD 1833 (Islamabad)*. In the judgment the Court relied on Advanced Law Lexicon by P. Ramanatha Aiyar, 3rd ed., which explained *force majeure* in the following words:

“...[E]vents outside the control of the parties and which prevent one or both of the parties from performing their contractual obligations; A contract provision that stipulates that unforeseen events... will excuse a party from its duty to perform the contract; A contractual provision allocating the

risk if performance becomes impossible or impracticable as a result of an event or effect that the parties could not have anticipated or controlled.”

The judgment of the Islamabad High Court concluded that:

“...[F]orce majeure refers to legal or physical prevention and not economic profitability.”

Force majeure is a standard clause in most contracts. The *force majeure* clause may usually provide, a list of specific *force majeure* events but the lists are deemed to be inclusive and do recognize that there may be such events that are not specifically part of the contract but are, nonetheless, unforeseeable and unavoidable. Therefore, a pandemic like Coronavirus may not be specifically mentioned in the contract but it may be covered or addressed within other *force majeure* events such as government orders, national emergencies, or acts of God.

In light of the above, what triggers as a *force majeure* event, depends on the wording of the *force majeure* clause. For example, if the *force majeure* clause states that the *force majeure* event has affected the ability of a party to perform its contractual obligations, then in that case, that party is required to demonstrate that its performance under the contract has become impossible to carry out due to the *force majeure* event and that it is not merely difficult or costly to perform. Furthermore, in order to invoke the *force majeure* clause, the affected party has to show that it has taken all reasonable steps to mitigate the event and its consequences.

Furthermore, the Supreme Court of Pakistan has relaxed the limitation law in respect of court filings, hence recognizing the pandemic. This will have an influencing effect on any court in

Pakistan later faced with interpreting force majeure in connection with COVID 19.

In the conclusion, it is important to note that like many other jurisdictions in the world, the courts in Pakistan also fully recognize the *force*

majeure clause in contracts. It can be foreseen that, due to the outbreak of the pandemic Coronavirus a lot of litigation will follow, where parties will be invoking the *force majeure* clause in order to relieve their contractual obligations.

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