

" APPLICABILITY
OF FORCE
MAJEURE DURING
PANDEMIC IN THE
UAE: RECENT
COURT RULING



Before attempting to rely on a "force majeure" provision in reaction to the Covid-19 outbreak, businesses operating in the United Arab Emirates (UAE) must carefully review the terms of their contracts and brush up on their legal skills. Due to the global coronavirus pandemic (COVID-19), which has made it more difficult for many suppliers and counterparties to meet their contractual obligations, there have been increasing claims and notifications to contracting companies. Companies need advice more than ever on their options for legal action and other types of redress during these historic times. In light of recent UAE rulings, this article examines how contracting parties may use force majeure and end their agreements due to the Covid-19 epidemic.

How Does Force Majeure Work?

A provision is known as "force majeure" is included in contracts to release parties from responsibility for inevitable natural disasters that alter the course of events and prohibit participants from completing their contractual obligations.

Provision on Force Majeure under Civil Transaction Code

According to **Article 273 of the UAE Civil Code**, an event must make it impossible to fulfil a commitment to qualify as a force majeure occurrence (Federal Law No. 5 of 1985, as amended).

According to **Article 273**, *"In contracts binding on both parties, if force majeure supervenes which makes the performance of the contract impossible, the corresponding obligation shall cease, and the contract shall be automatically cancelled."*

According to the legislation, the party asserting a Force Majeure event should prove the following:

- Because of the occurrence, the obligation could not be performed;
- When the Contract was reached, it wasn't anticipated; and
- Either the event or the effect is unavoidable.

Three different forms of impossibilities that might hinder the obligor from fulfilling its contractual obligation are listed in Article 273:

- Total impossibility,
- Partial impossibility, and
- Temporary impossibility.

The duties of an obligor are discharged in cases when a force majeure occurrence renders execution impossible. Unless it can be shown that the Contract may still function without the extinguished obligations, this will automatically void the corresponding obligation(s) of the obligee and lead to the "automatic cancellation" of the agreement.

The UAE law distinguishes between the partial and total impossibility of completing a contractual duty due to a force majeure incident. The impossible portion of the performance must end if the Force Majeure occurrence only partially affects your firm. Partially impossible performance entitles the affected party to terminate the agreement and give the other party notice of such termination. Temporary impossibility is subject to the same rule.

Essential Elements to constitute Force Majeure.

An event must meet all of the following requirements to be considered a force majeure event:

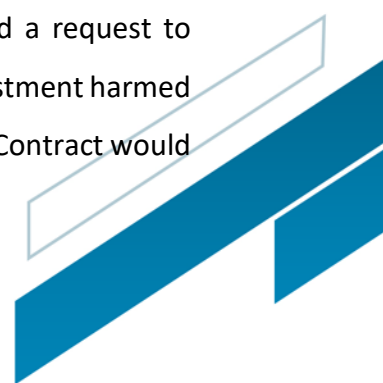
- (a) It must be beyond the control of the party owing the obligation;
- (b) It could not have been reasonably anticipated at the time the Contract was signed;
- (c) Its effects cannot be mitigated by taking reasonable precautions; and
- (d) There must be a causal connection between the event and the other events.

1. Unforeseeability

According to the **Abu Dhabi Court of Cassation Decision No. 835 of 2021**, a force majeure event must be unforeseeable when the Contract is made; that is, it must be an occurrence that the parties could not have foreseen at the time the Contract was made. It means that the event must not only make the performance of the Contract burdensome for the judgment debtor and an inconvenience but also make contractual performance impossible.

2. Impossibility of performance of Contract

In its **Decision No. 512 of 2021**, the Abu Dhabi Court of Cassation reviewed a request to terminate a contract due to force majeure and to reclaim payments for an investment harmed by the pandemic. Following **Article 273 of the Civil Code**, it was ruled that the Contract would



be cancelled. The relevant Contractual obligation would be eliminated if circumstances prevented the obligee from fulfilling their Contractual obligations. Additionally, the Court ruled that a claim for exemption from Contractual obligation based on a case of force majeure must establish that the loss only occurred due to the force majeure.

The Dubai Court of Cassation concluded in its **Decision No. 479 of 2021** that fulfilling Contractual obligations outlined in binding contract clauses are impossible by force majeure. In this case, neither a total nor a partial or temporary impossibility was invoked by Defendant. The Covid-19 epidemic did not cause the project to delay since Defendant had already issued a letter requesting a delay with a further extension of the delivery date.

Take Away

The pandemic's interruption won't always qualify as a case of force majeure that would allow for the termination of a contract. The cases examined above explain that the following must occur for a pandemic- related occurrence to qualify as force majeure:

- The asserted force majeure incident must be the only factor prohibiting performance;
- It was impossible to escape the pandemic's impacts;
- Instead of simply alleging that the pandemic has prevented the execution of the contract, the party claiming a pandemic-related force majeure event must detail how the pandemic has done so; and
- Total, partial, or temporary impossibility to accomplish are all possible.

It is challenging to establish that a contract has been frustrated, and force majeure provisions are often construed narrowly. Therefore, parties should consult counsel while structuring the contract, especially when incorporating the Force Majeure provision.

For more information related to the topic, please don't hesitate to contact HHS Lawyers and Legal Consultants.

