

코로나19, COVID-19 사태로 국제계약의 계약불이행 관련 불가항력 Force Majeure 조항

관련 실무적 Check Points, Action TIPS – 외국 로펌의 영문버전 포스팅



링크: [COVID-19 Contractual performance – Force Majeure clauses and other options:](#)

[a global perspective](#)

[국제계약의 불가항력 조항 검토 포인트 - Reviewing a Force Majeure clause](#)

The review of an express Force Majeure provision might include considering the following questions:

- Are we the affected party or the unaffected party?

- Is COVID-19 a type of event that triggers the relevant clause? Obvious possibilities include a "disease", an "epidemic" or a "pandemic". Some clauses include sweeping language such as "any event or circumstance beyond the reasonable control of the affected party" while others are limited to major events such as earthquake, war, explosion, fire and flood. Governmental action is another particularly helpful category for affected providers.

- Is the waiver of obligations limited to failures due to a Force Majeure event or only those that could not have been prevented through reasonable means (such as workaround plans)?

- Must performance be "prevented" (essentially impossible) or is it sufficient for performance to be "delayed" or "hindered" for the clause to excuse contractual obligations?

- What is the impact of the party's own actions in contributing to its inability to perform?

For instance, if it has imposed a travel ban that has meant it is unable to perform, does that limit its ability to rely on the Force Majeure clause?

- When should notice be given? Should it be when there is an actual impact, or a possible impact? Does giving notice have adverse contractual effects, such as beginning a period for correction and restoration of full performance?

- Is there an obligation to take steps to mitigate the consequences of the event? If so,

which party has (or which parties have) that obligation? Are they described in the contract (such as a specific disaster recovery or business continuity plan)?

- Is there an obligation to report to the other party on a continuing basis as to the steps being taken and/or the expected impact of the event?

- Does either party have [the right to terminate or delay performance of the contract](#) if the clause has been invoked? If so, after how long?

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