



Force Majeure – means "Superior Force"

FAQs on - Force Majeure

1.	What is Force Majeure?
	<p>A common clause in Contract / Agreement that essentially frees parties from liability or obligation when an extraordinary event or circumstance beyond their control happens.</p> <p>In the absence of a force majeure clause, parties to Contract / Agreement are left to the mercy of the narrow common law contract doctrines of "impracticability" and "frustration of purpose," which result in excuse of performance.</p>
2.	What incidents or circumstances can be considered as Force Majeure Event?
	<ul style="list-style-type: none">➤ natural disasters like hurricanes, floods, earthquakes, and weather disturbances; or➤ war, terrorism or threats of terrorism, civil disorder, labour strikes or disruptions, fire, disease or medical epidemics or outbreaks, and curtailment of transportation facilities; or➤ Act of God i.e. incident outside the reasonable control of a party;➤ Event materially affects the ability of one or more of the parties to perform their contractual obligations etc.
3.	Is outbreak of COVID-19 a force majeure situation?
	<p>Government of India have issued office memorandum No. 18/4/2020-PPD dated 19th February, 2020 and notified that the COVID-19 pandemic will be treated as a Force Majeure event. The Government of India has clarified that the disruption of the supply chains due to spread of coronavirus in China or any other country should be considered as a case of natural calamity and “force majeure clause” may be invoked, wherever considered appropriate, following the due procedure.</p> <p>Also, it is medical epidemic or outbreak and thus <i>can be considered as event</i> for invoking a Force Majeure.</p> <p>Whether the effect of the COVID-19 pandemic is treated as 'Force Majeure' will depend on the nature of the obligations and how they are affected by the pandemic.</p> <p>In light of the COVID-19 pandemic, <i>contracting parties will have to establish that the outbreak and its effects</i> have had unforeseeable consequences on the performance of their contractual obligations.</p>

4.	What is the significance of a Force Majeure clause?
	<p>The clause intends to <i>relieve a party of its contractual obligations</i> in cases where the failure to perform could not have been avoided by taking better care or due diligence.</p> <p>Exceptions: Force Majeure clause does not cover failure to meet contractual obligations due to :-</p> <ul style="list-style-type: none"> ➤ Negligence; or ➤ lack of available funds
5.	When one can Invoke Force Majeure Clause? What's Step One?
	<p>Make sure that the Contract / Agreement has a Force Majeure (FM) clause. This clause cannot be implied and in absence of it, the bar for showing frustration of a Contract / Agreement is much higher on the defaulting party.</p>
6.	When can a party to a Contract invoke 'Force Majeure' as a ground for non-performance of his/its Contractual Obligations?
	<p>For invocation Force Majeure, the event must have materially affected the contracting parties' ability to perform the Contract.</p> <p>The said invocation has to be in accordance with the terms of the force majeure clause and its consequences as may be mutually agreed upon by the contracting parties.</p> <p>The affected party is required to notify the other party about the occurrence of a force majeure event resulting into delayed performance or has rendered the Contract / Agreement impossible to perform, as the case may be. [<i>Timely Communication to the other Party(ies) is important so as to justify Defaulting Party's Claim at a later date</i>]</p>
7.	How to prove that an event was not “reasonably foreseeable” so as to claim the benefit of Force Majeure Clause?
	<ul style="list-style-type: none"> ➤ Generally Contract/Agreement contain list of the events that are to be considered as Force Majeure Event; or ➤ There could be specific phrases used such as such as “national emergencies,” “act of God,” “governmental actions or regulations,” or “acts beyond the control of the parties” etc. <p style="text-align: center;">Each case must be evaluated individually</p>
8.	Does Force Majeure clause offer relief from performance?
	<p>This actually depends upon the clause and vary case to case basis. Need is to check and follow the process steps set out in the Contract/Agreement.</p> <p>Any event '<i>beyond the reasonable control of the relevant party</i>' can only be relied on by a party if party had taken all reasonable measures.</p>

9.	In absence of Force Majeure clause can terms of Contract/Agreement be treated as void or terminated?
	<p>Yes. Section 56 of the Indian Contract Act, 1872 - <i>An agreement to do an act impossible in itself is void.</i> A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.</p> <p>If the contracting parties claim that the Contract is frustrated under Section 56 of the Contract Act, the Contract will be automatically terminated in its entirety. However, repudiating a Contract / Agreement under said Section 56 require substantial evidence.</p>
10.	Can Force Majeure Clause help in reducing risk of liability associated with the non-performance?
	<p>Yes. Force Majeure Clause if negotiated carefully plays important role in reduction of risk of liability associated with the non-performance due to occurrence of Force Majeure Event.</p> <p>Parties to Agreement / Contract shall seek necessary legal advice of Legal or Professional Experts prior to entering into a Contract / Agreement.</p> <p>Taking appropriate precautions can provide reassurance that, even in the worst of circumstances, one can have the flexibility to make the best decision(s).</p>

Contribution by – CS Nimisha Purohit and CS Sneha Puri

Please feel free to reach out to us to know more

E-mail us at	➤ kbaglacs@gmail.com ➤ maheshgbagla@gmail.com
Call us on	➤ +91-9049000431 ➤ +91-7249136913 ➤ +91-7875795779

Thanks and Regards
Team ~ K. Bagla & Associates

Your Compliance Partner

Disclaimer:

Views, opinions expressed herein this Note is for educational purpose only and shall not be considered as legal advice or guidance under any circumstances of whatsoever nature. Users are recommended to seek appropriate legal advice before acting further and the author takes no responsibility about his/her/its views stated herein.