

LIABILITY AND OBLIGATION

What might force majeure post-Covid look like?



Force majeure clauses can be invaluable for parties dealing with unforeseen circumstances. Covid-19 means they'll now become even more common in contracts. But what exactly are they – and how do they apply to today's changed world. **Evangelos Kyveris** explains.

Since the Covid-19 pandemic began, many businesses have found it difficult to fulfil their contractual obligations. As a result, force majeure provisions are coming into sharp focus as an increasingly attractive option for parties looking to avoid liability where, through no fault of their own, they can no longer meet their contractual obligations.



WHAT IS A FORCE MAJEURE CLAUSE?

A force majeure clause can be used as a way out of an existing contract following an event outside a party's control. So, should an uncontrollable event prevent one or all the parties from fulfilling their obligations, the contractual obligations and liabilities are excused or suspended.

Whether a force majeure clause relieves a party of contractual liability depends on the precise wording of the clause, the circumstances listed in it and the situation that has arisen. What's more, it's the responsibility of the party relying on the clause to show it's been affected by a particular circumstance.

Although each force majeure clause will vary and must be considered on its own terms, the most common elements are the:

- occurrence of unforeseen supervening events
- impact on performance
- contractual consequences where the clause is triggered and
- procedural steps to meet the contractual consequences.



CONTRACTS AND COVID-19

In a similar way that terrorism became a standard force majeure event after 9/11, from now on we should expect a term in force majeure clauses which specifically covers pandemics, epidemics and other similar events. Of course, this new change will take time as careful drafting is needed to understand the scope of such future risks.

“One of the contractual changes we should expect in the post-Covid-19 era is a term in force majeure clauses which specifically covers pandemics**”**