

## **COVID-19 BUSINESS IMPACT: OPPORTUNITIES AND RECOVERY**

As the COVID - 19 pandemic continues to disrupt commercial activities across the globe, there is a rising concern about the possible breach of contracts that may inadvertently result from such disruptions. The pandemic is a novel supervening event that is likely to unsettle the age-long principle of sanctity of contract as expressed in the maxim "*pacta sunt servanda*" meaning parties must keep their contractual promises.

With the imposition of lockdown measures, travel restrictions and social distancing policies across the globe, it has become increasingly imperative for businesses to be flexible and creative in order to remain profitable or even afloat. Businesses are having to rely more heavily on technology while also reviewing contractual terms and obligations and developing robust business continuity plans, which can be quickly deployed during eventualities like the COVID– 19 pandemic.

At present, an avalanche of disputes relating to the enforcement of contractual rights and obligations appears inevitable in the days ahead, which will test and possibly redefine the limits of the legal defences of "Frustration" and "Force Majeure".

The legal effects of the two defences are similar in that they respectively operate to alter the parties' contractual obligations in the event of an appropriate extraordinary event or circumstance. In applicable instances, they excuse an affected party from performing the contract (in whole or in part), they provide legitimate excuses for "delay in performance" and enable extension of time etc.

However, while "Frustration" is a general common law principle, "Force Majeure" is a contractual term which, as a legal concept, cannot be imputed into a contract. As it is now standard for contracts to contain "Force Majeure" provisions, the pertinent questions are whether it can be interpreted to apply and cover instances of COVID– 19 firstly based on the specific wording of the relevant term and or whether where the relevant term includes "Act of God", a more liberal interpretation stance would be taken by the Courts to cover a pandemic that is man-made having remote causation and unforeseen impacts. The question also exists whether in the event of future pandemics, their disruptive impacts can be classified as "unforeseen" following on from the lessons from COVID– 19.

With the lessons from the pandemic, it is expected that going forward, business contracting as indeed operations would be both more flexible and appropriately robust to absorb the shocks that may result from future pandemics or natural disasters. The way forward for businesses may include, but not limited, to the following measures:

1. Insurance policies in respect of unforeseen man-made eventualities like COVID -19.
2. Deployment of robust business continuity strategies and flexible operational models with capacity to adapt quickly to possible changes or needs.

3. Expansion of 'Force Majeure' provisions to accommodate novel eventualities like COVID -19.
4. Promoting and encouraging e-commerce friendly legislation as well as legislation specifically aimed at the impacts or fallouts of COVID-19.

For businesses requiring advice and or support in relation to present challenges connected with COVID – 19 pandemic and those seeking to restructure their business against the impact of possible future pandemics, please contact us at [b.j.bulama@twentyfour-law.com](mailto:b.j.bulama@twentyfour-law.com) and, or [info@twentyfour-law.com](mailto:info@twentyfour-law.com).



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