

COVID-19 Pandemic

The coronavirus disease 2019 (COVID-19) was first reported in Wuhan, China, in December 2019 and has since spread globally rapidly. The World Health Organization declared COVID-19 to be a pandemic on 11 March 2020, and on 3 April 2020, the Singapore government implemented an elevated set of safe distancing measures as a circuit breaker to pre-empt the trend of increasing local transmission of COVID-19 (CB Measures).

The CB Measures aim to reduce much more significantly movements and interactions in public and private spaces in Singapore, and involve the closure of all physical workplace premises (save for certain essential services) from 7 April 2020 to 1 June 2020.

What Is Force Majeure?

A *force majeure* clause allocates risks for events beyond a party's control, and which restrict or make impossible the ability of a party to perform its obligations under the contract. It typically allows a party to suspend or terminate the performance of its obligations under a contract when certain events arise that are unforeseen and beyond the parties' control. The list of *force majeure* events to be included is a matter of negotiation between the parties to the contract. However, these commonly include war, riots, fire, hurricane, typhoon, earthquake, lightning, explosion, strikes, lockouts, floods, other natural disasters and government actions prohibiting or restricting a party from performing its obligations under the contract.

Is COVID-19 a Force Majeure Event?

Whether COVID-19 would constitute a *force majeure* event would be strictly dependent on the wording of the *force majeure* clause. Some *force majeure* clauses expressly list an "epidemic", "pandemic" or "disease" as examples of *force majeure* situations, but their application will depend on the extent to which COVID-19 has prevented their performance. Numerous countries, including Singapore, have also ordered lockdowns and closed offices and factories due to the COVID-19 outbreak. As such, "government actions prohibiting or restricting a party from performing its obligations under the contract" could also allow some parties to invoke the *force majeure* clause.

Force majeure clauses sometimes do not list specific examples, but instead refer to events beyond the parties' control, which make it impossible or illegal for parties to fulfil their contractual obligations. The party seeking to rely on the *force majeure* clause must demonstrate that the COVID-19 outbreak has made it impossible, and not just more costly, for it to fulfil its obligations under the contract.



Unable to Rely on a Force Majeure Clause?

If the contract does not contain a *force majeure* clause or the parties are unable to rely on the *force majeure* clause in the contract, the parties may attempt to rely on the common law doctrine of frustration. Please see a brief summary of the difference between *force majeure* and frustration below. For more information, please refer to our article "[Comparison of Force Majeure and Frustration](#)".

Force Majeure	Frustration
Contractual principle – <i>force majeure</i> event must be stated in contract	Common law principle – radical change in circumstances must be demonstrated
Obligations may be suspended, deferred or terminated	Contract may be terminated

Singapore has on 7 April 2020 passed the COVID-19 (Temporary Measures) Act, giving temporary relief from some contractual obligations. It will only apply to certain contracts entered into or renewed before 25 March 2020, and to obligations to be performed on or after 1 February 2020. The relief is temporary – the obligation must be performed at the end of the suspension period. The right to claim frustration or *force majeure* is unaffected. For more information, please refer to our article "[Summary of the Singapore COVID-19 \(Temporary Measures\) Bill](#)".

Conclusion

Parties should seek legal advice on whether the current COVID-19 outbreak constitutes a *force majeure* event under their contracts, or whether they are able to rely on the doctrine of frustration or the COVID-19 (Temporary Measures) Act.

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