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Revisiting Force Majeure and Dispute Resolution Clauses in Light of the Recent Outbreak of the Coronavirus

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The recent outbreak of the novel coronavirus COVID-19 has had and continues to have a devastating impact on human health and life around the globe, with significant repercussions for businesses worldwide. This client alert highlights some of the contractual issues that companies are facing in deciding whether their contracts permit them or their counterparties to declare force majeure to excuse contractual obligations in light of the impact of the growing epidemic. Contracting parties' rights and obligations in this regard are a function of the language of the force majeure clause, the governing law clause, and the dispute resolution procedures agreed in the contract. Even those companies not yet affected by the coronavirus may benefit from a careful analysis of the interplay of these contractual provisions in their existing and contemplated future contracts to assess their rights if future unexpected events affect the parties' ability to perform their contractual obligations.

COVID-19: Current State of Impact

Since its first detection in Wuhan, China in December 2019, COVID-19 has had a significant toll on human health and life. Tens of thousands of people have been infected, and thousands have died. Millions more have been affected by government efforts in China and around the world to slow the spread of the epidemic through quarantines, travel restrictions, heightened border scrutiny, and other measures.

The epidemic and government measures taken in response have also had a significant impact, both direct and indirect, on businesses and commercial relations, as worker shortages have occurred; supply chains have been disrupted; facilities and production have been suspended; and demand for certain goods and services have fallen. The impact has been particularly pronounced in business sectors that rely on global supply chains and other cross-border industries, including

manufacturing, construction, mining, commodity markets, shipping, tourism, aviation, and oil and gas. The consequences have reached far beyond China—companies across the world have been affected.

As a result of these effects caused by the epidemic and government measures taken in response, more and more companies are reportedly declaring force majeure, citing inability to perform their contractual obligations. For example, China National Offshore Oil Corporation (CNOOC) reportedly invoked force majeure under liquefied natural gas contracts with several suppliers, including Royal Dutch Shell Plc and Total SA, both of which rejected the force majeure notice.[1] Other widely reported instances of companies declaring force majeure include Guangxi Nanguo Copper, a Chinese copper smelter, and Jiangsu New Time Shipbuilding Co., a Chinese shipbuilder.[2]

Indeed, the China Council for the Promotion of International Trade (CCPIT) (affiliated with the China Chamber of International Commerce) began issuing certificates of force majeure upon request to Chinese companies affected by COVID-19 in early February. The first such certificate was reportedly issued on February 2, 2020, to a Chinese manufacturer of automotive parts that supplies Peugeot. Since then, CCPIT has issued over 3,000 certificates in relation to contracts with an aggregate value of ¥270 billion (almost US$40 billion).[3] Moreover, on February 10, 2020, the Legislative Affairs Commission of the Standing Committee of the National People's Congress announced that, in its view, measures taken by the Chinese government in relation to the coronavirus outbreak should be regarded as force majeure events.[4] It is not clear what contractual or legal significance these certificates or the Legislative Affairs Commission's announcement may have on parties' rights under contracts, but the growing impact of the coronavirus on commercial relations is gaining attention at the highest levels of business and government.

The Operation of a Force Majeure Clause

Force majeure clauses differ considerably from contract to contract, but often have several key features. Different legal systems also have different approaches to force majeure; the governing law of the contract will influence how any force majeure clause will be interpreted and will

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[1] Stephen Stapczynski, *Shell, Total reject China's force majeure on LNG shipments*, World Oil (Feb. 7, 2020), https://www.worldoil.com/news/2020/2/7/shell-total-reject-china-s-force-majeure-on-lng-shipments.

[2] Tom Daly, *China copper smelter Guangxi Nanguo declares force majeure amid coronavirus: sources*, Reuters (Feb. 7, 2020) (reporting on Guangxi Nanguo), https://www.reuters.com/article/us-china-health-copper/china-copper-smelter-guangxi-nanguo-declares-force-majeure-amid-coronavirus-sources-idUSKBN2010NL; Aradhana Aravindan and Jessica Jaganathan, *Singapore builders seek force majeure advice as coronavirus causes labor crunch*, Reuters (Feb. 18, 2020) (reporting on Jiangsu New Time), https://www.reuters.com/article/us-china-health-singapore-construction/singapore-builders-seek-force-majeure-advice-as-coronavirus-causes-labor-crunch-idUSKBN20C0EI.

[3] Zhong Nan, *Force majeure certificates issued for companies affected by epidemic*, China Daily (Feb. 21, 2020), https://www.chinadaily.com.cn/a/202002/21/WS5e4fe598a31012821727967f.html.

[4] CCPIT, CCPIT Commercial Certification Center Provides Force Majeure Certificates of Novel Coronavirus Pneumonia Service (Feb. 21, 2020), http://en.ccpit.org/info/info_40288117668b3d9b0170671f67f30716.html.

determine the extent to which parties can be excused from their contractual obligations even in the absence of an express force majeure clause.

– Background on force majeure and what force majeure clauses typically look like

Force majeure refers to an event beyond the control of the parties that prevents a party from fulfilling its contractual obligations. The concept has its roots in Roman law, and the term—translated literally from French—means “superior force.” The doctrine of force majeure is recognized in many civil law systems and is loosely related to the doctrines of impossibility, impracticability, and frustration of purpose that exist in some common law jurisdictions in that it may discharge a party from certain contractual obligations in narrow circumstances in which performance has been rendered impossible or impracticable, or the purpose of the contract has been frustrated due to events beyond the parties’ control.

Although some jurisdictions may imply a right to declare force majeure into contracts that are otherwise silent, force majeure is largely a contractual concept that depends on the precise language drafted by the contracting parties. The governing law agreed by the parties in the contract informs how a force majeure clause will be interpreted. Industry or trade practice can also be relevant to the interpretation of the force majeure clause.

A typical force majeure clause defines a force majeure event by setting forth certain requirements that must be established, such as an event that is not within the reasonable control of the parties, that was not reasonably foreseeable, the effects of which cannot be avoided through reasonable efforts or due diligence, and that materially affects the ability to perform contractual obligations. Clauses typically require that contractual performance be impossible in light of the event, not simply more burdensome. Therefore, a mere increase in the price of supplies or labor, by itself, would generally not be sufficient for invoking force majeure. Some clauses also expressly excuse delays in performance.

Some clauses set forth additional requirements on the party declaring force majeure, such as a duty to mitigate damages and an obligation to provide certain notice to the counterparty. For instance, the clause may require notice as soon as possible following the occurrence of the force majeure event and may set forth an obligation to keep the other party informed until it is able to resume its contractual obligations. It may also require reasonable endeavors to resume performance as soon as reasonably practicable.

In addition to or instead of defining a force majeure event, many force majeure clauses provide a list of examples of force majeure events. Depending on the language of the clause, the list may be exhaustive or non-exhaustive. The most common examples in such lists are natural events (such as acts of God, floods, fires, earthquakes, hurricanes, etc.). Other clauses include political or human events (such as acts of war, civil strife, invasion, riots, labor strikes, etc.), although some clauses intentionally omit reference to

government measures. In addition, some clauses expressly mention epidemics, but this is less common, outside certain industries. Some clauses also include a generic, "catch-all" phrase like "any other events or circumstances beyond the reasonable control of the party affected" following the list of force majeure events. Other force majeure clauses may include a list of excluded events that do not constitute force majeure, such as financial hardship.

If a force majeure event has occurred within the meaning of the contractual definition, and a party cannot perform its obligations, a typical force majeure clause excuses that party's performance. Some clauses are more concrete than others on the consequences of a force majeure event and the duration of any excused non-performance. Some clauses may allow a party to terminate the contract in certain circumstances. Some clauses expressly exclude payment from the obligations that may be excused. In sum, the precise language of the clause and the governing law applicable to interpreting the clause are critical to understanding the operation of the force majeure clause in any particular contract.

Although clauses may differ considerably, one somewhat detailed example of a force majeure clause is the following:

> No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement [(except for any obligations to make payments to the other party hereunder)], when and to the extent such failure or delay is caused by or results from the following force majeure events ("Force Majeure Events"): (a) acts of God; (b) flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order or law; (e) actions, embargoes or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; (g) national or regional emergency; [(h) strikes, labor stoppages or slowdowns or other industrial disturbances;] [and] [(i) shortage of adequate power or transportation facilities;] [and] [(j) other [similar] events beyond the [reasonable] control of the party impacted by the Force Majeure Event (the "Impacted Party")]. The Impacted Party shall give notice [within [NUMBER] days of the Force Majeure Event] to the other party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of [NUMBER] days following written notice given by it under this Section

[X], [either party/the other party] may thereafter terminate this Agreement upon [NUMBER] days' written notice].[5]

Whether the impact of the coronavirus or government measures taken in response falls within the scope of a particular force majeure clause requires a careful legal analysis of the contract language in light of the governing law (discussed in more detail in the following section). The governing law may affect whether requirements outside those expressly enumerated may be taken into account in determining whether a force majeure event has occurred, and if a party has properly invoked force majeure as an excuse for performance.

Other provisions in the contract may have a bearing on how an unforeseen event affects contractual obligations. Some contracts may have provisions regarding risk allocation, e.g., relating to changes in law or regulations. Maritime contracts involving charter parties often contain specific clauses on infectious diseases and their consequences. Some contracts include so-called "hardship" clauses that allow a party suffering hardship—a concept that may or may not be defined under the contract—to notify the counterparty and request negotiations to address the effects of the alleged hardship (but often such clauses do not specify the consequences of a failure to reach agreement on how to address alleged hardship).

The burden of establishing that the requirements of the clause have been satisfied will typically rest on the party invoking the force majeure clause. As each contract is unique, legal advice is important to navigate the nuances and issues raised.

– Approaches to force majeure in different jurisdictions

Force majeure under U.S. law

Although the law regarding force majeure clauses differs among U.S. states, force majeure is not usually implied into contracts—the parties must have expressly provided for force majeure as an excuse for non-performance. Most U.S. states construe force majeure clauses narrowly and generally require that the intervening event must have been unforeseeable and beyond the control of the parties.[6] The language of the contract is often of primary importance; even when an extreme and unforeseeable event happens, a party generally must establish that the incident falls within the contractual definition of a force majeure event.[7] A party relying on a force majeure clause to excuse performance also

[5] Westlaw Practical Law Commercial Transactions, General Contract Clauses: Force Majeure, available at https://1.next.westlaw.com/.

[6] In *re Cablevision Consumer Litigation*, 864 F. Supp. 2d 258 (E.D.N.Y. 2012).

[7] *Reade v. Stoneybrook Realty, LLC*, 63 A.D.3d 433, 882 N.Y.S.2d 8 (1st Dep't 2009).

typically bears the burden of proving that the event was beyond its control and without its fault or negligence.[8]

Under New York law, force majeure clauses are narrowly construed; the clause must contemplate the specific event that allegedly prevented performance.[9] When a force majeure clause contains an expansive catch all phrase in addition to specified events, New York courts recognize only events that are the same kind as those listed in the contract, rather than giving it the most expansive meaning possible.[10] Force majeure is limited to a wholly unforeseeable event that makes performance objectively impossible—unanticipated difficulties do not suffice.[11] Furthermore, a party is not relieved of liability if it was also negligent in contributing to the injury caused by the force majeure event.[12]

Related concepts of impossibility, impracticability, and frustration of purpose may apply, depending on the jurisdiction and the language of the contract. Under some states' laws, a party may be relieved from a contractual duty if performance is made impracticable, through no fault of that party, by the occurrence of an event that had not been assumed to occur when the contract was concluded.[13] Impracticality usually requires more than a mere change in the level of difficulty or cost, such as higher wages, unless the increase or other change is far beyond the normal range. Under some states' laws, the frustration of purpose doctrine excuses contractual performance that remains possible but the expected value of performance to the party seeking to be excused has been destroyed by the supervening event.[14]

Force majeure under English law

Similar to the situation under the law of most U.S. states, force majeure is not implied into contracts under English law. Where a force majeure clause exists in a contract, it is strictly interpreted under English law. The force majeure event must be the primary and sole cause of the failure or inability to perform—where there is a cause in addition to the force majeure event that prevented performance, the force majeure clause cannot be relied

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[8] *Phillips Puerto Rico Core, Inc. v. Tradax Petroleum Ltd.*, 782 F.2d 314, 319 (2nd Cir. 1985) (citing Corbin on Contracts § 642 at 73 (1960)).

[9] *Phibro Energy, Inc. v. Empresa De Polimeros De Sines Sarl*, 720 F. Supp. 312, 318 (S.D.N.Y. 1989) (citing *Kel Kim Corp. v. Central Markets, Inc.*, 524 N.Y.S.2d 384, 385 (1987)).

[10] *Team Marketing USA Corp. v. Power Pact, LLC*, 839 N.Y.S.2d 242 (3d Dep't 2007).

[11] *Phibro Energy, Inc. v. Empresa De Polimeros De Sines Sarl*, 720 F. Supp. 312, 318 (S.D.N.Y. 1989).

[12] *Team Marketing USA Corp. v. Power Pact, LLC*, 839 N.Y.S.2d 242 (3d Dep't 2007).

[13] Restatement Second, Contracts § 261; see also *Consumers Power Co. v. Nuclear Fuel Services, Inc.*, 509 F. Supp. 201, 209 (W.D.N.Y. 1981).

[14] *RFF Family Partnership, LP v. Link Development, LLC*, 962 F. Supp. 2d 344 (D. Mass. 2013).

on.[15] The party invoking force majeure must typically establish that a superseding event beyond the reasonable control of the parties has occurred; the event could not have been avoided or mitigated by taking reasonable steps; and the force majeure event has caused an inability to perform its contractual obligations.[16] Even where the contract does not expressly provide it, the court may find that the parties are obliged to take reasonable steps to mitigate the harm from a force majeure event.[17]

In the absence of a force majeure clause, the frustration doctrine may excuse performance. Related to the historical doctrine of impossibility, frustration of contract occurs "when there supervenes an event (without default of either party and for which the contract makes no sufficient provision) which so significantly changes the nature (not merely the expense or onerousness) of the outstanding contractual rights and/or obligations from what the parties could reasonably have contemplated at the time of its execution that it would be unjust to hold them to the literal sense of its stipulations in the new circumstances."[18]

Force majeure under civil law

Many countries are civil law jurisdictions, with different rules in the civil codes governing force majeure events. Generally speaking, civil law jurisdictions imply the doctrine of force majeure into contracts to excuse performance in certain circumstances. Typically, a party must establish that the event was beyond the party's control; not reasonably foreseeable at the time the parties entered into contract; the consequences could not be avoided by appropriate measures; and performance has been prevented as a result.

Civil law jurisdictions have generally incorporated the definition of a force majeure event in their civil codes.[19] The doctrine of force majeure varies by country, with some adopting narrower approaches than others. Judges are left to assess the application of force majeure statutes on a case-by-case basis. Although the definition of a force majeure event varies, civil law jurisdictions typically provide that force majeure events free a party from compliance with the relevant contractual obligation.[20] As a general rule, force majeure

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[15] *Classic Maritime Inc v Limbungan Makmur SDN BHD* [2018] EWHC 2389.

[16] *B&S Contracts v VG Publications* [1984] ICR 419.

[17] *Classic Maritime Inc v Limbungan Makmur* SDN BHD [2018] EWHC 2389.

[18] *National Carriers Ltd v Panalpina (Northern) Ltd* [1980] UKHL 8.

[19] *See, e.g.*, French Civil Code, Art. 1218 ("In contractual matters, there is force majeure where an event beyond the control of the debtor, which could not reasonably have been foreseen at the time of the conclusion of the contract and whose effects could not be avoided by appropriate measures, prevents performance of his obligation by the debtor. If the prevention is temporary, performance of the obligation is suspended unless the delay which results justifies termination of the contract. If the prevention is permanent, the contract is terminated by operation of law, and the parties are discharged from their obligations under the conditions provided by articles 1351 and 1351-1.").

[20] Marel Katsivela, *Contracts: Force Majeure Concept or Force Majeure Clauses*, Unif. L. Rev. 102 (2007).

events must occur after the execution of the contract; the events must take place outside the party's conduct and control; the events must not have been foreseen at the time of contract; and the effects of the events must have been unavoidable by the party.[21] Force majeure events typically can originate in nature, can be acts of God, and can have a political character.

In many civil law jurisdictions, the unforeseeable element in the definition of force majeure is an objective standard assessed at the time of the execution of the contract. That is, a court will assess whether a reasonable person would have been able to foresee the occurrence of the event at the time of execution of the contract. The unavoidability of the event is also an objective standard measured at the moment the event occurred and asks whether the event could have reasonably been avoided.

As a general rule, the mere fact that the performance of an obligation has become more onerous does not qualify as a force majeure event.[22] In cases in which the effects of a force majeure event only last for a determined period of time, a party typically will only be excused from performing the contractual obligation during that period. Once the event ceases to exist, the party is again obligated to perform.[23]

In most civil law jurisdictions, parties can agree in their contracts to specific language governing the definition and consequences of a force majeure event.

Recommendations for Companies Affected by the Coronavirus or Other Unexpected Events

The coronavirus and the government measures taken in response are affecting companies around the world. Parties that have been or may be affected by these or other unexpected events may benefit from a thorough analysis of the interplay of the force majeure clauses, governing law clauses, and any dispute resolution provisions in their contracts to assess their rights and obligations in the face of unexpected events.

Even in contracts without express force majeure clauses, the parties may have rights and obligations in the face of unexpected events that are implied under the governing law, such as the force majeure doctrine in many civil law jurisdictions or other related doctrines (such as impossibility, impracticability, or frustration) in common law countries.

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[21] Dietrich Maskow, *Hardship and Force Majeure*, 40 Am. J. Comp. L. 657 (1992).

[22] Mahmoud Reza & Javad Zamani, *Force Majeure in International Contracts: Current Trends and How International Arbitration Practice Is Responding*, 33 Arbitration Int'l 3, 395 (2017).

[23] *Id*.

Moreover, even those companies that do not anticipate being affected directly or indirectly by COVID-19 may consider this a constructive time to review the terms of their contracts to examine their rights and obligations and options available for dispute resolution if performance becomes affected by some other unexpected event. Parties may draw lessons from the widespread impact of the coronavirus on international business in deciding whether to seek to renegotiate existing contractual provisions or negotiate future contracts to more adequately address the potential impact of other unexpected events that may affect the parties' ability to perform their contractual obligations. In particular, specific issues may arise when entering into contracts with parties in certain jurisdictions, such as China and elsewhere, where special care must be taken to draft effective contractual provisions, including force majeure clauses, governing law clauses, and dispute resolution provisions. For example, the laws of some jurisdictions may necessitate the inclusion of additional language in contractual provisions, such as arbitration agreements, to ensure enforceable rights.

– Establishing a force majeure event

  Parties contemplating a declaration of force majeure or receiving such a declaration from a counterparty should consider a number of questions in assessing whether a force majeure event has occurred within the meaning of the contractual clause (or governing law) to support a declaration of force majeure with respect to the coronavirus outbreak or government measures taken in response. Many of these questions are relevant, in the abstract, to other possible unexpected events that parties may face.

  Preliminarily, parties should examine whether it is the outbreak itself, or a government measure taken in response that prevents or causes a delay in performance of a contractual obligation. Some force majeure clauses cover natural events but not political actions, or vice versa. Obviously, an express inclusion of epidemics or public health events in a list of examples in the clause would make a force majeure claim in light of the current outbreak more likely to succeed. Parties should also determine whether unforeseeability is defined in the contract or interpreted under the governing law, as foreseeable events generally do not qualify as force majeure. And of course, for parties affected by the current outbreak, the coronavirus or a related government measure must be the actual cause of the inability to perform. Generally speaking, other causes not covered by the force majeure clause, including negligence or other fault, would likely prevent the party from invoking force majeure as an excuse for non-performance.

  A force majeure event may not exist if a party is able to avoid or overcome the inability caused by the alleged event and perform its contractual obligations. Even where an event otherwise qualifying as a force majeure occurs, if alternative means of performance are available—through other suppliers or manufacturers, for instance—the failure to perform typically cannot be excused.

Parties should be mindful that mere financial burden or decreased profitability would generally not qualify as a force majeure event under a force majeure clause or implied doctrines under the governing law. For instance, where a government measure or a natural event decreases the demand for a certain product or service, such a change in the market would usually not be considered one that is unforeseeable or that renders performance impossible.

– Obligations of the parties

Before invoking—or deciding whether to accept or reject—force majeure to excuse performance, parties should carefully review what is required under the contractual provisions and governing law to successfully claim and defend it.

For example, force majeure clauses often require the affected party to notify the other party, typically in writing, of the force majeure event as soon as practically possible. Some clauses stipulate the notice to be delivered to the counterparty within a certain number of days. They also usually require the party invoking force majeure to use reasonable efforts to limit the impact of the event on the performance of the party's contractual obligations.

Failure to satisfy these requirements—whether imposed by the contract or by the governing law—can result in the rejection or dismissal of a force majeure claim.

The contract and/or governing law may require the party invoking force majeure to undertake due diligence or reasonable efforts to continue performance. The party invoking force majeure may be required to mitigate the effect of the force majeure event, including by recourse to alternative sources of services, equipment, or materials in some situations. The party invoking force majeure may also be required to provide periodic reports to its counterparty regarding the progress of the force majeure event and any changes in the ability to perform. Some clauses may even mandate that the party invoking force majeure must submit a plan for addressing the consequences of the event. Other contracts require parties to renegotiate or modify the contract to reflect changed circumstances; sometimes, the contract requires such renegotiation to take place within a certain number of days. Failure to fulfill these obligations may affect the force majeure claim.

– Contractual consequences of invoking a force majeure clause

Before declaring force majeure or responding to a counterparty's declaration, parties should review what the contract provides about the consequences of invoking a force majeure clause. Declaring force majeure may discharge the entire contract or only a specific obligation. Some contracts stipulate the effect of a force majeure declaration on other obligations under the contract. For instance, some long-term delivery contracts (such as long-term sale and

purchase agreements) may excuse delivery of specified volumes in case of force majeure, which may raise questions about the extent to which such volumes must be delivered later and under what terms. Some clauses identify obligations that may not be excused—the most common example is payment.

Some clauses may also specify how long a suspension of obligations remains in effect. For example, a clause may not permit the indefinite suspension of performance but provide instead that force majeure only excuses performance for a specific period of time Some clauses may also require the parties to renegotiate or modify the contract to reflect changed circumstances.

– Dispute resolution

A party declaring force majeure or receiving a declaration from its counterparty generally has several options regarding next steps, depending on the language of the contract. First, it could seek to negotiate with the counterparty on how to address the declaration and the impact of the force majeure on the parties' commercial relationship. Second, if the parties cannot reach agreement, either party may consider whether it is able to pursue formal dispute resolution under the contract to resolve the dispute.

The parties should examine what dispute resolution, if any, is available under the contract to resolve a dispute between the parties as to whether a force majeure event has occurred and, if so, what the contractual consequences are. In particular, parties should examine whether the contract contains an arbitration clause, requiring the parties to arbitrate any dispute, or a forum selection clause, specifying the national court system in which the parties can or must litigate a dispute. Parties to international contracts often (but not always) include arbitration clauses as the means to resolve disputes. Given the pressing need to resolve any such disputes promptly, parties may want to explore whether it is possible to seek interim or provisional relief, either from an arbitral tribunal or a local court, depending on the dispute resolution clause in the contract. Some international arbitration rules provide for the possibility of emergency arbitration to address urgent issues that require decisions within a matter of days. Many arbitration rules or applicable arbitration laws also permit parties to seek interim or provisional relief from local courts, prior to the appointment of a tribunal. The options available to the parties will depend on the dispute resolution clause in the contract.

Looking beyond the coronavirus epidemic, there are many unexpected events and government measures taken in response that might constitute force majeure events excusing performance depending on the contract terms and governing law agreed by the parties. Before such events occur, parties may find it timely to reflect on how such unforeseen events may affect their commercial relations, and the extent to which the

contractual provisions in their existing or contemplated future contracts adequately address these risks, and, equally importantly, the extent to which they provide for effective dispute resolution mechanisms to resolve any disputes.

Conclusion

Whether or not companies are directly affected by the impact of the coronavirus and government measures taken in response, the outbreak is a reminder to all companies to review the terms of their contracts to determine their rights, obligations, and potential remedies, as well as dispute resolution options in the event of diseases, epidemics, and other unexpected events that may severely impact contractual performance. In general, force majeure clauses should be drafted to clearly indicate the events that qualify as force majeure; the requirements for the party declaring force majeure; and the consequences of a force majeure declaration, including the period of suspension and excused obligations. The interpretation of force majeure clauses depends heavily on the language of the contract, interpreted in light of the agreed governing law. Moreover, contracts should ideally include a dispute resolution clause that allows for an effective and enforceable means to resolve disputes that may arise, such as international arbitration. Parties are encouraged to consult legal experts who can help to draft such clauses and help to avoid or resolve disputes that may arise through international arbitration and other forms of dispute resolution.

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