

Running Head: Contract & International Trade Law Module

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Topic: Options Available to Companies who's Ability to Carry Out Contractual Obligations
Have Been Impacted by the Pandemic

OPTIONS AVAILABLE TO COMPANIES WHO'S ABILITY TO CARRY OUT CONTRACTUAL OBLIGATIONS HAVE BEEN IMPACTED BY THE PANDEMIC

Introduction

The pandemic caused by COVID-19 has resulted in significant disruptions in global supply networks and commercial operations. The actions that governments have taken to slow the spread of the virus have resulted in volatility in the financial markets, a decline in the price of oil, and an increase in the price of gold. This has resulted in severe repercussions for businesses since they may find themselves unable to meet their contractual responsibilities as a direct result of the epidemic. In this briefing, we will examine the options available to companies whose ability to carry out their contractual obligations has been impacted by the pandemic. It is still having an influence on the business sector, which is still suffering its aftereffects. The widespread spread of the coronavirus has wreaked havoc on the economy and been catastrophic for almost all companies¹. At every step of the supply chain, businesses are clearly putting themselves in a position where they run a larger risk of facing legal ramifications. When parties to a commercial transaction discover that they are unable to execute the obligations outlined in a contract, the process of carrying out such responsibilities becomes riddled with complications. Thus, companies all over the world need to consider the potential of reevaluating their present obligations in order to reach an adequate agreement on modifying their existing contracts if necessary. This is because reevaluating their commitments might help them save money. Despite this, some companies are doing in-depth analyses of the present circumstances in an effort to identify significant aspects of their contracts that can facilitate the termination of

¹ Chun-Ying, L. I. "The Language Features and Translation of Business Contracts." (2019).

disadvantageous agreements. Businesses who have been impacted by the Covid-19 epidemic and are unable to satisfy their contractual commitments might choose from a number of different choices that are accessible to them. This briefing is going to go through some of these possibilities in further detail.

The Basic Tenets of the Contract Law

Contract law governs agreements between parties, providing a framework for the enforcement of these agreements. The basic tenets of contract law include the following:

1. **Agreement:** In order for there to be a binding agreement between the parties, there must first be an agreement. This requires one side to make an offer, and the other party must accept that offer in order for this to take place. The stipulations of the deal ought to be understandable and devoid of any ambiguity.
2. **Consideration:** The term "consideration" refers to anything of value that is offered by one party to the other in return for something of value that is offered by the first party. This might take the shape of monetary compensation, an item, a service, or even a commitment to carry out a certain action².
3. **Capacity:** It is necessary for both parties to a contract to be able to fulfil their end of the bargain legally. This indicates that individuals must be of legal age, have the ability to make their own decisions, and not be subject to any kind of coercion or undue influence.

² Ezeldin A. Samer, and Amr Abu Helw. "Proposed force majeure clause for construction contracts under civil and common laws." (2018).

4. **Legality:** The subject matter of the contract has to be within the bounds of the law. Illegal activity or conduct that is in opposition to established public policy cannot be the subject of a legally binding contract.
5. **Intention to Create Legal Relations:** It is necessary for both parties to have the purpose of entering into legal relations. This indicates that both parties must have the intention for the agreement to be legally binding for it to take effect.
6. **Consent:** The conditions of the agreement must be freely and willingly accepted by both parties before the agreement may be considered valid. If the consent was gained dishonestly, under duress, or via undue influence, the contract may be null and invalid.
7. **Performance:** Both parties must perform their obligations under the contract. Failure to perform may result in a breach of contract, giving rise to legal remedies for the injured party.

These basic tenets form the foundation of contract law, and it is important for parties to understand these principles when entering into agreements. Failure to comply with these principles may result in the contract being unenforceable or result in legal **disputes.**²

Moreover, when a contractual duty is broken, there are often severe ramifications that follow. This awareness suggests that the parties bound by a contract should stick to the conditions that are outlined in the agreement that they signed. Despite this, violation of contract is only one of the numerous aspects that define carelessness. Carelessness encompasses a wide range of behaviors. This is to indicate that a breach of contract may occur as a result of actions of behavior or omission, and that individuals and parties who abandon their responsibilities are expected to have legal remedies available to them. As a consequence of this, violating a contract demonstrates either a partial or complete disregard for the responsibilities that are established in

the pact. Whenever a party is found to have broken the terms of a contract, the law stipulates that they should be held accountable for their actions via the appropriate channels. It is possible for the guilty parties to be held liable for any damages or losses that were brought about as a result of their actions or inactions, and they may be required to pay for such damages or losses. In many instances, the findings for the confirmed infractions result in punishment for either party in the form of monetary restitution, fines, or a directive from the court. A successful claim for breach of contract makes reference to the principles of tort and involves the assertion of duty, carelessness or cause, and loss³. This is necessary for the claim to be considered valid. This understanding suggests that aggrieved parties in a claim suit should assert that the defendant had a responsibility that they absconded, while their activities produced hurt or damages. This is because the defendant's conduct created the injury or damage. First and foremost, losses should be quantified and it should be demonstrated that they happened as a direct result of the other party's failure or reluctance to fulfill its contractual commitment.

Interpretation on the Covid-19 Crisis

The Covid-19 pandemic has had a detrimental effect not only on the economics of the globe but also on the way people live their lives. This epidemic has also had a direct influence on the health and well-being of millions of people. As a direct consequence of the pandemic, individuals, governments, and healthcare institutions are all confronted with difficulties that have never been seen before. The pandemic has had huge repercussions for the health of the general

³ Jayabalan, Sheela. "The legality of the doctrine of frustration in the realm of Covid-19 pandemic." (2020)

population, since millions of people have been infected while an equivalent number have lost their lives. The relevance of healthcare systems and their preparedness to deal with major crises in public health has also been brought to light as a result of the outbreak. The epidemic has also had a huge influence on the economy of the world, as a result of which a great number of companies have been compelled to discontinue or scale down their activities, and millions of people have lost their **employment**³. The epidemic has brought to light the vulnerabilities and inequities that exist within the global economic system. It has also brought to light the need of increased collaboration and assistance for those who are most adversely impacted.

The pandemic has also challenged individuals and communities, forcing them to adapt to new ways of living, working, and interacting with each other. The pandemic has highlighted the importance of resilience, innovation, and community spirit in the face of adversity. As vaccines become more widely available and governments begin to lift restrictions, there is hope that the world will eventually recover from the pandemic⁴. However, the pandemic has also exposed the need for greater investment in public health, healthcare systems, and global cooperation to better prepare for future crises

The majority of companies are still having difficulty recovering from the pandemic caused by COVID-19, despite the extensive efforts and precautions taken to prevent the spread of the coronavirus. After the first positive cases of Covid-19 were verified on March 11, 2020, the disease quickly escalated into a pandemic and has remained one ever since. Lockdowns,

⁴ “Pandemics, Public-Private Partnerships (Ppps), and Force Majeure: Covid-19 Expectations and Implications”

restriction of movement, and social distancing announcements are only some of the required steps that have been implemented in many areas of the globe in an effort to prevent the further spread of the virus. The limits that were stated by the government have proved disruptive to all different kinds of social and commercial activity. This understanding suggests that enterprises all around the globe have been either directly or indirectly impacted by the unfavorable turn of events that followed the development and continuation of the Covid-19 epidemic. Significantly, the majority of companies all over the globe will continue to bear the repercussions of the incapacity of binding parties to comply with the responsibilities outlined in their contracts. More worrisome is the fact that there is an increasing amount of uncertainty as a direct result of the challenges associated with enforcing business contracts and transactions. It is imperative that an expedient solution be found to cushion the majority of firms that persistently fall short of meeting their contractual responsibilities⁵. On the other hand, the global economy is still contracting and moaning in the aftermath of the COVID epidemic, while it is becoming more obvious that aggressive parties are actively exploring strategies to postpone or evade performance. The majority of the parties who are aggrieved have a valid claim that Covid-19 prevented them from meeting their contractual obligation, but some of the parties use Covid-19 as an excuse to avoid the kinds of bad transactions that are typically associated with breaches of contract that have been adjudicated. The idea of "force majeure" and the "doctrine of frustration" are examples of frequent legal channels that claimants of relief may use in their quest for redress. As a result, the emphasis of this research is placed on the two ideas that have been

⁵Mutikani, Lucia. "What to know about the report on America's COVID-hit GDP." (2020)

italicized as potential legal justifications for parties that claim that the Covid-19 epidemic has had a negative impact on their businesses.

The COVID-19 pandemic and the steps taken to prevent the further spread of the virus and its consequences have had an influence on the economy, which has been to the disadvantage of many different organizations. Although data show that some firms have positive insurance coverages, there is a need for government involvement to protect many businesses from catastrophic pandemic-related losses⁵. This is because certain businesses have advantageous insurance coverages. In a similar vein, studies highlight the need for the government to specify actions to safeguard companies against the inconveniences created by repeated disruptions and the subsequent difficulties to the functioning of organizations.

According to the findings of the research, Covid-19 is a worldwide epidemic that is still putting a pressure on companies everywhere. As a consequence of this, a preferable option that complements the doctrine of frustration and Force majeure calls for parties to fulfill their obligation and should, as a result, forbear one another. As a result of this, the parties involved should seriously consider renegotiating the terms of their contracts and should continue to adhere to the restrictions that are attached to their agreements. Instead, the parties involved might try to renegotiate conditions that are more sustainable. First and foremost, the parties involved should take into account the impact of the fulfilment of any existing contracts as well as the ramifications of any action taken to reduce the likelihood of previously unforeseen outcomes.

The Covid-19 Pandemic Frustration

The pandemic caused by the COVID-19 virus is being felt all across the globe and is believed to be the cause of current economic imbalances. The pandemic caused by COVID-19

provides a number of different possibilities, all of which are connected and fit the philosophy of frustration. Nonetheless, the aggrieved parties have the burden of proving that it is no longer viable to perform their contractual obligations in light of Covid. With this fact, it follows that the aggrieved party has the burden of proving probable losses caused by the epidemic if they want to use the law of frustration. As an illustration of this, the Poussard case against Spier and Pond provides a real-world scenario that demonstrates dissatisfaction. Specifically, in the case of *Poussard v. Spiers and Pond*, the court came to the conclusion that the singer's sickness hindered his capacity to perform a contractual commitment⁶. The Covid-19 pandemic presents a number of contexts that create confusion as a result of the involvement of a number of different entities. These contexts include situations in which raw materials are not available, there is not enough staff, and travel arrangements are disrupted, to name just a few. Despite this, these inconvenient circumstances pertain to the actions and directions of the government, which may not be considered part of the frustration ideology.

Contracts that are deemed to have been frustrated become outdated and, as a result, are no longer binding. In the case *Ag Cross River State v. Ag Federation & Anor*, the courts reached the conclusion that frustrated contracts release any party from their responsibilities under the contract. This ruling affirms that such an outcome is possible. The theory of frustration puts a stop to a contract, as opposed to the force majeure provision, which just puts a temporary hold on an existing agreement. To put it another way, the theory of frustration nullifies previously established rights and responsibilities, making frustrated contracts unlawful and invalid and, as a result, unenforceable. Our discovery suggests that companies may apply the theory of frustration

⁶ *Poussard v Spier and Pond*

to seek relief post-Covid even if there are no onerous government limitations to work around. Notwithstanding this, under common law the theory of frustration cannot be applied in hindsight since it is ineffective⁶.

In order to determine whether or not a case involves frustration, the court will often evaluate the relevant facts and circumstances. For example, in the case of *Wing v. Xiong*, the court observed that a 10-day isolation rule enacted by the government prevented the claimant from accessing his apartment in Kowloon, Hong Kong. This made it difficult for the claimant to fulfil the responsibilities that were stipulated in the lease contracts. In spite of this, the court emphasized that a 10-day exclusion was not realistic for the 2-year contracts that the claimant had engaged into with his landlord since the court considered 10 days to be trivial. In the case of *WeMA Bank Plc v. Alhaji Sola Oloko*, the court ruled that the Appellant behaved irresponsibly by not paying his responsibility to the bank.⁷ This decision was upheld by the court. The court determined that the Appellant's sole defense was to utilize Covid-19 and modified precautions to prevent the virus from spreading further. As a result, the judge ruled that the appellant was guilty of the unlawful conduct that was in contrast to the provisions that were agreed upon at the time of consenting to the terms. The judge also said that the restriction on mobility did not merit annoyance.

Force Majeure: Conceptual Analysis and relations to the Covid-19

The term "force majeure" refers to a phrase that is often included in commercial contracts. This clause gives businesses the right to file claims for damages that have been caused

⁷ *WeMA Bank Plc v Alhaji Sola Oloko*

by unusual occurrences and circumstances. The term "force majeure" refers to situations and occurrences that take place outside of the control of either party. Yet, in order to invoke the concept of force majeure, the circumstances must be such that neither party was able to prevent, obstruct, or delay the other in the performance of their responsibilities as outlined in the contract. Acts of God, which might include natural disasters like earthquakes, storms, and even plagues, are grouped together under the umbrella phrase "extraordinary occurrences." In addition, the phrase "Force Majeure" applies to situations like war and criminal activity. In spite of this, the party that is attempting to have the provision rescinded is the one who is responsible for providing evidence that a force majeure event has occurred, which prevents them from meeting the current contractual duty⁸.

While a variety of unusual occurrences associated to Covid-19 are not included, force majeure applies to situations that arise as a result of epidemics and pandemics. As a consequence of this, incorporating the COVID-19 pandemic into acts of force majeure remains a question of interpretation, particularly for corporations seeking relief. Companies who are attempting to get relief under the "force majeure" umbrella need to concentrate their efforts on locating terms in their contracts that allow them to do so within the framework of the "prevailing circumstances" after "Covid." On the other hand, activities taken by the government in response to the epidemic are not covered by "force majeure." This conclusion suggests that measures taken by the government do not fit within the purview of the Force majeure clause. Importantly, governments all over the globe continue to develop policies that interfere with the routine operations of businesses⁹. Movement limitations are one example of the measures that have been implemented

⁸ Mathew, Renjith. "Force-Majeure under Contract Law in the Context of Covid-19 Pandemic." (2020) Available at SSRN 3588338, 18

by governments to prevent the spread of the coronavirus. These measures, along with the others, are being subjected to a comprehensive evaluation to establish whether or not they fall under the "force majeure" clause.

When an existing contract is terminated on the grounds of "force majeure," the party making the claim is responsible for proving that the situation in question is covered by the terms of the agreement (Force majeure). A claim of "force majeure" requires the participation and interpretation of the court in order to determine its legitimacy. Notwithstanding this, the courts have the ability to find that either party has breached the contract in a way that constitutes a repudiatory breach depending on the evidence that is shown to **them**⁶. The Covid-19 pandemic's aftereffects continue to have a negative impact on a wide variety of companies, which calls for the development of legal papers that include relevant provisions that are handled by the exact wordings of the phrase "force majeure." Yet, parties may avoid inevitable disagreements that the existing legal system does not capture¹⁰. Instead, articulations should play a more significant role in specifying determinative authorities, including governments and non-governmental groups. The incorporation of particular occurrences and timeframes will provide clarity to the process of interpreting contentious provisions in the years to come.

To successfully use the concept of force majeure, it is essential for the parties involved to demonstrate that they have complied with all of the requirements outlined in the current contract. The most significant thing for parties who want to depend on force majeure is to specify

¹⁰ MagGuill v Aer Lingus & United Airlines

circumstances that triggered it within a certain period of time. It is damaging to any claims if the claimants fail to serve the opposing party with a notice even if they are negligent about doing so. Since Covid-19 is in a state of perpetual evolution, this insight suggests that it may be difficult for claimants to determine the circumstances that triggered their benefits due of the structure of the program.

The fact that there is no legal presumption of force majeure makes it difficult for a claimant to convince a court to apply a force majeure provision since the clause itself is not contained in the contract. This interpretation also suggests that claimants are only permitted to rely on the law of frustration in circumstances in which the force majeure provision is absent from a contract. In these kinds of situations, it is normal to expect the court to nullify existing contracts where claimants assert the presence of unanticipated occurrences that have interfered with their lives and had a detrimental effect on their ability to fulfil their contractual responsibilities⁹. But, because of the very high bar set by the law, it might be difficult to demonstrate grievances⁶. The majority of the time, the courts will side with legal clarity in matters pertaining to contract law. This will enable the parties to fairly divide the risks involved.

The courts are required to evaluate each claim of dissatisfaction in light of the evidence that is now available. The judgement that was handed down in the case of MagGuill v. Aer Lingus and United Airlines provides an overview of the guiding principles that the courts look to when making decisions about problems of this kind. In principle, any party should be able to demonstrate that they were required to adhere to certain contractual commitments, which have been made impossible due to the present circumstances. The most crucial thing for the courts to do is to prove that none of the parties was responsible for the frustrating incident. In addition, the court should investigate the whole set of circumstances surrounding the contract and the incident

or events that were annoying, emphasizing that the concept of frustration is not applied flippantly.

In contrast to a provision for force majeure, which allows for scheduled suspension if current circumstances hinder company activities, a successful claim for frustration results in the instant cancellation of any and all previous agreements. Expectedly, parties that want to apply either theory should exercise extreme caution when contemplating the decision they seek and the potential repercussions to their typical day-to-day activities. Interestingly, the majority of force majeure provisions provide affected parties with the opportunity to lessen the impact of the proclamation in order to prevent further damages and losses. In the event that a breach of contract is found to have occurred, the party that filed the claim has the obligation to accept full responsibility and to take all efforts that are required as well as those that are deemed to be reasonable in order to limit the possibility for loss and damage. As a result, companies should consult applicable legislative safeguards while reducing the effects of breaching conditions brought on by the Covid-19 disaster⁹. The most essential thing for firms in this situation to do is to investigate the likelihood of making a claim on their business interruption insurance. Additionally, extra efforts should require governments all over the globe to establish laws that cater to such potential outcomes.

Conclusion

The COVID-19 pandemic has affected businesses worldwide and many companies are struggling to carry out their contractual obligations. Here are some options available to companies:

Renegotiate the Contract: Companies can renegotiate the terms of the contract with the other party. This can involve extending deadlines or changing the scope of the work. It is important to communicate with the other party and come to an agreement that is mutually beneficial.

Force Majeure Clause: Many contracts include a force majeure clause that excuses non-performance in the event of unforeseen circumstances. The pandemic may fall under this clause, but it is important to review the language of the clause and ensure that the specific circumstances are covered.

Frustration of Purpose: If the pandemic has made it impossible to carry out the purpose of the contract, the parties may be excused from performance. However, this is a difficult argument to make and it is important to consult with a lawyer before taking this approach.

Insurance: Companies may have insurance policies that cover losses due to pandemics. It is important to review the terms of the policy and file a claim if appropriate.

Termination: If all else fails, the parties may need to terminate the contract. It is important to review the termination provisions of the contract and follow the appropriate procedures.

It is important for companies to communicate with the other party and seek legal advice before taking any action. The specific options available will depend on the language of the contract and the circumstances of the pandemic.

Case Studies

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Attorney-General, Cross River State vs Attorney-General of the Federation &
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