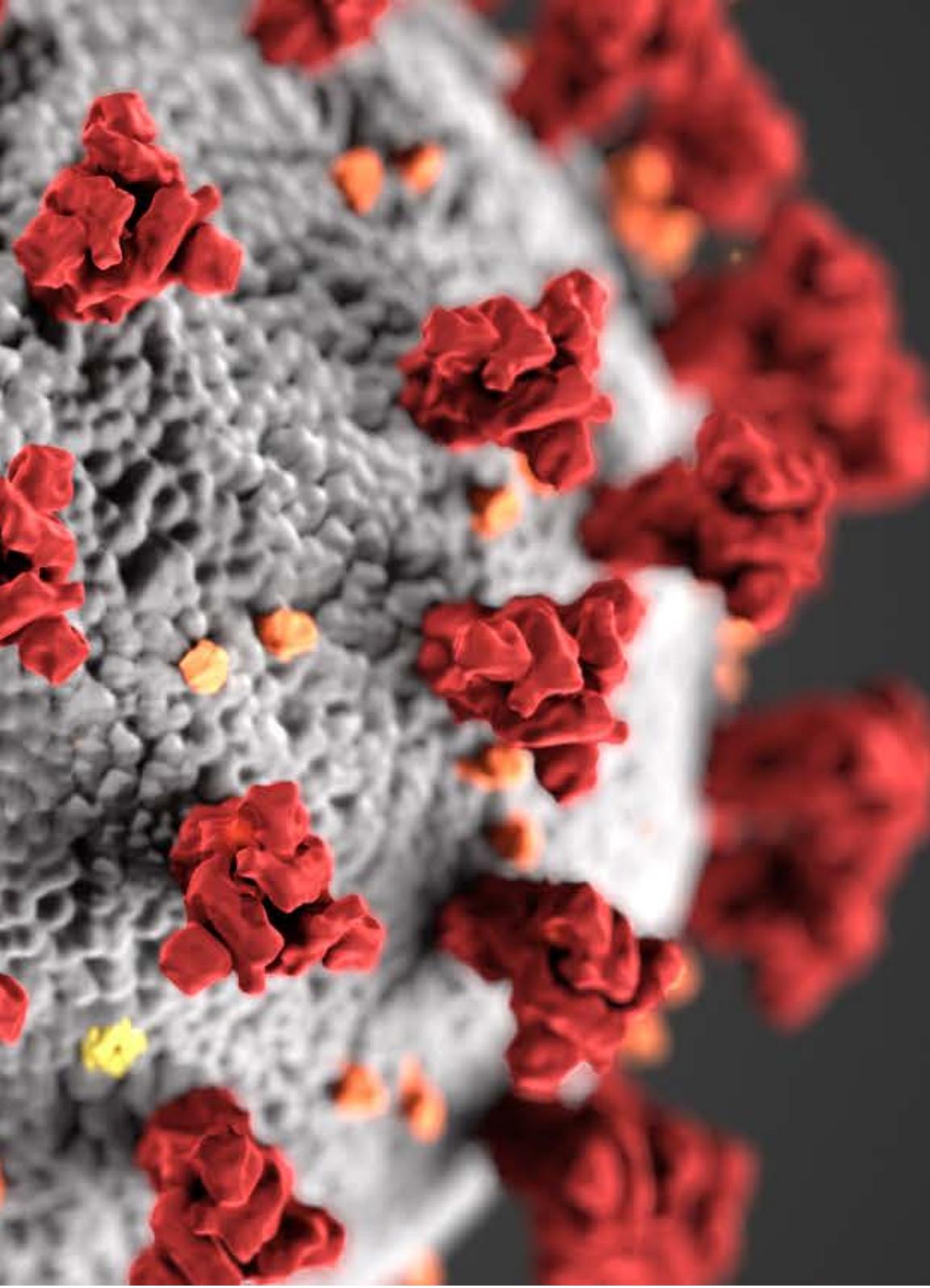


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COVID-19 Pandemic and Force Majeure

Legal Insight in the State of Qatar
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While the entire world is going through an unprecedented sanitary crisis, we, practitioners, start receiving a lot of inquiries from our clients about the legal consequences that the COVID- 19 outbreak will have on contractual obligations. Our clients inquire about whether or not this situation may be qualified as a force majeure event, preventing the non-performing party to be held responsible.

Introduction

The COVID- 19 outbreak brings me back to my years at the university where, as a law student, I was studying contracts law and what a force majeure event is. I remember a very theoretical lecture from my law professor, as practical examples of force majeure events are pretty rare.

Health Organization on March 11,2020 and while thousands of people have lost their life due to the virus, there are only reasons to be concerned about this new virus. Yet, it may give to people of my generation their first force majeure event of that scale. Before looking at the consequences of a possible force majeure event (B), we must first make sure that the outbreak of the COVID- 19 meets all the characteristics of a force majeure event (A).

A. The Characteristics of a Force Majeure Event

As indicated by its name, force majeure is a French concept which appeared in France in the nineteenth century.

According to article 1218 of the French Civil Code, an event can be qualified as a force majeure event when it is exterior to the party, was unpredictable at the time the contract was executed and irresistible in its impacts.

We cannot find such a detailed definition in the Qatari Civil Code. Article 187 simply mentions an event beyond the control of the obligor. The acceptance criteria are therefore broader in Qatari law than in French law. Yet, a reference to the French criteria will be extremely useful to determine with certitude whether the COVID-19 outbreak constitutes a force majeure event.

In our civil law system, in the event of a dispute between the parties, it belongs to the judge to decide whether the COVID-19 outbreak constitutes a force majeure event. The broad Qatari definition of a force majeure event leaves no doubt that the COVID-19 outbreak is beyond the parties' control. The strong but appropriate measures taken by the Qatari authorities to halt the spread of the virus is another element to demonstrate that the parties to a contract may have no control over what is happening.

FORCE MAJEURE

As for the French criteria, the COVID-19 outbreak undoubtedly meets the three traditional criteria of a force majeure event:

- **Externality.** Undoubtedly, the parties to the contract will be complete strangers to the virus outbreak.
- **Unpredictability.** It is probably the most disputed criterium. Some people may argue that there were previous outbreaks in a recent past (SARS, the H1N1 influenza in 2009 and Ebola) and that the world should then anticipate outbreaks on regular basis. However, a virus that virulent which caused to disrupt and paralyze the entire world at the same time is extremely rare. It can only be compared to the 1918 influenza pandemic that contaminated a third of the world's population before it fizzled out. Events that occur once per century can hardly be qualified as predictable.
- **Irresistibility.** The party to a contract that couldn't fulfill its obligations could also easily argue that it could not prevent the consequences of the outbreak and especially the measures taken in Qatar, but also abroad, to halt the outbreak.

Even when scrutinized through more detailed criteria, it leaves no doubt that the COVID-19 pandemic is a force majeure event. The Qatari criterium that a force majeure event must be an event beyond the control of the defaulting party makes the qualification even easier. We must now look at the consequences of a force majeure event on contracts.

B. The Consequence of a Force Majeure Event on Contracts



The consequence of a force majeure event is that the party that would be prevented from fulfilling its obligations would not be held liable. In practice, most force majeure clauses do not excuse a party's failure entirely, but only suspend the obligation for the duration of the event.

The Qatari Civil Code makes a distinction between contracts that bind on one party only and contracts that bind on both parties. Article 187 of the Qatari Civil Code provides that:

“in contracts binding on one party, where performance of the obligation becomes impossible due to force majeure beyond the control of the obligor, the contract shall terminate automatically. Where such impossibility is partial, the obligee may enforce the contract to the extent of such part of the obligation that can be performed.”

Article 188 of the Qatari Civil Code provides that:

“in contracts binding on both parties, where performance of an obligation by one party is extinguished by reason of impossibility of performance due to force majeure beyond the control of the obligor, such obligation and correlative obligations shall also be extinguished and the contract deemed rescinded ipso facto. Where such impossibility is partial, the obligee may either enforce the contract to the extent of such part of the obligation that can be performed or demand termination of the contract.

In short, what can be saved must be saved and if the parties are in a position to carry on with the execution of their obligations, they must carry on. A force majeure event cannot be saved as a pretext to suspend all contractual obligations.

Conclusion



At the time we were writing this article, approximately one third of the world population was living confined. We were already receiving a lot of inquiries regarding the qualification that should be given to the virus outbreak. We expect to receive even more inquiries once things get back to normal.

Undoubtedly, according to the Qatari Civil Code, the **COVID- 19 outbreak must be qualified as a force majeure event**. The response that we have already given to our clients is to make a clear distinction between the obligations that they can fulfill and those that they really can't; a force majeure event doesn't suspend all obligations.

However, it is certain that in the confusion caused by the outbreak, some parties will take advantage of the situation. It will be once again the judge's duty to scrutinize each situation and to determine if a defaulting party was truly facing an obstacle "beyond its control."

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Should you have any inquiries please do contact our team at the details listed herein.

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