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Force Majeure in International Contracts Post-COVID-19

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Abstract: The COVID-19 pandemic has significantly transformed the interpretation and application of force majeure clauses in international contracts. Traditionally designed to address unforeseeable and uncontrollable events, force majeure provisions have faced unprecedented scrutiny and redefinition due to global lockdowns, supply chain disruptions, and public health emergencies. This article analyzes the evolving legal landscape surrounding force majeure, drawing on comparative international case law from jurisdictions such as the United States, China, India, and the United Kingdom. It highlights how the pandemic prompted new legal interpretations, regulatory responses, and a marked shift in contract drafting practices. Key developments include the explicit inclusion of pandemics in contractual language, adoption of hardship and renegotiation clauses, and increased emphasis on notice and mitigation obligations. The article further explores statistical trends, practical challenges, and the long-term shift toward risk-sharing frameworks. As the force majeure doctrine becomes a focal point of global commercial negotiations, legal precision and proactive contract management are now indispensable tools in cross-border commerce.

Keywords: Force majeure, COVID-19 contracts, international contract law, pandemic clause, hardship clause, contract renegotiation, impossibility of performance, frustration of contract, comparative legal analysis,

INTRODUCTION

The global COVID-19 pandemic has served as a watershed moment for international contract law, particularly the concept and practice surrounding force majeure clauses. Once a relatively standard provision addressing unforeseen events, force majeure has been stress-tested by the pandemic's scale and complexity, leading to changing legal interpretations, new jurisprudence, and evolving contract drafting practices^{[1][4][6]}.

WHAT IS FORCE MAJEURE?

Force majeure refers to contract clauses excusing one or both parties' nonperformance in the event of extraordinary circumstances beyond their control, such as "acts of God," wars, natural disasters, or government interventions^{[1][6]}. The aim of such provisions is to allocate risk for unpredictable events and maintain fairness if obligations become impossible or radically different from what was anticipated.

Traditionally, force majeure events had to be:

- Unforeseeable at contract formation
- Beyond the control of involved parties
- Impossible to overcome by reasonable means

With COVID-19, the applicability and interpretation of these clauses became central to global commerce^{[1][6]}.

Impact of COVID-19 on Force Majeure Clauses

Pandemic as a Force Majeure Event

- When COVID-19 emerged, many parties sought to invoke force majeure protections due to government lockdowns, supply chain disruptions, travel bans, and general economic upheaval.
- Courts, arbitral panels, and legal advisors became involved in determining if and how the pandemic fit pre-existing force majeure language, notably if “epidemic” or “pandemic” was expressly listed^{[1][4][5]}.
- The Government of India, for example, officially notified that the pandemic and related supply chain disruptions were to be considered a force majeure event for government contracts^[2].

Key Court Decision Example

In 2022, the UK High Court declared “epidemic” within a contract’s force majeure clause as encompassing the COVID-19 pandemic, recognizing it as an event “beyond the reasonable control of a party affecting the performance by that party of its obligations”^[5].

COMPARATIVE INTERNATIONAL LEGAL DEVELOPMENTS

United States

- Courts generally require precise contract drafting. If pandemics/epidemics were listed, force majeure could be invoked more readily; otherwise, parties often struggled to prove that COVID-19 was truly unforeseeable and made performance objectively impossible^{[1][6]}.

China

- Chinese authorities issued force majeure certificates to domestic companies seeking relief from contractual penalties, widely recognizing the pandemic as a force majeure event^[1].

Germany

- German law also generally recognized COVID-19-related impossibility and frustration under its Civil Code, but careful contract language remains crucial^[1].

India

- Force majeure defense is scrutinized closely. Indian courts look at whether:
 - The event rendered performance truly impossible (not just more burdensome or costly)
 - The event was unforeseeable
 - The party seeking relief acted in good faith and attempted to mitigate losses^{[7][8]}.

CHANGES IN CONTRACT DRAFTING AND NEGOTIATION POST-PANDEMIC

1. Explicit Inclusion of Pandemics and Epidemics

Post-2020, parties increasingly spell out terms such as “pandemic,” “epidemic,” “government order,” and “public health emergency” within force majeure lists to avoid ambiguity and legal disputes^{[9][6]}.

2. Hardship and Renegotiation Clauses

To handle less extreme but still significant disruptions, contracts now often include “hardship” or “renegotiation” provisions, requiring both sides to discuss and seek reasonable accommodations before pursuing legal action or termination^[4].

3. Notice and Mitigation Requirements

Modern force majeure clauses typically stress timely notice from an affected party and require all reasonable efforts to continue or mitigate interrupted performance^{[5][10][6]}.

STATISTICAL AND PRACTICAL IMPACT OF COVID-19

Key Trends (Graphical Analysis):

Force Majeure Invocations: 2019–2024 (Sample Estimates)

- Drastic spike in 2020, with sustained higher rates compared to pre-pandemic levels.

Commonly Added Force Majeure Terms Post-2020

Term	% of New Contracts (Est.)
“Pandemic/Epidemic”	85% ^[6]
“Government Action”	78% ^[6]
“Public Health”	76% ^[6]
“Quarantine”	69% ^[6]

[Graph: Estimated Annual Force Majeure Claim Filings (2018–2024)]

Instructions: Visualize a bar or line chart demonstrating the rapid surge in force majeure claim filings in 2020, with elevated but tapering trends in subsequent years, based on legal case statistics and industry reporting from sources cited above.

Key Legal and Practical Lessons

- **Precise Language is Vital:** Courts and arbitrators rely heavily on contract wording—vague catch-all provisions may have limited utility^{[1][6]}.
- **Foreseeability Tests Apply:** If a risk was or should have been foreseen (such as ongoing COVID waves post-2020), courts have sometimes denied force majeure relief for new contracts^{[7][8]}.
- **Notice and Documentation Are Critical:** Timely notification, thorough documentation, and demonstrated mitigation efforts are now essential for any party to claim relief^[5].
- **Shift to Risk-Sharing:** Hardship and renegotiation clauses reflect a broader move toward cooperation under unforeseen disruption rather than unilateral withdrawal^[4].

Recent Trends and Ongoing Evolution

Legal practice is still catching up with the massive shift caused by the pandemic. Force majeure remains a subject of ongoing judicial scrutiny and legislative reform around the world, with parties now viewing it as a core issue in international negotiations rather than as an afterthought^{[9][1][6]}.

CONCLUSION

The COVID-19 pandemic fundamentally altered both the perception and use of force majeure in international contracts. Explicit references to disease, clear notice and mitigation requirements, and willingness to renegotiate under hardship have become common. While many disputes linger in national and international courts, the net effect has been to move force majeure from a boilerplate provision to a major negotiation point, with courts now focusing on contract language, foreseeability, and good faith mitigation.

Images and Visuals

Inline Visuals

1. **Workflow of Force Majeure Clause Application Post-COVID-19**
 - Flowchart: From event occurrence → party notification → evaluation of contract → negotiation/renegotiation → court/arbitration if unresolved.
 - [Image: Process Diagram]
2. **Comparative Table: Key Elements of Force Majeure Clauses Post-COVID-19**

Jurisdiction	Pre-pandemic Approach	Post-pandemic Reforms
US	“Act of God”, disasters	Explicit mention of pandemics
China	Catastrophic events	Issued government certificates
India	Frustration, impossibility	Case-by-case analysis

- [Image: Table/Chart]

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