

FORCE MAJEURE CLAUSE CONTRACT REVIEW CHECKLIST

Cyprus Law | Governed by the Contract Law, Cap. 149 and English Common Law principles

Matter / Contract:

Reviewed by:

Date of Review:

File Reference:

1. THRESHOLD: DOES A FORCE MAJEURE CLAUSE EXIST?

- Confirm the contract contains an express force majeure clause
- If absent, assess whether the doctrine of frustration may apply *[implied relief]*
- Identify the exact clause number and page reference for audit trail

2. DEFINITION AND SCOPE OF QUALIFYING EVENTS

2a. Enumerated Events

- List all expressly enumerated events (e.g., war, earthquake, pandemic, flood)
- Check whether the list is exhaustive or illustrative (look for 'including but not limited to')
- Confirm whether epidemics / pandemics are explicitly listed post-COVID
- Check for governmental / regulatory action, sanctions, and import/export restrictions
- Assess whether strikes, labour disputes, and industrial action are included
- Confirm whether cybersecurity incidents or infrastructure failures are covered

2b. General / Catch-All Language

- Identify any general sweep-up language ('any other event beyond the party's control')
- Assess whether the sweep-up is restricted by ejusdem generis — are all listed events of the same type?
- Determine if 'Acts of God' are defined or left to common law interpretation
- Check if economic hardship, price increases, or supply chain disruption qualify

3. CAUSATION AND STANDARD OF PROOF

- Does the clause require the event to 'prevent' performance (strict) or merely 'hinder / delay' it (broad)?
- Is there a foreseeability carve-out — events foreseeable at the time of contracting may be excluded

- Check for 'beyond reasonable control' language and what standard of 'control' is applied
- Assess whether partial inability to perform triggers the clause
- Confirm if financial inability or insolvency is expressly excluded as a force majeure event
- Identify who bears the burden of proving the causal link between event and non-performance

4. NOTICE REQUIREMENTS

- Identify the form of notice required (written, email, registered post, hand delivery)
- Note the notice period — how many days after the triggering event must notice be given?
- Confirm the designated recipient and notice address
- Check whether notice of cessation of the force majeure event is also required
- Determine if failure to give timely notice forfeits the right to rely on the clause
- Cross-reference with the general notices clause in the contract for consistency

5. CONSEQUENCES AND RELIEF AVAILABLE

5a. *During the Force Majeure Period*

- Is the affected party excused from performance entirely, or only suspended?
- Is the unaffected party also excused from its counter-obligations (e.g., payment)?
- Are there any interim obligations during the force majeure period (e.g., mitigation steps)?

5b. *Post-Force Majeure Period*

- Is there an automatic right to terminate after a specified duration?
- Identify the trigger period for termination (e.g., 30, 60, 90 days)
- Does either party have the right to terminate, or is it mutual?
- Check what happens to payments already made or obligations already performed
- Are there consequences for the party that invoked force majeure if the event is disputed?

6. MITIGATION OBLIGATIONS

- Is there an express obligation on the affected party to use reasonable endeavours to mitigate?
- Does the clause require the party to seek alternative means of performance?
- Is there a duty to keep the other party informed of the duration and anticipated end of the event?
- Check whether mitigation failure could forfeit force majeure protection
- If no express mitigation clause, note that Cypriot courts will imply a duty to mitigate

7. GOVERNING LAW, JURISDICTION, AND DISPUTE RESOLUTION

- Confirm the governing law of the contract — is it Cyprus law, English law, or other?
- If foreign law governs, obtain specialist advice on equivalent force majeure principles

- Identify the dispute resolution mechanism — litigation (Cyprus courts), arbitration, or mediation
- Note any mandatory procedural steps before commencing proceedings
- Check whether force majeure disputes are subject to expedited resolution
- For ICC / LCIA arbitration: consider whether emergency arbitrator relief may be sought

8. INTERACTION WITH OTHER CONTRACT PROVISIONS

- Cross-check with liquidated damages / penalty clauses — does force majeure suspend LD accrual?
- Review MAC (Material Adverse Change) clauses — does the event trigger both MAC and FM?
- Check break clause and step-in rights provisions for interaction with force majeure
- Review insurance requirements — is the party required to maintain business interruption cover?
- Assess indemnity provisions — can the force majeure clause be used as a shield to indemnity claims?
- Review entire agreement clause — does it exclude implied force majeure / frustration arguments?
- Check for hardship / material adverse effect clauses as alternative relief

9. REGULATORY AND PUBLIC LAW CONSIDERATIONS (CYPRUS-SPECIFIC)

- Check whether any government emergency decree or ministerial order triggered the force majeure event
- Consider EU Regulation impact — EU sanctions or directives as potential force majeure triggers
- Review whether the Cyprus Emergency Powers Act or Public Health Law provisions apply
- For public contracts (government as counter-party): assess Public Procurement Law provisions
- Check whether VAT / stamp duty consequences arise from contract suspension or termination
- Consider any reporting obligations to the Cyprus Bar Association or competent authority

10. PRACTICAL RISK ASSESSMENT AND RECOMMENDATIONS

- Assess the overall strength of any potential force majeure claim or defence
- Prepare a chronology of events linking the force majeure trigger to performance failure
- Preserve all documentary evidence of the triggering event and its effects
- Consider whether to seek a without-prejudice standstill agreement with the counter-party
- Advise client on reputational and commercial risks of invoking force majeure
- If clause is weak or absent: assess litigation risk under the legal doctrine of frustration
- Draft recommended clause amendments for future contracts

REVIEW SIGN-OFF_____
Reviewing Lawyer_____
Supervising Partner_____
Date Completed

This checklist is for professional legal use only. It does not constitute legal advice and should be adapted to the specific facts of each matter.