

# CORONAVIRUS

and its contractual implications

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## The Spread of Coronavirus and its impact on contractual obligations in the State of Qatar

The World Health Organization has recently announced that the new Coronavirus, which still appears to be spreading around the world, has now become a global pandemic albeit affirming that it can still be “controlled” under proper measures and precautions. As the coronavirus was seen as an epidemic in its early stages, affecting a large amount of people, it has grown so much to become a pandemic, affecting populations all across the globe where people no longer enjoy immunity as its speed is moving beyond expectations. However, the COVID-19 virus seems to have repercussions besides health and physical ones, but also contractual ones. This article will focus on the impact of the virus on contractual obligations in the State of Qatar.

As the Coronavirus continues to globally spread, the impact on contractual obligations in the State of Qatar continues to increase by the minute amid the effect it has caused on businesses, which has become worrisome. For that reason, Qatar has not taken the matter lightly and is working on implementing extreme measures, which were discussed in a seminar organized around the coronavirus and its effect on contractual obligations under the Qatari Law. The seminar was held at the Qatar International Court, featuring Judge Abdelraouf Elbekei, partner at Sharq Law Firm covering the topic of coronavirus and its impact on contractual obligations under Qatari law with efforts to raise awareness on the matter. Several issues were brought up and debated, one of which was raised by Judge Elbekei, who explained the legal and financial repercussions that this virus has on businesses in Qatar. He expressed that the impact of this pandemic may lead to an overburdening of the debtor to fulfil his/her commitment under “exceptional circumstances” also known as

“hardship”. A pandemic may also lead to the impossibility of the debtor to fulfill his/her obligations, leading to a case of force majeure<sup>1</sup>.

However, Judge Abdelraouf expressed that the coronavirus pandemic should be regarded as an “exceptional and unforeseen” event rather than one of force majeure since the situation that the world is witnessing does not make it impossible for the parties to realize their contractual obligations, but rather it results in certain implications<sup>2</sup>. This leaves us with the question of: How and when do the concepts of unexpected exceptional circumstance and force majeure apply when a pandemic such as the coronavirus is taking place?

It is not permissible to revoke a contract or to amend it except upon the agreement of the parties or for reasons determined by the law according to the principle of “pacta sunt servanda”<sup>3</sup>. However, there are exceptions to this rule where a contract obligation could not be met due to an unforeseen event or a force majeure. It is crucial to first distinguish the difference between the two concepts. An unexcepted exceptional circumstance is when an unforeseen event takes place that results in the loss or postponement of a contract obligation, however, not impossible to achieve but rather a burden on the debtor who may face financial damages. In such an instance, the judge may according to the exceptional events that have taken place and after analyzing the interests of both parties, return the burden of fulfilling the obligation to a reasonable extent in which any agreement between the parties shall become null and void<sup>4</sup>.

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1 <https://www.qicdrc.gov.qa/news-item/qatar-international-court-hosts-seminar-coronavirus-and-its-impact-contractual-obligations>

2 Dr Mohamad Khadrawi, “2019”, الأثار القانونية لفيروس كورونا المستجد على الالتزامات التعاقدية”, PDF

3 Dr Mohamad Khadrawi, “2019”, الأثار القانونية لفيروس كورونا المستجد على الالتزامات التعاقدية”, PDF

4 Dr Mohamad Khadrawi, “2019”, الأثار القانونية لفيروس كورونا المستجد على الالتزامات التعاقدية”, PDF

According to the Qatar Civil Law No. 22 of 2004, in Article 171 paragraph 2 which states that: "if a general unforeseen and exceptional event occurs and such occurrence results in rendering the implementation of the contractual obligation, though not impossible, an exhausting factor that threatens the debtor with an enormous loss, the Judge shall, according to conditions of the case and after balancing the interests of the two parties, reduce the exhaustive obligation reasonably"<sup>5</sup>. This conveys that the courts are in fact willing to take into consideration the unexpected outbreak of the coronavirus after analyzing whether the parties have indeed been affected by it, proving that it is the reason behind why the contract obligations could not be met. Appeal No. 68 of 1984 issued on 28/01/1984 by the Qatari court of appeal has shown an instance where the courts have used the definition of an unforeseen event to minimize the burden on the debtor caused due to the occurrence of such an event, preventing the debtor to meet his contractual obligations.

Whereby force majeure, although follows a similar concept as an unexpected exceptional circumstance, it is applied in the scenario where the unforeseen event has made it absolutely impossible for the parties to fulfill their contractual obligations. According to the Qatar Civil Law No. 22 of 2004, Article 188

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<sup>5</sup> Qatari Civil Law No. 22 of 2004

also portrays an overview of how force majeure is implemented in contracts under the State of Qatar. It mentions: "In respect of contracts binding on both parties, if it has become impossible for one of the parties to perform his/her obligation for an extraneous cause beyond his control, such obligation as well as the counter-obligations shall abate. The contract shall also be revoked automatically. In case of partial impossibility, the creditor may, as appropriate, plead the contract in respect of the performable part of the obligation or request the revocation thereof"<sup>6</sup>. On that account, the Qatari Civil Law confirms that in the case of force majeure, once proven, the courts shall be flexible in acquitting the parties from allegations for not being able to meet their obligations. An instance of this statement is portrayed under Appeal No. 51 issued on 17/06/2008 by the Court of Cassation, where the maritime transport contract imposes an obligation on the carrier to ensure that the goods transferred are fully and properly delivered to the consignee, which is an obligation to achieve an objective, including the requirement that the responsibility of the carrier remains until the consignee actually receives the goods. Therefore, if the goods are destroyed or damaged, the carrier's will be held liable unless he/she proves that the damage is caused by force majeure<sup>7</sup>. Hence, the theory of exceptional circumstances differs completely from the force majeure theory because the latter is the impossibility of implementing the commitment to the contract, while the first returns to the fact that conditions make the implementation of the commitment to the contract exhausting and not impossible.

Under the umbrella of the courts, when exceptional circumstances and conflict arises between the parties, the judge has the right to amend the rights and

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<sup>6</sup> Qatari Civil Law No. 22 of 2004

<sup>7</sup> Court of Cassation- Appeal No. 51- 17/06/2008

obligations of the contract, and may annul the contract if it was considered that the termination of the contract is the easiest and most suitable case for justice. Accordingly, it is clear that the courts may, and due to the occurrence of exceptional circumstances, intervene to stop the contract, modify it, or even terminate it. That being said, the date of the contract is one of the most important factors in analyzing what constitutes a force majeure event or simply an unexcepted exceptional circumstance. For instance, in reference to a previous pandemic, the Chikungunya disease which emerged in January 2006, a case issued on 29/12/2009 by the French court of cassation concluded that there is no valid justification for the termination of the contract as the date of the signing of the contract was after the period of which the pandemic appeared<sup>8</sup>. Thus, a contract can be canceled after the outbreak of the pandemic if it was concluded before the pandemic.

Consequently, although, it is the court's discretion to decide on the matter, it all connects back to what clauses the signed contract had in place when it went into effect. Both unforeseen circumstances clauses and force majeure clauses are typically general and do not specify what sort of events falls underneath each, which is subject to different perceptions. To that end, it is crucial to understand both concepts and differentiate them from one another in order to properly analyze whether the coronavirus is a force majeure or an unforeseen circumstance; and the court of cassation shall play a fundamental role in deciding on the matter. In analyzing the cases, the theory of exceptional and unforeseeable circumstances presupposes that during the implementation of the contract, an exceptional circumstance occurred that was not expected by the parties involved in the contract, which lead to an economic imbalance between the parties of the contract, leaving the debtor with heavy loss that

goes beyond the reasonable limit. In this case, the aggrieved party must resort to the courts with the aim of restoring the economic balance of the contract based on the theory of exceptional circumstances, in which case the judge's ruling will be, according to the opinion of Judge Elbekei, either to postpone the implementation of the contract to another time or to implement the contract in its time at a higher cost. This ruling will be taken in order to maintain the economic balance between the parties of the contract. In the event where it was absolutely proven to be impossible for the parties to meet their obligations, making it a force majeure scenario, the parties shall be exempted from their liabilities.

Whether the coronavirus is regarded as unforeseen circumstance or a force majeure is debatable. It is undoubtedly accurate that the spread of the coronavirus could not have been foreseen or prevented making it automatically an unforeseen circumstance. However, as the spread of the coronavirus is on the rise and the world has started to witness scenarios in which travel restrictions and quarantine instances are taking place, it is yet to be studied and referenced by the court of cassation if the coronavirus could be seen as a force majeure instance.

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