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# MODERN LAW

**The Legal Impact of the  
Novel Coronavirus  
"Covid-19" Global  
Pandemic on the Binding  
Force of Contracts**





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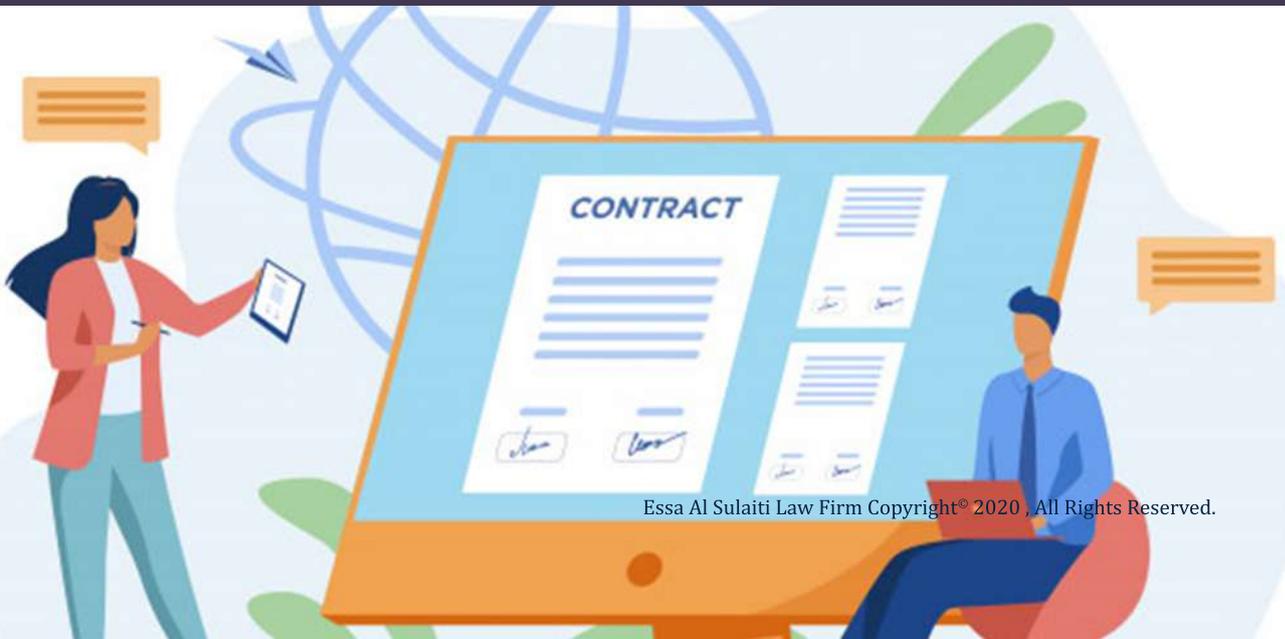
# The Legal Impact of the Novel Coronavirus "Covid-19" Global Pandemic on the Binding Force of Contracts

## Introduction

The World Health Organization has declared (Coronavirus / Covid19-) outbreak a global Pandemic, which has caused fear and panic in much of the world, and all States have started implementing their precautionary measures to counter this outbreak. However, these measures have had some negative impacts on all sectors of life. This was followed by many consequences, not to mention the health impact; it affects life in general in all its economic, scientific and political aspects.



The Economic sector is the prime mover for all other sectors in life. It is the backbone of all people and nations. The world got into a state of paralysis after the almost complete standstill due to the Novel Coronavirus (Covid-19) outbreak, which hit the four corners of the world and led normal life to come to a standstill. Crowded busy countries and cities became ghost cities. Many States have taken some preventive and precautionary measures to limit the spread of this Pandemic, which in turn has stopped the production process and transportation in most societies, which impacts negatively on the economies in most of the world. In a situation like this, it was necessary for this Pandemic to have a legal impact on all transactions and contracts, for individuals, companies or States. In the context of the preventive measures taken by the State to limit the spread of the virus, contractual obligations have been affected and have become difficult to implement. Each contract differs from other contracts due to its nature such as construction contracts, leases, transportation contracts, commercial contracts and others. In this article, we will dive into the General Unforeseen and Exceptional Events and the theory of Force Majeure in the Qatari Civil Code and their impact on the binding force on contracts of all types due to the spread of the Novel Coronavirus (Covid-19). Legal research and argument arose over whether this Pandemic should be considered a Force Majeure or a General Unforeseen and Exceptional Event "Exigent Circumstances" in light of the obvious negative impacts and the collapse of the contractual obligations as a result of the overall recession and the projection of the increase in disputes and lawsuits between the parties of a contract. Therefore, we will explain, in details, the difference between Force Majeure and General Unforeseen and Exceptional Event "Exigent Circumstances" in the established legal practice.





## The Principle of Pacta Sunt Servanda

**In the present law, Article No. (171) of Qatar Civil Code No. 22 of 2004 provides that:**

1. Pacta sunt servanda, and a contract duly and properly concluded between the parties may be revoked or altered only by mutual consent of the parties or for reasons provided for by the law.
2. However, if exceptional and unforeseeable events occur, and the fulfilment of the contractual obligation, though not impossible, becomes excessively onerous in such a way as to threaten the debtor with exorbitant loss, the judge may, according to the circumstances and after taking into consideration the interests of both parties, reduce the excessive obligation to a reasonable level. Any agreement to the contrary shall be void.

By reading the text in Paragraph (1) of the above Article No. (171), we find that it has established a legal principle that is firmly in contracts, which is the principle of (Pacta Sunt Servanda), this principle stipulates that a contract concluded between parties must be kept, and non-fulfilment of the respective obligations is a breach of contract and neither of them is entitled to individually revoke the contract.

### **A well-established principle of the Qatari Court of Cassation is that:**

"Article No. (171) of Qatar Civil Code No. 22 of 2004 provides that "Pacta Sunt Servanda", and a contract duly and properly concluded between the parties may be revoked or altered only by mutual consent of the parties or for reasons provided for by law", as settled by the precedents of this court, is that, in principle, the contract is the law of the contracting parties, which is an application to the concept of the "autonomy of the will", which means that if an agreement is validly made by the parties without violation of public order or contradiction in the papers, it becomes binding on such parties, and may not be rescinded or modified by any one side of the two parties, since the contract is the result of two wills which may not be undone by one will."

(Appeal No. (62) of 2008, Session of 17/06/2008 - Q4, p. 318)



## Exceptions to the Pacta Sunt Servanda Principle

The aim of the principle of Pacta Sunt Servanda is to achieve stability in contracts and transactions, however, this principle is not absolute because of the existence of some exceptions set out in Qatar Civil Code that restricted this principle and its aim is to achieve justice in society. Therefore, we find that most legal legislations in many States around the world have followed the same approach as the Qatari legislator. The exceptions to the principle are as follows:

- ◆ **First - In case of a General Unforeseen and Exceptional Event "Exigent Circumstances"**
- ◆ **Second - In case of a Force Majeure**

The main principle of contracts is that it arranges mutual obligations between the two contracting parties. However, there are cases and circumstances amidst which it is completely or partially impossible for one of the contracting parties to fulfil his contractual obligation, or when the fulfilment of this contractual obligation becomes an onerous burden, which we will explain this in detail below:





## ◆ First : General Unforeseen and Exceptional Event "Exigent Circumstances" Theory

In the event of a General Unforeseen and Exceptional Event “Exigent Circumstances” that make the fulfilment of one of contracting parties (debtor) for his contractual obligation excessively onerous in such a way as to threaten the debtor with an exorbitant loss.

In an establishment of the principle of justice and in order to instill it as a value in society, we find that the Qatari legislator has intervened to protect one of contracting parties (obligor) from the fulfilment of his contractual obligation by setting out these foregoing exceptions in Qatar Civil Code No. 22 of 2004 for the restitution of rights.

### **Conditions for Implementing the Theory of General Unforeseen and Exceptional Event “Exigent Circumstances” in Legal Binding Contracts:**

- A. General Unforeseen and Exceptional Events such as (wars, rains, torrential rains and floods, diseases and epidemics).
- B. Unpredictability of these General Unforeseen and Exceptional Event by the public.
- C. The existence of a (enforceable) contractual relationship binding on both parties at the time of the event.
- D. The fulfilment of the contractual obligation by the debtor, though not impossible, becomes excessively onerous.
- E. The fulfilment of the contractual obligation becomes excessively onerous in such a way as to threaten the debtor with exorbitant loss.

If the above conditions are met, the Qatari legislator allows the aggrieved debtor to file a lawsuit before the court requesting the reduction of the excessively onerous contractual obligation to a reasonable level.

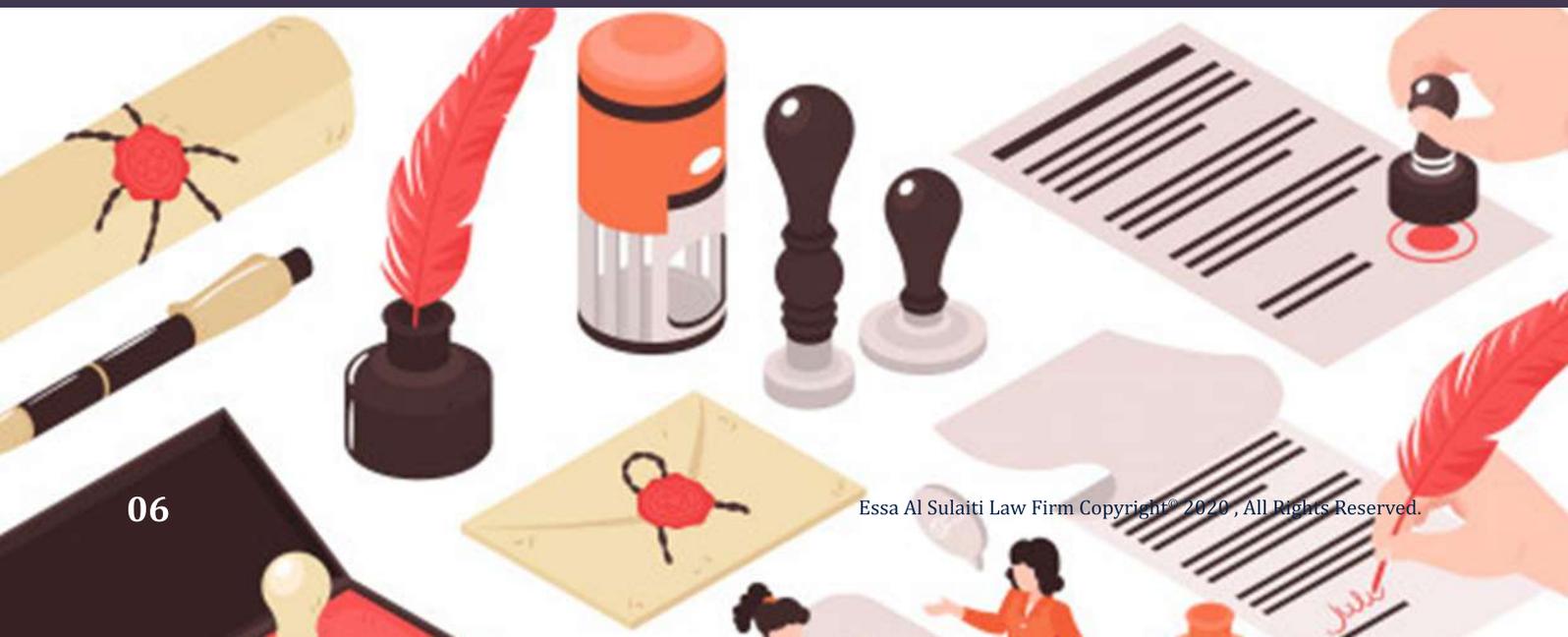


## The Court may, according to the filed lawsuit, intervene between the two contracting parties to establish the value of justice by taking the following decision:

1. Balancing between the interests of the two contracting parties.
2. Reduction of the excessively onerous contractual obligation for the aggrieved debtor to a reasonable level.
3. Any agreement to the contrary that contains a clause denying or invalidating the existence of general unforeseen and exceptional events shall be void.

By applying the theory of the General Unforeseen and Exceptional Events "Exigent Circumstances" to the reality of the present experience, most States in the world are facing due to the outbreak of the Novel Coronavirus (Covid-19), which in turn caused a state of complete paralysis to life in general and led to the cessation of business operations almost completely, in addition to the cessation of land, sea and air transportation and all sporting and social events of all kinds.

In light of this reality, we find that the fulfillment of commercial and civil contracts of all kinds to the debtor party in the contractual relationship has become excessively onerous and a threat of exorbitant loss that may not be reversible.





## The Legal Impact of the General Unforeseen and Exceptional Event “Exigent Circumstances” Theory

The aggrieved debtor may seek through the Court by requesting the reduction of the excessively onerous contractual obligation to a reasonable level.

### ◆ Second : Force Majeure Theory

Where performance of the obligation becomes completely or partially impossible due to Force Majeure beyond the control of the debtor; Force Majeure that precludes the responsibility, which means that it has reached a severity that makes it unforeseen and impossible to avoid in the sense that the event cannot be expected by the most vigilant and insightful people, that results in making the obligations impossible to perform by the aggrieved debtor, such as fire, death, and so forth.

**The Egyptian Court of Cassation issued the following ruling in this regard:**

“It is required for an event to qualify being a Force Majeure, it is required for that the event to be unforeseen and impossible to avoid. If one of these two conditions is not met, the event shall not be considered as a Force Majeure. It is not necessary for an event to be considered foreseen and it must be commonplace, as it is sufficient that conditions and circumstances indicate that it will happen and it is not required for the debtor to be aware of these circumstances if a vigilant and insightful person can be aware of them. Un-foreseeability of Force Majeure must be absolute, not relative, and in this matter, is objective and not subjective.”

(Appeal No. (77) of 72, Egyptian Court of Cassation)



**Article No. (188) of Qatar Civil Code No. 22 of 2004 also provides that:**

A. 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 debtor, such obligation and correlative obligations shall also be extinguished and the contract deemed rescinded ipso facto.

B. Where such impossibility is partial, the creditor may either enforce the contract to the extent of such part of the obligation that can be performed or request the termination of the contract.

**The Qatari Court of Cassation also issued the following ruling in this regard:**

“In order for an event to qualify as a Force Majeure, two conditions must be met, which are the un-foreseeability and impossibility of avoidance.”

(Appeal No. (134) of 2015, Session of 26/05/2015)

## **Legal Characterization of the Force Majeure Theory**

Whether an event is legally characterized as a Force Majeure or not, is of the discretionary powers and prerogatives of the Court, provided that its determination is grounded on reasonable and sufficient reasons for this characterization.

**The Qatari Court of Cassation issued another ruling in this regard:**

“It is decided that an assessment of whether an incident is considered a Force Majeure in which a responsibility and obligation exhausts is denied by the discretionary court of the subject matter, provided that it assesses its judiciary on reasonable sufficient grounds.”

(Appeals No. (13 and 14) of 2010, Session of 16/02/2010 – Q6, p. 193)



## Conditions for Implementing the Force Majeure Theory in Legal Binding Contracts

- A. The existence of an enforceable contractual relationship binding on both parties.
- B. The fulfilment of the contractual obligation by one of parties becomes impossible.
- C. The reason that resulted in the impossibility of the fulfilment of the contractual obligation by debtor is not reversed.
- D. It shall result in the extinguishment of such obligation and correlative obligations.
- E. The contract shall be deemed rescinded ipso facto.

Thus, we find that the Force Majeure has a significant impact on the contracts concluded between its parties, and the Court has the discretionary powers and prerogatives for Force Majeure characterization. Its impacts may be determined by the agreement of the contracting parties or by the Court, and all this is to establish rightness and justice among people.





# Similarities and Differences Between the Theories of General Unforeseen and Exceptional Event "Exigent Circumstances" and Force Majeure in Legal Binding Contracts

Many of legal practitioners may be confused between the General Unforeseen and Exceptional Event and the Force Majeure theory, given the importance of that, it was necessary to show similarities and differences between them, as follows:

## Similarities between both Theories:

- ◆ Both are require the existence of an enforceable contractual relationship binding on both parties at the time of these events.
- ◆ Both are unpredictable and unforeseen.
- ◆ Both are exceptions of the Pacta Sunt Servanda principle.
- ◆ Both require that the reason for their occurrence is a foreign cause which neither party can control.
- ◆ Both require the existence of a condition of partial impossibility and do not have a legal impact unless with court ruling.

## Differences between both Theories in legal binding contracts:

- ◆ In the theory of the General Unforeseen and Exceptional Event "Exigent Circumstances", the fulfilment of the contractual obligation by the debtor becomes excessively onerous and threatens with exorbitant loss.
- ◆ In the theory of Force Majeure, the fulfilment of the contractual obligation by the debtor becomes completely impossible.



## The Legal Impact Difference Between Both Theories:

### Regarding the theory of General Unforeseen and Exceptional Event “Exigent Circumstances”:

We find that its legal impact can only take place with court ruling, i.e., after judicial involvement to adjudicate in disputes between contracting parties.

### Regarding the theory of Force Majeure It is necessary to distinguish between two cases:

#### ◆ First Case: Complete Impossibility

In this case, the legal impact is that the obligation and correlative/corresponding obligations shall also be extinguished upon the occurrence of the event and the contract deemed rescinded ipso facto.

#### ◆ Second Case: Partial Impossibility

In this case, the legal impact can only take place with court ruling and the debtor or one party will have two choices:

A. Request the contract to be enforceable to the extent of such part of the obligation that can be performed.

B. Request the termination of the contract.

Based on the foregoing, we find that the aim of both of the aforementioned theories is to establish values of rightness and justice in society and restitution of rights, and it is a very good approach taken by the Qatari legislator to include them in the law. In this study, we will look through the impacts of such circumstances and their reverberations on concluded enforceable contracts, including construction contracts, leases and trade contracts. We will explain this in detail below.



## The Impact of the Theories on Contracts

After studying the theories of General Unforeseen and Exceptional Event “Exigent Circumstances” and Force Majeure, and applying them to the wide spread of the Novel Coronavirus Pandemic, there is no doubt that many contracts have been affected by these events. We shall consider to what extent the parties and contracts are affected after the implementation of precautionary measures taken by the State to reduce the spread of this Pandemic.

### Construction Contracts

In view of the directives of the general leadership of the State, the significant development and expansion in the construction sector, the state's preparations to host the FIFA 2022 World Cup, and Qatar National Vision 2030, the construction sector is one of the most important economic sectors and the largest affected by these current events.

Project developers may face many obstacles, such as the difficulty in purchasing or importing the materials needed for construction, which may make the fulfillment of the conditions stipulated in the contract more difficult, and this may also affect adherence to the timetable set for the completion of the project, such as commitment to delivery dates. The impact of this Pandemic in such contracts boils down to delays the with the execution of projects and works within a specific program/period, which in turn leads to an increase of costs for the contractor due to the preventive and precautionary measures that are taken by the State to limit the spread of this Pandemic, such as closing or limiting the use of land and sea ports, limitation of the number of working hours for workers in this sector, the difficulty in transporting workers, limitation of the number of workers in working in projects and sites, or delay in having supplies of materials arriving on time, which are required for the works. Beyond any doubt, all of the foregoing will inevitably result in damages in the sector on both contracting parties.



The construction sector witnessed a high boom in the State of Qatar due to the plurality and diversity of construction works sponsored by the State such as infrastructure works (roads, bridges and metro), in addition to the construction of stadiums which are being built for hosting the FIFA World Cup 2022 and major events. All of these factors combined made this an attractive sector to invest in. Due to the vitality and for the continuity of this sector, it was obvious that it would be affected by the outbreak of the Novel Coronavirus (Covid-19), which almost completely paralyzed all sectors of life.

## **Definition of Construction Contract**

A construction contract is a contract whereby one of the parties is obliged to perform a specific work or deliver something for the other party, in exchange for compensation, without being subordinate to this party or his deputy. This means that a construction contract is a consensual contract that does not require a specific form to be concluded, and it is a legally binding contract on both parties, and it is a commutative contract.

In construction contracts, we find that the fulfillment of contractor's contractual obligation has excessively onerous, due to the decision of the public authorities regarding the reduction the number of working hours, in addition, the public authorities issued a decision that prevented the private sector from engaging in any business on Saturdays due to the Novel Coronavirus (Covid-19) outbreak.

This resulted in damages to debtors in those contractual relationships, especially if the fulfillment of those works is linked to a specific timetable, which in turn leads to an increase in the period required to complete and accomplish such works, in a violation of the construction contract. This leads to and requires increased operating and fulfillment costs other than what was allocated for it in advance, which leads to this contractual obligation becoming excessively onerous to the contractors and threatens with exorbitant loss. Thus, entitling them to remedy these damages incurred by them according to their contractual obligation by filing a lawsuit requesting to reduce the excessive obligation to a reasonable level, basing their lawsuit on (theory of Exceptional General Unforeseen and Exceptional Event "Exigent Circumstances", as the gates of justice are open to achieve this.



## FIDIC Contracts

FIDIC contract is the which is one of the most common construction contracts internationally used in today's world. It was named after the International Federation of Consulting Engineers (Fédération Internationale Des Ingénieurs-Conseils), which was founded in Belgium in 1913. The standard form of FIDIC Construction Contract is the Red Book 1999 Edition, which is the most widely.

A newer edition was also released in 2017. It should be noted that in clause No. (19) of the FIDIC Contract 1999 Edition, the term (Force Majeure) was amended to (Exceptional Events) by Clause (18) in the new 2017 edition. This amendment was made in order to avoid the controversy surrounding the definitions of (Force Majeure) by the local laws of each State, as the definition of Force Majeure varies from one State to another, which is difficult to apply it to the International FIDIC Contract.

### **Impacts of the Force Majeure and General Unforeseen and Exceptional Events on FIDIC Contract**

As we have already indicated, construction contract is legally binding contract on both parties, and given the current situation of the Novel Coronavirus (Covid-19) outbreak, all States have taken some precautionary and preventive measures to prevent the spread of this Pandemic among their people. These precautionary measures have affected all sectors of life, including contracts concluded between its parties, and among these contracts, is the FIDIC Contract.



## **Notice of Force Majeure**

If a party is or will be prevented from performing any of its obligations under the contract by Force Majeure, then it shall give notice to the other party of the event or circumstances constituting the Force Majeure and shall specify the obligations, the performance of which is or will be prevented. Sub-Clause No. (19,2) of the Red Book FIDIC Contract 1999 Edition determined that the notice should be given within 14 days after a party becomes aware, or should have become aware, of the relevant event or circumstance constituting Force Majeure.

The Party shall, having given notice, be excused preforming such obligations for so long as such Force Majeure prevents it from performing them.

Force Majeure shall not apply to obligations of a party to make payments to the other party under the Contract. We note here that the contractor would benefit the most, since it is common that the party committed to make payments is the employer.

## **Duty to Minimize Delay**

The foregoing may result in delays in the performance of some of the obligations that became impossible due to Force Majeure, however, Sub-Clause No. (19,3) of the Red Book FIDIC Contract 1999 Edition determined a duty to minimize delay and provided that each party should at all times use all reasonable endeavors to minimize any delay in the performance of the contract as a result of Force Majeure and this must be proved by following all the usual and expected methods of exercising due diligence and trying to avoid all consequences of preforming the obligation.



## Consequences of Force Majeure

As determined by Sub-Clause No. (19,4) of the Red Book FIDIC Contract 1999 Edition, if the Contractor is prevented from performing any of its obligations under the contract by Force Majeure of which notice has been given, and suffers delay and/or incurs Cost by reason of such Force Majeure, the Contractor shall be entitled to:

- ◆ An extension of time for any such delay, if completion is or will be delayed, under Sub-Clause No. (8.4), and
- ◆ Additional payment for such Cost, if the event or circumstance is long term or has a substantial impact as described in Sub-Clause No. (19.1).

After receiving this notice, the Engineer shall proceed to agree or determine these matters (extension of time and additional payments) described in Sub-Clause No. (19,4) and in accordance with Sub-Clause No. (3.5) [Determinations].





## Optional Termination of Contract

Sub-Clause No. (19,4) of the Red Book FIDIC Contract 1999 Edition, states that if the execution of substantially all the Works in progress is prevented for a continuous period of 84 days by reason of Force Majeure of which notice has been given under Sub-Clause No. (19.2), or for multiple periods which total more than 140 days due to the same notified Force Majeure. then either Party may give to the other Party a notice of termination of the Contract. In this event, the termination shall take effect 7 days after the notice is given, and the Contractor shall proceed in taking all the procedures stipulated for stopping the Works and removing the Contractor's equipment.

Upon such termination, the Engineer shall determine the value of the work done and issue a Payment Certificate, which shall include:

1. The amounts payable for any work carried out for which a price is stated in the Contract;
2. The Cost of Plant and Materials ordered for the Works which have been delivered to the Contractor, or of which the Contractor is liable to accept delivery: this Plant and Materials shall become the property of (and be at the risk of) the Employer when paid for by the Employer, and the Contractor shall place the same at the Employer's disposal;
3. Any other Cost or liability which in the circumstances was reasonably incurred by the Contractor in the expectation of completing the Works;
4. The Cost of removal of Temporary Works and Contractor's Equipment from the Site and the return of these items to the Contractor's works in his country (or to any other destination at no greater cost): and
5. The Cost of repatriation of the Contractor's staff and labor employed wholly in connection with the Works at the date of termination.



## Release from Performance under the Law

Sub-Clause No. (19,7) of the Red Book FIDIC Contract 1999 Edition, states that notwithstanding any other provision of Clause No. (19), if any event or circumstance outside the control of the Parties (including, but not limited to. Force Majeure) arises which makes it impossible or unlawful for either or both Parties to fulfil its or their contractual obligations or which, under the law governing the Contract, entitles the Parties to be released from further performance of the Contract, then upon notice by either Party to the other Party of such event or circumstance:

1. The Parties shall be discharged from further performance, without prejudice to the rights of either Party in respect of any previous breach of the Contract.
2. The sum payable by the Employer to the Contractor shall be the same as would have been payable under Sub-Clause No. (19.6) if the Contract had been terminated under Sub-Clause No. (19.6).

## Land, Sea and Air Transportation Contracts

Land, Sea and Air Transportation Contracts are among the contracts greatly affected by the current events, as the State of Qatar is home to approximately 2 million residents, most of them travel in and outside States in summer, thus requiring reserving places for travel and concluding contracts with the transportation companies (Land, Sea and Air). After the Novel Coronavirus (Covid-19) outbreak in the world, the State decided, as a precautionary step, to cease or limiting nearly all air and sea activities, and close borders and land crossings, thus making it (completely/partially) impossible to perform the obligations imposed on the transportation companies.

The question that the aggrieved party, after performing his obligation (payment for the transportation service) and the impossibility of the other party to perform its obligation, is "what are its rights related to refund and request the necessary compensations from the damage caused by the impossibility of performing the terms of the contract, and the right of the other party (transportation companies) regarding pleading Force Majeure after the impossibility of performing the obligation?!!"



There are some transportation companies that have tried to solve the issue amicably with their customers, and each party bears part of the loss, so that part of the paid amount is refunded to the aggrieved party, which received a great acceptance and welcome by the parties.

There are some other transportation companies plead Force Majeure, and that they are not responsible for what happened, and that they have also faced great damages as it has become impossible for them to conclude more contracts. In such case, the debtor aggrieved by this Exceptional Event (especially as most States have taken the decision to close their land, sea and air borders) is entitled to resort to the competent court and take advantage of the (Theory of Force Majeure) as the contract in such cases shall be deemed rescinded ipso facto.

## **Impacts of Covid-19 Pandemic on Land, Sea and Air Transportation Contracts**

As we have already indicated, Covid-19 Pandemic has taken its toll on all vital sectors of society and completely paralyzed the transportation sector in all its forms, especially since most of States have taken a number of preventive measures to limit the spread of this Pandemic and to protect its citizens, including but not limited to; the decision to shut down/limiting Airspace, which affects air transportation sector and the contracts concluded therein.

For example, transportation contracts for some goods and services made through this sector, whether between States or individuals, may be negatively affected by the decision of shutting down / limiting Airspace of some States, especially if the transportation is linked to a States that shut down its Airspace.



Regarding the decision to limit the use or close land ports of some States, it will also result in damages to land transportation sector and the contracts concluded therein, such as commercial contracts for food supply, whether from the exporting or importing State. In the event of such a decision, it will definitely make it difficult for the State to perform its contractual obligation.

As for the decision to close seaports of some States, it will result in damages to maritime transportation sector and the contracts concluded therein (such as Oil Transportation Contracts or Materials or Heavy Machinery Transportation Contracts carried out by ships). In the event of such a decision to close seaports in one of the exporting or importing State, it will lead to falter in performance of the contractual obligations of the parties.

## Lease Contracts

Lease is a nominate contract and its definition is a contract by which lessor conveys land, property, real-estate etc. to the lessee a specified time in return for a periodic payment. This sector, like other sectors, has faced damages in the contractual obligations, however, the damage caused by contractual obligations in this sector has several aspects and there are discrepancies between them. As we have already indicated, Covid-19 Pandemic has almost completely paralyzed normal life due to the preventive measures taken by the States that issued various decisions aimed in their entirety to suspend movement and transportation completely, and that there are some States that issued decisions to suspend some commercial activities such as hair salons, beauty centers for women and sporting events, and imposed curfews at certain times. There are some States that have imposed complete curfew and social distancing.

In addition, authorities decided to close some malls, shopping centers and commercial stores as well as the decision of limitation of working hours and number of workers in the private sector. Therefore, it is imperative that real estate sector would be affected by these measures, and the debtor's performance of his contractual obligations has become excessively onerous and even impossible in some cases.



## **We will address the different situation of leases and divide them into three sections:**

- ◆ Leases for commercial stores that were not covered by a decision of the public authorities to cease their commercial activities.

Such as pharmacies, fuel stations and food/grocery stores, as they practice their commercial activities naturally, and theory of Exigent Circumstances or theory of Force Majeure is not enforceable in this case.

- ◆ Leases for commercial stores that were covered by a decision of the public authorities to reduce the number of working hours, in addition to cease commercial activities on Saturdays.

This results in diminishing profits, which makes it difficult for them to fully comply with their obligation. Also, in light of the usual conditions, the aggrieved debtor is entitled to file a lawsuit before the court requesting the reduction of the excessively onerous contractual obligation to a reasonable level, pursuant to the theory of the General Unforeseen and Exceptional Event "Exigent Circumstances".

- ◆ Leases for commercial stores that were covered by a decision of the public authorities to cease commercial activities completely has two cases:

**First Case:** Leases for commercial activities that were specified in nature by the public authorities to cease commercial activities completely such as hair salons and beauty centers for women are entitled to plead Force Majeure and be free of their obligations and the contract shall be deemed rescinded ipso facto.



**Second Case:** Leases for commercial stores that were not specified in nature by the public authorities, but instead they are located in areas/malls and commercial markets covered by a decision a decision of the public authorities to close them completely until further notice due to the preventive measures taken by the State to limit the spread of the Novel Coronavirus "Covid-19" Pandemic, such as the case in (public markets and the industrial area), in this case, the aggrieved debtor is entitled to plead Force Majeure to be free of its obligations, and also the contract shall be deemed rescinded ipso facto.

Incidentally, in this regard, if the subject of the lease is movables and immovables, such as cars, machines and equipment leases, the agreement of the parties or the court shall determine the total or partial cancellation or reduction of the excessively onerous contractual obligation to a reasonable level.

### **The Egyptian Court of Cassation issued the following ruling in this regard:**

"Whereas the judgment being challenged established is based on occurrence a foreign cause; "As ascertained by the knowledge residing in the breast of the judges of the court in light of the complexities and circumstances surrounding the incident that the fire suddenly broke out in the car, which is a foreign cause that the transport secretary has no hand in it, and neither him nor the owner of the furniture were unable to prevent or stop it, thus negating the responsibility."

(Appeal No. (1168) of 50, Egyptian Court of Cassation)





## Commercial Contracts

It is difficult to formulate one definition for commercial contracts or put them under any characterization, as each contract contained in the Civil Code may be used in the commercial field and the undertakings taken by merchants cannot be gauged.

Nevertheless, any contract may acquire the commercial characterization by applying one of the criteria prescribed for commercial work, and then the contract is considered a commercial contract by law. According to the theory of Accessory Commercial Transactions, the contract shall be considered commercial if a merchant concludes it for commercial needs, and the contract may be mixed, i.e. commercially with respect to one party and civil with respect to the other party as such in theory of Accessory Commercial Transactions.

As commercial contracts define rights and obligations for parties, approximately all of contracts were affected by the spread of the Novel Coronavirus (Covid-19) Pandemic that has taken its toll on all vital sectors of society and completely paralyzed the commercial sector in all its forms, especially since most of States have taken a number of preventive measures to limit the spread of this Pandemic and to protect its citizens, including but not limited to; the decision to shut down Airspace, which affects commercial sector and the contracts concluded therein. Commercial contracts are sales, purchase and supply contracts, and the spread of the Novel Coronavirus (Covid-19) Pandemic may negatively affect the performance of contractual relationships in completing and fulfilling obligations.

### **Types of commercial contracts include, but not limited to:**

Distribution Contract - Marketing Contract - Management & Operation Contract - Franchise Contract - Partnership Contract - Property Management Contract - Agency Contract - Commercial Mortgage Loan Contract - Warranty Contract – ....

In this regard, contracts break down into categories in terms of the period; short-term contracts, i.e. once the contract is enforceable and the parties have agreed, the obligations are performed immediately, such as sales and purchase contracts, once the contract is concluded, buying and selling activities takes place in time and place.



Long-term contracts have been also negatively affected by the Novel Coronavirus (Covid-19) Pandemic in terms of completing the obligations and fulfilling them.

We should also mention entry into force, as the contract may be concluded, but the parties agree that the contract will enter into force in a later period, whether long-term or short-term contract. Force Majeure here may occur during the time of contract entry into force, and the Court has the discretionary powers and prerogatives to completely or partially enforce the contract, suspend the contract, or reduce it to a reasonable level.

On the other hand, there is a type of long-term contract, which requires a long period of time to be fulfilled, for example, supply contracts (local or international). The contract may be concluded once the parties agree on the terms, but once it enters into force, it needs a long period of time to be fulfilled. The fulfillment may be daily, monthly, or yearly, and General Unforeseen and Exceptional Event "Exigent Circumstances" or Force Majeure may occur during the validity and enforcement period of the contract, and in such case, the Court has the discretionary powers and prerogatives to estimate of the loss or rule with the impossibility of performing the obligation and rescind it or reduce it to a reasonable level.

### **The Egyptian Court of Cassation issued the following ruling in this regard:**

"Force Majeure, within the meaning of Article No. (165) of the Civil Code, is war, earthquake, or fire, and it may also be an enforceable administrative order, provided that the conditions are met (the event being unforeseeable and impossibility to avoid), and the debtor's obligation shall be precluded, and the causal relationship between the tort and the damage in the liability in tort shall be negated, and compensation is not applicable in either case."

(Appeal No. (423) of 41, Egyptian Court of Cassation)



## Conclusion

To address the Novel Coronavirus (Covid-19) outbreak that struck most of the States around the world, and as the honor of the Qatari nation is based on the values of tolerance, cooperation, solidarity and collaboration, it is necessary for the parties of within a contractual relationship, in which one of the parties was aggrieved during performing his contractual obligation, to sit together and find a satisfactory solution to all. In addition, our wise leadership had laid down principles and values in order to enable this option and issued a number of instructions and guiding statements in this regard. These decisions include, but not limited to, resolution to exempt citizens from electricity and water bills for a period of six months and exempt citizens taking loans from banks from paying their obligations for a period of six months, in addition to many procedures taken by the state to mitigate the impacts of this pandemic that may not be adequately explained herein. Including number of malls and shopping centers decided to exempt their lessees from paying their rental obligations such as the Katara Cultural Village, private complexes, etc. Therefore, it was necessary for the parties of any contractual relationship to follow this positive example taken by the State and private entities pursuant to the rule “No harm, No foul” instead of implementing the articles and provisions of law to adjudicate any dispute that may arise between them, resulted from this crisis. Therefore, as legal practitioners and by taking into account the current circumstance in the world due to the repercussions of the Novel Coronavirus (Covid-19) outbreak, including our beloved State of Qatar, we advise to follow the same approach taken by the State by hearing the voice of reason, wisdom, cooperation and compromise so that we can safely overcome this pandemic together.



By applying the foregoing on all types of contracts, we find that there are some contracts that have not been completely affected by the preventive measures and efforts taken by the State to address and limit the spread of the Novel Coronavirus (Covid-19) outbreak. For example, pharmacies, food/grocery stores, restaurants, and fuel stations. On the contrary, the sales of some activities increased in these difficult times. And there is another type of contracts that has been affected to the extent that the performance of the obligations has become impossible, such as the retail stores that were completely closed from a decision issued by the State, and in such case, the theory of Force Majeure may be applied. And there is a third type of contracts that has been affected the performance of the obligations has not become impossible but rather has become excessively onerous, and in such case, the theory of General Unforeseen and Exceptional Event "Exigent Circumstances" may be applied. Above all, the Court that have the discretionary powers and prerogatives to determine those Exigent Circumstances, or they may be determined by agreement between the parties, in cases where a contract may not be amended or terminated unless by an agreement between the parties.



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