

# Force Majeure Clause in Procurement of Goods

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In the wake of the global economic slowdown and disruption in the movement of goods and services through international borders because of the COVID-19 pandemic, the Ministry of Finance recently issued an office memorandum **allowing entities to invoke the “force majeure” clause in contracts executed under the Manual for Procurement of Goods, 2017**. This has been on the grounds of supply chain disruption to mitigate the spread of COVID-19 in China or any other country.

## Force Majeure Clause

The memo clarifies that such **instances should be considered as a case of natural calamity and the force majeure clause may be invoked** wherever appropriate in accordance with the procedures laid down in the procurement manual. Force majeure in contracts typically **allow parties to avoid performing their contractual obligations when inevitable, unforeseen, and uncontrollable circumstances arise, rendering the performance of the contract impossible**. This clause does not excuse a party's non-performance entirely, but **only suspends it for the duration of the force majeure**.

[As an illustration, if an Indian party enters into a contract with a foreign party to purchase a certain quantity of dairy products and at a later stage, Indian laws prohibit import of dairy products into India, then such contract becomes impossible and thereby void].

As per the Manual for Procurement of Goods 2017, a force majeure means extraordinary events or circumstances beyond human control such as an event described as an act of God (like a natural calamity) or events such as a war, strikes, riots, crimes (but not including negligence or wrong-doing,

predictable/ seasonal rain and any other events specifically excluded in the clause). While the memo only applies to contracts executed under the procurement manual with government entities, the **reasoning applied here may also be adopted and claimed in private contracts**, as applicable. However, the chances of successfully invoking the force majeure clause would be determined based on specific facts and circumstances of each case. **The argument is yet to be tested in the court of law.**

From an organizational standpoint, this is a crucial time for management, including general counsels, legal heads, chief financial officers, chief executive officers and key managerial personnel to prepare for the COVID-19 pandemic. **Organizations need to consider whether they can successfully claim impossibility of performing their contractual obligations and invoke force majeure clauses in their contracts.** Only foresight and careful planning will lead to a scenario where any upcoming losses can be mitigated.