



In a force majeure situation no compensation is due if a party is prevented from executing its contractual obligations. This is a principle under Belgian law that also applies if no contractual clause on force majeure is in place. A contractual clause can be more precise or even derogate from this principle. Force majeure is defined very broadly as an unforeseeable and unavoidable event which is independent of the will of the person invoking the force majeure. The situation of force majeure may not be caused by a fault of the party.

At this time the COVID-19 pandemic will in many cases be a situation of force majeure, for instance if there is a ban of certain activities by the authorities. For other activities it might sometimes be harder to invoke force majeure. The fact that it becomes much more difficult to fulfill a contractual obligation does not necessarily make it impossible to fulfill such contractual obligation. If an activity is suspended as a preventive measure which is not imposed by the authorities, the contract party will have to establish that the conditions of force majeure are met.

Some of the major difficulties when facing the ongoing Corona-crisis are:

- is the execution of the obligation only suspended or definitively impossible; how much effort (and even loss) can reasonably be expected from a party in order to postpone the execution of its obligations?
- remains the execution of the obligation impossible even if there is no longer a government order in place?
- are the consequences of a pandemic or epidemic as of now still 'unforeseeable'?

These questions can also be relevant in an extra-

contractual sphere: now interrupting contractual negotiations too quickly invoking force majeure, could sometimes constitute a pre-contractual fault.

The answer to the questions raised will differ from case to case and can only be assessed on an individual basis. Motivation, substantiation and timing of force majeure notifications will sometimes need to be carefully drafted.

MVVP has in this respect advised many live event organizers, retailers, and companies in the supply chain.



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