

## Brief Comments

Acts of God and Force  
Majeure concepts in times of  
Coronavirus

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Due to the current social and economic crisis caused by the spread of COVID-19, more than a few are asking whether the obligations assumed in civil and commercial contracts, signed prior to the decreed state of emergency are still in force.

Thus, the multiple and drastic changes that have taken place in unexpectedly, over the last weeks and even days, have led to a change in the ecosystem of many companies. This shift, usually negative, has caused some people to look at the concepts of force majeure or fortuitous case as a way for them to avoid their contractual obligations.

Although force majeure is an event which, in an unforeseen manner and totally beyond the control of the person alleging it, hinders any effort to comply with the agreed obligations, our Supreme Court (TS)<sup>i</sup> demands that certain requirements be met in order to resort thereto:

First, the party alleging force majeure must assume and foresee the circumstances related to the performance of the contract, even though such circumstances are beyond their control. That is, the status of being an outsider, which is implied by force majeure, does not itself exempt the party who must comply with their obligation from the duty to foresee and assume the various scenarios that such an obligation entail.

In other words, in order to resort to force majeure, a party must have acted with the diligence that is understood to be reasonable in each case. According to the TS (S. 20 July 2000): "*Force majeure must consist of a force that is greater than all control and foresight, and in order to assess its occurrence one must be aware of the normal and reasonable foresight that circumstances require adopting in each specific case, or the inevitability of a practical possibility.*".

Secondly, there must be a total absence of fault on the part of the person invoking it.

Finally, according to the caselaw of the first chamber of the TS, the party alleging force majeure bears the burden of proving its existence.

Consequently, in the days to come, we must be even more cautious than usual, if possible, when resorting to fortuitous events and force majeure to avoid contractual obligations. The fleeting nature of events means that new scenarios in the business world must be examined by the parties in detail and with the reasonable diligence required in each case.

<sup>i</sup> Caselaw of the TS sentences: S. 18 December 2006, S. 24 December 1999, S. 19 May 1960, 28 December 1997, 13 July, 24 December 1999, 2 March 2001, S. 22 February 2005, S. 20 July 2000, S. 4 July 1983, reiterated in those of 31 March 1995, 31 May 1997, 20 July 2000 and 15 February 2006.