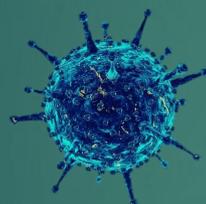
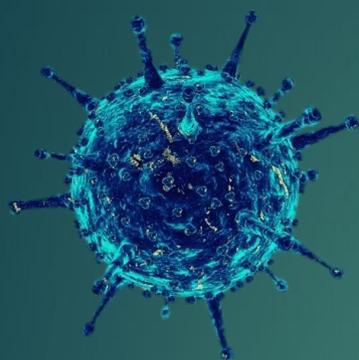


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# COVID – 19 and Its Impact on Contract Performance: Iranian Law Perspective



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The spread of coronavirus has already begun to exert pressure on businesses' and traders' abilities to supply goods and services. The outbreak of the virus will unquestionably impact businesses' abilities to live up to their prior commitments. Some businesses will be unable to perform their obligations or will be able to do only with a considerable amount of delay. Businesses that have entered into transactions with the Iranian counterparties might legitimately be concerned about the effects of this pandemic on their obligations toward Iranian counterparties, especially if the parties have chosen the Iranian laws and courts to govern their relationship.

The two major legal concepts dealing with the problem of changed circumstances are *force majeure* and hardship.

### **Force Majeure**

*Force majeure* is used as a general term referring to some kinds of events that serve as a basis for an exemption from liability. Iranian law does not explicitly deal with the question of *force majeure*; but courts invoke articles 227 and 229 of the Civil Code to deduce the proper rules. The current practice of courts requires the following conditions to be met concomitantly for an event to amount to force majeure. The event:

- (i) must have an external nature;
- (ii) could not be foreseen or avoided;
- (iii) renders performance of a contractual obligation impossible permanently or temporarily.

A party's ability to avail himself of *force majeure* exemption will depend upon the permanent or temporary nature of the event:

(i) If the event renders the performance of an obligation temporarily impossible, the contract is suspended. The non-performing party shall commence upon delivering on his obligation once the event extinguishes, but he will not be liable for damages for delayed performance.

It must be noted that in cases where the time of performance is essential, a temporary impediment can lead to the automatic termination of the contract.

(ii) If the event renders the performance of an obligation permanently out of the question, the

contract is automatically terminated, and the non-performing party is released from his obligations.

For example, if the Coronavirus leads to closer of borders and the import of raw materials becomes impossible, while the materials are not accessible in the market, the *force majeure* can be invoked by the seller. Depending on duration of the contract, the effect of *force majeure* will be suspension or automatic termination.

If Coronavirus causes the obligor's health to be compromised, it can be examined as a *force majeure* in some circumstances; particularly when the obligor's place of residence or place of contract performance be in quarantine by order of government authorities.

However, Iranian laws, as well as Islamic law, permit the contracting parties to contractually allocate the risks arising out of *force majeure* events.

### **Hardship**

Hardship situation comes into play when the performance of a contract becomes excessively onerous from the economic point of view.

The Iranian Civil Code does not deal with hardship situations. Courts invoke *Sharia* law to decide disputes in such cases. The rule of *osro-o-haraj* largely resembles hardship provision in modern civil codes. However, Iranian laws authorize parties to include a hardship provision in their contract. In that case, the available remedy is a termination or judicial modification. If in the above example, the raw materials are available in the market, but their price has been increased onerously, the hardship mechanism will be reliable for the affected party.

It must be noted that, in the absence of statutory provisions and parties' agreement, Iranian courts by relying on Article 3 of Civil Procedure Code, have to decide cases based upon sharia law or general principles of law. In the latter case, it appears that courts are permitted to rely on international soft law principles of contract law, such as UNIDROIT Principles on International Commercial Contracts. Accordingly, Iranian courts might transport the requirements of the hardship

provision from the UNIDROIT Principles, which in Article 6.2.2 the events to:

- (i) occur or become known to the affected party after the conclusion of contract,
- (ii) could not reasonably have been taken into account by the affected party at the time of conclusion of contract,
- (iii) are beyond the control of the affected party; and
- (iv) the risk of the events was not assumed by the affected party.

In the case of the satisfaction of these conditions, the affected party may request the renegotiation of the contract from the other side. However, the affected party shall continue to perform his obligations during that period. If such renegotiation fails within a reasonable time, each party may refer to the court. If the court finds that the requirements of hardship are met, it may modify the contract or terminate it.

### **Coronavirus in the Shadow of Sanctions**

In recent years, Iran has been faced with various sanctions. These sanctions involve different legal consequences besides economic, political and social effects and have made disturbance in the performance of contracts. Taking into account the legal effects of sanctions, in some Iranian cases, the conditions of *force majeure* have been satisfied and non-performing party could exempt from contractual liability and in some other cases, the affected party could invoke to hardship mechanism. For example, Branch 10 of Tehran Appeal Court, in its decision No. 9209970221000229 dated 15 May 2013 has held that the economic sanctions are considered as a *force majeure*. In other case, branch 21 of Supreme Court in its decision No. 9309970908100085 dated 22 Sep 2014 has declared that due to the onerous increase of the prices, the affected party is not contractually liable.

The Coronavirus pandemic has now been added to the sanctions and it has made implementation of contracts even more complicated. In fact, most of the contracts have been confronted with two barriers. Therefore, in examining the possibility of contract performance in the shadow of Coronavirus, the sanctions shall

also be considered to establish the actual consequences of the Coronavirus.

### **Conclusion**

In the wake of the spread of the virus, an affected party will have two legal tools to rely on: *force majeure* and *osro-o-haraj* rule. It is self-explanatory, however, that the outcome of the case will depend upon the individual circumstances of each case.

An obligor will be able to invoke *force majeure* if the virus makes the performance of his obligations impossible either temporarily or permanently. But if the virus renders the performance of the contract economically unbalanced, the obligor may rely upon hardship theory either based on the contract term or the general rule of *osro-o-haraj*.

It should be born in mind that the monetary obligations cannot be affected by COVID-19 under Iranian law, and in any event the obligor shall perform its due payment obligation, by other means such as electronically. If the cash payment is agreed between the parties, taking into account the circumstances of the case, the electronically payment shall be considered valid.