

FORCE MAJEURE

Navigating Extraordinary Events in Commercial Contracts



TODAY'S AGENDA

*Force Majeure
Webinar*

01

What is Force Majeure?

02

Essential Legal Elements

03

Indian Legal Framework

04

War & Industry Impact

05

Critical areas businesses must address and Best Practices to be adopted

06

DGFT Relief Scheme

WHAT IS FORCE MAJEURE?



For Indian businesses engaged in cross-border trade the effects of a conflict ranges from disrupted shipping routes to sanctions and supply shortages, pose significant challenges to contractual performance. This even leads to the failure of fulfilment of contractual obligations. This is where the doctrine of Force Majeure comes into force.

Force Majeure — a French term meaning "Superior Force." A contractual mechanism that excuses a party from performing its obligations when extraordinary events beyond its control make performance impossible, impracticable, or fundamentally altered.

WTO Definition

12.1. Force majeure refers to any failure by the WTO or the Contractor to perform obligations under the Contract caused by an impediment beyond its control that the relevant party could not have taken into account at the time of the signing of the Contract, and the consequences of which could not reasonably have been avoided or overcome by the relevant party.

ICC 2020 Standard

Event for the performance of contract must be: (1) **beyond party's control**, (2) **unforeseeable at contracting**, and (3) its **effect could not reasonably be avoided or overcome**.

ESSENTIAL ELEMENTS

Three cumulative conditions must ALL be satisfied

01

BEYOND CONTROL

External & Uncontrollable

The event must be external to the contract and parties — war, pandemic, government embargo. Self-induced or foreseeable business risks do NOT qualify.

02

UNFORESEEABILITY

Not Anticipated at Signing

The event must not have been reasonably foreseeable at the time the contract was signed. Pre-existing conflicts or known disruptions typically fail this test.

03

UNAVOIDABILITY

Mitigation Efforts Required

The party must demonstrate it took all reasonable steps to mitigate the impact. Force Majeure is not a license to abandon all effort — alternatives must be explored.



Why Force Majeure Clause is discussed today ?

- Ongoing Conflict - It has impacted Industries/businesses across the globe, including India.
- Although India is not a direct participant in the present conflict, its economy remains heavily dependent on energy imports from the Middle East. Disruptions in oil and liquefied natural gas (LNG) shipments have affected range of commercial agreements. Entire supply chain has been impacted from import of raw materials to procurement and production of finished goods.

DOES MIDDLE EAST CRISES QUALIFY AS FORCE MAJEURE?

Middle East Conflict & Strait of Hormuz Disruptions — An Indian Perspective



MAY QUALIFY IF...

- ✓ Contract specifically includes war / blockade / government action
- ✓ Obligations become impracticable due to widespread transport and infrastructure disruptions.
- ✓ Performance cannot be achieved even with reasonable efforts
- ✓ Event was not foreseeable at the time of contracting
- ✓ Proper and timely written notice is given to counterparty



MAY NOT QUALIFY IF...

- ✗ Performance is still possible but at higher cost
- ✗ Delay alone is caused — not true impossibility
- ✗ Risk allocation was already addressed in the contract
- ✗ Clause is narrowly drafted (e.g., only fire, flood)
- ✗ Conflict was already ongoing when contract was signed

INDIAN LEGAL FRAMEWORK

Indian Contract Act, 1872

Section 32 — Contingent Contracts

When a contract **expressly provides** for a force majeure clause, Section 32 governs its operation.

If the event becomes **impossible**, the contract becomes **void**.

Example: In case the supply of iron ore from the designated mining supplier is disrupted due to government-imposed mining bans or environmental restrictions, the contract shall stand suspended or become void

Section 56 — Doctrine of Frustration

Applies in the **absence** of a force majeure clause.

A valid contract becomes **void** if it later becomes impossible or unlawful due to events beyond the promisor's control.

Mere hardship or increased cost does NOT qualify as a force majeure event.



Supreme Court — Energy Watchdog v. CERC (2017) 14 SCC 80

Force majeure clause present → Section 32 applies. | No clause → Section 56 may apply.

Courts will NOT rewrite contracts merely because performance has become difficult or unprofitable.

JURISPRUDENCE DURING COVID-19

interpretation of Force Majeure Clause

Rohit ferro Tech Ltd case [2022 SCC Online Cal 1503]

Contracts concluded after the Pandemic became known to face stricter force majeure standards. Court reason that parties entering into contact in 2021 or after that possessed knowledge of pandemic risk. The unforeseeability doctrine, central to force majeure loses focus when circumstances become foreseeable.

Halliburton Offshore Services Inc. v. Vedanta Ltd. (Delhi High Court, 2020)

One of the earliest COVID-19 cases, the Court recognized the pandemic as a valid force majeure event. However, it made it clear that relief is not automatic and must be determined based on the specific facts of each case

Post-COVID, the significance of force majeure clauses has greatly increased, with courts frequently relying on them to assess contractual disruptions. It has now become a critical tool for managing risk and ensuring business continuity in uncertain times.

DOES DISRUPTIONS IN PROVIDING GOODS/SERVICES AUTOMATICALLY QUALIFY AS FORCE MAJEURE ?

The answer is “NO”. It does not automatically qualify as force majeure.

International arbitration practice and most legal systems require three essential elements as discussed above to be satisfied before force majeure can be successfully invoked. Below is example for various disruptions which can occur:

Situations	Likely Legal Interpretation
Port closure due to active armed conflict	Force majeure likely valid
Government-imposed sanctions blocking the route	Generally valid
Closure of Airport leading to failure to deliver goods/Services	Force Majeure
Infrastructure failure like water supply closed, LPG unavailability, transport network closure due to unforeseen event.	Force Majeure Valid
Complete unavailability of vessels on a specific route	Likely valid if well documented
Vessels damaged during transit due to Middle east crises	Force Majeure valid

IMPACT ON KEY INDUSTRIES



Foundries & Manufacturers

- ▶ Critical spare parts from conflict-affected regions may be blocked or delayed.
- ▶ Production halts cascade into delivery defaults
- ▶ Many foundries in the country (e.g., in areas around Gujarat) are heavily dependent on continuous natural gas supply; disruption leads to immediate furnace shutdowns and production loss.
- ▶ Inventory pile-up of semi-finished or finished goods due to logistics issues causes working capital blockage.
- ▶ Increase in raw material cost due to increase in pig iron and other raw materials caused by shortage of metal scrap imported from middle east.

Exporters & Importers

- ▶ Delayed raw materials → Letter of Credit defaults & working capital stress
- ▶ **Freight increased:** Significant increase in the freight leading to increased price in finished goods

Energy & Infrastructure (EPC)

- ▶ LNG/oil shipments via Hormuz directly impacted
- ▶ Power & fertiliser contracts vulnerable to supply disruption
- ▶ Long-term supply & investment agreements have been impacted.

CRITICAL AREAS BUSINESSES MUST ADDRESS

1

Not Informing the Other Party on Time — Late notice can forfeit your FM right, even if the crisis is genuine. Send formal written notice immediately.

4

Using a Generic Contract Clause — A narrow clause (only "fire, flood, war") may not cover pandemics, sanctions, or shipping disruptions.

2

Assuming the Crisis Alone is Enough Proof — You must connect the event specifically to your contractual obligation, not just cite the news.

5

Invoking FM for Financial Loss, Not Impossibility — Higher costs \neq FM. Ask: can we still perform, just at a higher cost?

3

Sitting Idle Instead of Finding Alternatives — Courts expect mitigation. Document every alternative route, supplier, or solution explored.

6

Failing to Keep Proper Records — Start a documentation file from day one: port advisories, government orders, emails, cost records.

DRAFTING AN EFFECTIVE FORCE MAJEURE CLAUSE



1

Clear Definition

Specify: acts of God, epidemics/pandemics, war, invasion, terrorism, blockade, embargo, geopolitical conflict, government action, port closure, strikes, logistics failures.

2

Notice Requirements

Mandate written notice within 5–10 working days specifying: nature of event, obligations affected, expected duration, and supporting evidence.

3

Mitigation Obligation

"The affected party shall use reasonable efforts to mitigate and resume performance as soon as practicable." Document all steps taken.

4

Suspension & Termination

State clearly: if FM event persists beyond 60–90 days, either party may terminate on 15 days' written notice. Temporary events → suspend only.

5

Broad vs. Narrow Wording

Broad clauses (referencing pandemic, sanctions, geopolitical conflict) consistently favoured by courts. Narrow clauses (only fire/flood) leave gaps.

6

Hardship Clause (Optional)

For events that don't prevent performance but make it economically irrational, add a separate hardship / renegotiation clause with additional option for arbitration.

SUPPORT PROVIDED BY GOVERNMENT TO INDUSTRIES DURING COVID PANDEMIC

The Government of India took several measures to support industries under situations similar to *force majeure* during the outbreak of COVID-19. Recognizing the severe disruption caused by lockdowns, supply chain breakdowns, and labour shortages, the government introduced a comprehensive relief framework under the Atmanirbhar Bharat Abhiyan. These measures aimed to provide liquidity, reduce financial stress, ensure business continuity, and protect industries from penalties arising due to non-performance of their contractual obligations. The approach combined legal relief (similar to force majeure protection) with financial assistance such as credit guarantees, subsidies, and policy reforms to revive industrial activity.

Examples of support provided by GOI is below:

Action Taken by Government	Benefit to Industry
₹3 lakh crore collateral-free loans (ECLGS)	Provided liquidity, prevented bankruptcy
₹20,000 crore subordinate debt for stressed MSMEs	Helped revive sick/NPA units
₹50,000 crore equity infusion (Fund of Funds)	Supported expansion and growth of MSMEs
EPF contribution paid/reduced by government	Reduced labour cost burden on industries
₹30,000 crore liquidity scheme for NBFCs	Ensured credit flow to industries

DGFT RELIEF SCHEME

RELIEF Scheme | Rs. 497 Crore Package | Notification No. 65/2025-26 | Dated: 19 March 2026 | Implementing Agency: ECGC

Resilience & Logistics Intervention for Export Facilitation. This scheme comes Under Export Promotion Mission (EPM). Covers additional freight, insurance & war-risk costs arising from West Asia conflict and Gulf maritime disruptions.

COMPONENT I

Active ECGC Holders

(with bill of lading issued from 14 Feb – 15 Mar 2026)

- ▶ Must have active ECGC credit insurance at time of shipment
- ▶ Government Support – Rs. 56 Crore

COMPONENT II

New / Upcoming Shipments

(with bill of lading issued from 16 Mar – 15 Jun 2026)

- ▶ For exporters without current ECGC cover
- ▶ Government Support – Rs. 159 Crore

COMPONENT III

MSMEs without ECGC

(with bill of lading issued from 14 Feb – 15 Mar 2026)

- ▶ MSME exporters without ECGC credit insurance
- ▶ Government Support – Rs. 282 Crore

IMPORT SCHEMES

- **Customs Duty Exemption on 40 Petrochemical Products**

On April 2, 2026, the Finance Ministry issued a notification waiving all customs duties on 40 critical petrochemical products. The move is a direct response to the growing conflict in West Asia, which has threatened the stability of feedstock availability and pricing for key manufacturing sectors.

- **DGFT Extension of Export Obligations (Advance Authorisation & EPCG)**

Export obligations under specified advance authorisations and EPCG authorisations those expiring between 1 March and 31 May 2026 have been extended to 31 August 2026, without the need for exporters to pay a composition fee or submit separate application

WHAT PRACTICAL STEPS INDUSTRIES SHOULD TAKE NOW ?

01

Contract Review

Audit all active contracts for FM clause scope, notice obligations & whether current disruptions are covered.

02

Issue Protective Notice

Send written notices immediately to preserve legal rights without formally refusing performance.

03

Documentation Protocol

Record every disruption in real time — shipping advisories, freight escalations & government orders.

04

Engage Legal Counsel

English, Singapore, UAE & Indian law each have materially different FM standards — get jurisdiction-specific advice.

05

Review Insurance Cover

Check marine & trade credit policies for war-zone exclusions. Activate war risk endorsements if needed.

06

Diversify Supply Chain

Dual-vendor strategy, multi-route planning & distributed storage reduce single-point-of-failure risk.

07

Train Internal Teams

Create SOPs, assign notice responsibilities & run legal awareness sessions to prevent costly errors.



HOW SBA CAN HELP YOU

*Your Trusted
Legal Partner*

Industry-Specific Legal Advisory

- We review your existing contracts and draft robust, industry-specific Force Majeure clauses covering war, sanctions, geopolitical events and supply disruptions.
- We also provide tailored advisory for sectors like foundry, EPC, MSMEs, and logistics, along with scheme-specific support.

Legal Notice & Claims Support

Timely, court-compliant Force Majeure notices; documentation of causal links, mitigation efforts and procedural requirements to protect your claim.

Global Diversification

We also assist in global diversification strategies, guiding businesses on expanding into new markets as an effective risk mitigation approach.



A N Y

QUESTIONS?

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