

COVID-19: IMPLICATION ON THE ENFORCEMENT OF CONTRACTS IN NIGERIA

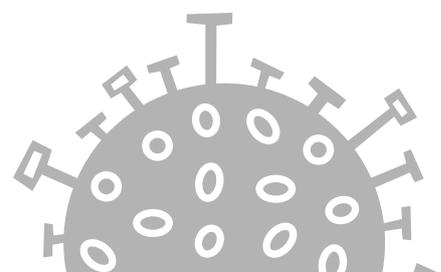


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The outbreak of the Corona Virus pandemic (Covid-19) which has claimed over 37,832 lives as at 31st March, 2020 has caused significant disruption in business activities, trade and commerce, activities of essential industries in Nigeria and across the globe. More specifically, the travel & tourism sector, hotel and hospitality businesses and the transportation sectors are the most hit by the restrictions placed on movements by the national governments as a way of curtailing the spread of the deadly virus.

The major concern of many individuals and corporate entities in Nigeria and across the globe is whether there exist any form of justification for non-performance of their contractual and financial obligations. Despite the fact that many businesses in Nigeria now allow their employees to work remotely, it is almost certain that many businesses and individuals will fail to meet with their obligations under various contracts and will unavoidably be in breach of such contracts. We have attempted here, to examine the impact of Covid-19 from a legal perspective with concentration to commercial disputes arising from non-performance of contractual and financial obligations. The parties in breach are likely to hide behind the principle of force majeure stipulated in their contracts.

Force majeure clause is a provision in a commercial agreement that excuses a party from performing its contractual obligations as a result of an event or factor that the parties could not have reasonably anticipated or controlled. Force majeure events are not exhaustive but include floods, earthquakes and other unforeseeable events which constitutes “acts of God”. It can be argued that Covid-19 is a force majeure event which has led to the grounding of economic activities in many countries.





Conventionally, if a force majeure event occurs, the performance of certain duties or obligations will be suspended under the contract until the force majeure event is contained or the parties may decide to terminate the contract entirely depending on the clear provisions contained in the contract if the event continues for a prolonged period. In the event where the underlying contract of the parties does not provide for force majeure, parties can rely on the common law doctrine of frustration which is applicable where an event occurs that radically or fundamentally affects the performance of the contract. The burden to establish that the non-performance of the obligation is as a result of force majeure or that the contract has been frustrated by the occurrence of the event lies on the party relying on force majeure or the doctrine of frustration.

In conclusion, it is strongly recommended that individuals and corporate entities who are being affected by the Covid-19 pandemic in the performance of their obligations should timeously notify the other contracting party of the suspension of the performance of the obligations pending when the restrictions and lockdown returns to normalcy. Proactive steps should also be taken by requesting for time extensions, amendments in the contract to accommodate the unprecedented situation, or demand for waivers of certain obligations in order to preserve long-term business relationships and ameliorate the devastating effects of Covid-19 is indeed felt across the globe.

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