

# Navigating COVID-19: Top Issues Concerning Force Majeure Clauses

The COVID-19 global pandemic has led to rapid and significant changes across every industry and has threatened the ability of many companies to satisfy their contractual obligations. As a result, the doctrine of force majeure and associated common law defenses have emerged at the forefront of many discussions in the commercial sector. Manatt has set up a dedicated task force of attorneys focused on assisting companies working through contracting issues. Manatt can help you navigate the complex and seemingly ambiguous language found in these provisions as these uncertain circumstances continue to evolve.

## Key Issues to Consider

### Litigation Concerning Business Interruption and the Cancellation of Large Events

**The Issue:** As economic activity slows, issues will arise concerning whether the pandemic excuses, delays or otherwise impacts ongoing contractual obligations or obligations to perform within specified time frames. Relevant issues will include enforcement of force majeure clauses and common law defenses to contractual performance, such as impossibility, impracticability and frustration of purpose.

**How Manatt Can Help:** These issues will cut across industries and will impact parties on both sides of contractual obligations. Manatt has established a multidisciplinary task force to focus on these issues as they impact our clients.

### Force Majeure Clauses in Sponsorship, Media, Vendor, Marketing and Promotion Agreements

**The Issue:** Advertisers should assess the adequacy and completeness of their force majeure clauses to address delays and cancellations based on public health and safety concerns, even without specific governmental orders or guidance, and the effect such delays or cancellations have on the parties' respective rights and obligations such as make goods, fee adjustments and termination.

**How Manatt Can Help:** Manatt can review and analyze applicable agreements to determine application of any force majeure or other suspension clauses and strategic use of such clauses, as well as assist clients in strengthening such clauses in existing or future contracts. Manatt can also advise clients on their options when force majeure has been asserted against them.

### Contract Performance Disputes Concerning Financial Institutions

**The Issue:** Financial institutions that have outsourced key functions (such as loan servicing or call center support) will be severely prejudiced when vendors are unable or unwilling to perform their obligations based on pandemic concerns or governmental orders. Conversely, companies unable to perform their own obligations to third parties will be in need of relief.

**How Manatt Can Help:** Drawing from our firm's institutional strength serving financial services clients, Manatt has extensive experience analyzing and litigating contract terms and doctrines implicated by the inability to perform, specifically as they pertain to the financial industry.

## Force Majeure Provisions in Entertainment Agreements

**The Issue:** In film, TV and the music industry, underlying agreements require delivery of product by certain dates or consequences ensue—often a reduction in compensation, overage charges, or even termination of the agreement. Those operating in the entertainment industry have their own set of unique questions that implicate force majeure and associated clauses: What if a promoter preemptively cancelled a live performance event or production is shut down? How will this affect booking agencies, marketing agencies, below-the-line workers and others?

**How Manatt Can Help:** Manatt's multidisciplinary team of professionals, including those in our acclaimed entertainment practice, can review and analyze applicable agreements to determine deadlines and application of any force majeure or other suspension clauses.

## Real Estate Contract Enforcement

**The Issue:** Parties are revisiting force majeure provisions, frustration of purpose protections and similar clauses in real estate contracts to address current and anticipated nonperformance or delayed performance. This issue comes up in a wide variety of arrangements, including construction contracts, development joint ventures, purchase and sale agreements, construction loan agreements, and leases, among others.

**How Manatt Can Help:** Manatt can help negotiate appropriate contractual provisions and evaluate claims under existing contracts. Coordinating with seasoned real estate counsel can significantly minimize the potential costly repercussions, including defaults, and potential litigation.

## We're Here to Help:



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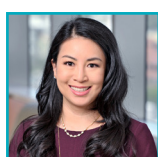
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