

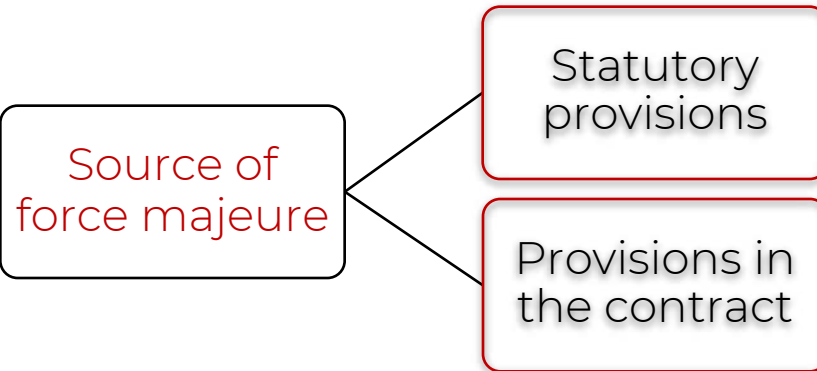
**FORCE MAJEURE UNDER
RUSSIAN CIVIL LAW AND MYANMAR COMMON LAW**

Concept of Force Majeure

- ❑ occurring with or without human intervention;
- ❑ not reasonably foreseen by the parties; and
- ❑ beyond the parties' control and consequences which could not have been prevented.

Common Law - no general legal concept of force majeure; rather, force majeure is a creature of contract.

Civil Law - force majeure is directly regulated by civil codes and acts as a legitimate ground for non-performance of a contract.



Russia | Regulation

Civil code of the Russian Federation (Article 401) - an event qualifies as force majeure if a party is able to prove that the performance of the obligations has been impossible due to the event simultaneously having the following features: **emergency** and **inevitability**.

Russia | Specific Requirements

- Under Russian law, the decision as to whether an event constitutes force majeure is made by the court on the request of the party claiming relief for force majeure.
- Russian law allows for the terms of a contract to provide for rules that differ from the rules established by default by statute.
- Russian Civil Code expressly states that the following are not considered force majeure:
 - default by subcontractors or other counterparties on which a party to a contract relied in order to perform its own obligations;
 - the absence of the market of goods required for the performance of obligations; or
 - the party's lack of funds.

Russia | COVID-19

- As it was recently clarified by the Russian Supreme Court, the pandemic itself cannot constitute a force majeure event. Only specific consequences of COVID-19 would constitute a force majeure.
- Thus, if the list of force majeure events in the contract includes a pandemic or an epidemic, this would simplify the process of proving that events due to COVID-19 qualify as a force majeure event.

Myanmar | Regulation

- In Myanmar this common law concept of force majeure is governed under Section 56 of the Myanmar Contract Act, 1872 (MCA).
- The **doctrine of frustration** provides that a contract may be terminated on the ground of frustration when something occurs after the formation of the contract which renders it physically or commercially impossible to fulfil the contract or transforms the obligation to perform into a radically different obligation from that undertaken at the time of entry into the contract (derives from the case *Mohamed Ismail and others v. The King (1940)*).



Myanmar | Specific Requirements

- There may be force majeure clauses, where upon continuation of the force majeure event beyond a certain number of days would **automatically** lead to a termination of the contract.
- Affected party wishing to enforce a force majeure clause must send a **notice** to the other party within a specified number of days from the occurrence of the event.
- Depending on the nature of the case, the contract may be terminated, or an extension of time will be granted to perform the contract upon the force majeure event coming to an end.

Myanmar | COVID-19

- Recognising COVID-19 as a force majeure depends on whether the contract contains a force majeure clause and whether the clause covers a pandemic event such as the COVID-19 outbreak.
- The evolution of the pandemic is now **NOT** unforeseeable nor unpredictable and could likely not be claimed in good faith as a force majeure event, given that the parties would be aware of the pandemic at the time of signing of the contract.

Thank you