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Force Majeure Revisited: Contractual Risk in Times of Geopolitical Instability

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Over the past decade, international commerce has been repeatedly confronted with extraordinary events capable of disrupting contractual performance on a global scale. The COVID-19 pandemic, the war in Ukraine and, more recently, the escalating geopolitical tensions in the Middle East have once again highlighted how rapidly external developments may affect supply chains, transportation networks, energy markets and the overall viability of commercial arrangements. Such developments may also lead to regulatory responses, including sanctions regimes, export controls and restrictions affecting cross-border transactions.

Against this background, the concept of *force majeure* has become increasingly central to the assessment of contractual risk. Businesses are often faced with the question of whether events such as armed conflicts, sanctions regimes, state-imposed restrictions or severe market disruptions may justify the suspension, adjustment or termination of contractual obligations.

Under Greek law, the effect of such events on contractual performance is determined both by the contractual provisions agreed between the parties and by the general principles of the Greek Civil Code. As demonstrated during the COVID-19 crisis, the legal assessment ultimately depends on the particular circumstances of each case, including the nature of the event, the contractual framework governing the relationship between the parties and the extent to which the event actually prevents or materially affects performance.

The notion of *force majeure* under Greek law

Greek civil law does not contain an express statutory definition of *force majeure*. However, according to well-established case law, a *force majeure* event is generally understood as an unforeseeable event which cannot be avoided, even if all reasonable measures have been taken and which cannot be attributed to the fault of the contracting parties.

Examples traditionally recognized by Greek courts include natural disasters such as earthquakes, floods or hurricanes, as well as certain state measures that could not reasonably have been anticipated, including administrative acts that prevent the operation of specific sectors or impose restrictions affecting contractual performance. War, armed conflict, hostilities and comparable geopolitical events may also constitute *force majeure* events. In practice, such events may also disrupt transportation routes, energy supplies, logistics networks or access to key markets, thereby affecting the practical ability of businesses to perform their contractual obligations.

For a *force majeure* event to affect contractual obligations, the party invoking it must demonstrate that the event actually prevented the performance of its obligation or caused a delay in performance. This assessment is factual and must be established on a case-by-case basis. Importantly, the mere occurrence of an extraordinary event does not automatically release a party from liability. On the contrary, the party invoking force majeure must demonstrate a causal link between the event and

the inability or delay in performing its contractual obligations. As a general rule of Greek civil law, when performance is prevented due to such an event, the party concerned is not liable for non-performance, pursuant to Article 336 of the Greek Civil Code.

In practice, such risks are often allocated through force majeure clauses incorporated into commercial contracts. These clauses typically define the relevant events and determine their legal consequences, which may include suspension of contractual obligations, extension of deadlines or, in certain circumstances, termination of the agreement. Through such contractual provisions, the parties effectively allocate the risk associated with extraordinary events that may affect performance. In many commercial sectors, these clauses also interact with contractual provisions addressing sanctions compliance, supply chain disruptions or insurance obligations.

Unforeseen change of circumstances and contractual imbalance

Even in the absence of a *force majeure* clause, Greek law provides mechanisms for addressing situations where extraordinary events significantly disturb the contractual equilibrium.

Article 388 of the Greek Civil Code provides that where the circumstances on which the parties based the conclusion of their contract subsequently change due to extraordinary and unforeseeable reasons, and this change renders the performance of contractual obligations excessively onerous for one of the parties, the competent court may, upon request, readjust the contractual obligations or dissolve the contract, wholly or partially. Greek courts generally treat the dissolution of a contract as a measure of last resort and tend instead to favor reasonable readjustment of contractual obligations in order to restore the contractual balance between the parties.

In addition, Article 288 of the Greek Civil Code establishes the fundamental principle of good faith and business ethics in contractual performance. Under this provision, parties must perform their obligations in accordance with good faith, taking into account prevailing commercial practices. Where the contractual balance has been materially disturbed due to a significant and lasting change in circumstances, courts may intervene in order to adjust the parties' obligations accordingly.

Practical considerations for contracting parties

In times of geopolitical uncertainty and economic volatility, contracting parties should approach contractual performance with caution. As experience from previous crises has shown, unilateral decisions regarding the suspension or termination of contracts may expose parties to significant legal risks if the strict conditions of *force majeure* or unforeseen change of circumstances are not satisfied.

Parties whose ability to perform their obligations has been affected by extraordinary events should promptly notify their counterparties, carefully document the circumstances affecting performance and take reasonable steps to mitigate any resulting damage. Timely notification may also be required under contractual *force majeure* clauses, financing arrangements or insurance policies.

At the same time, counterparties should assess with care whether non-performance is indeed attributable to *force majeure* before initiating termination procedures or liability claims. Businesses should also evaluate potential exposure arising from sanctions regimes, regulatory restrictions, disruptions to logistics or transportation routes and the availability of insurance coverage for war-related risks.

In many cases, constructive dialogue and renegotiation of contractual terms may provide the most effective and commercially sustainable solution, particularly where the disruption is temporary or where the continuation of the

commercial relationship remains desirable for both parties.

Concluding remarks

Recent global developments underline the increasing importance of carefully structured contractual risk-allocation mechanisms. Businesses operating in sectors exposed to geopolitical instability or market disruption should review their contractual frameworks and ensure that *force majeure* provisions, hardship mechanisms and notification obligations adequately reflect the risks associated with the current international environment. Particular attention should also be given to supply chain resilience, sanctions compliance and insurance coverage in order to mitigate the broader commercial risks associated with geopolitical crises.

Ultimately, if recent years have demonstrated anything, it is that extraordinary events are no longer exceptional, and contractual risk allocation must evolve accordingly.

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