



Will the COVID-19 pandemic give rise to the force majeure clauses?

COVID-19

As a result of third wave pandemic in Thailand, it significantly affects Thai's economy as a whole including commerce, production, import and export activities. Consequently, a number of businesses could not be able to satisfy their contractual obligations. This has raised an issue of force majeure whether such situation will be able to give rise to the force majeure clause which could suspend or excuse their obligations.

Force majeure under Thai legal terms

According to section 8 of Civil and Commercial Code of Thailand ("CCC"), it provides the meaning of force majeure which refers to "any event the happening or pernicious result of which could not be prevented even though a person against whom it happened or threatened to happen were to take such appropriate care as might be expected from him in his situation and in such condition" In other words, force majeure denotes an external event that arises result of which could not reasonably be prevented even though a person was to take such appropriate care as might be expected from him.

In practice, as a record, Thai Supreme Court has considered force majeure as flooding, wildfire, and earthquake. In addition, Thai Court narrowly interprets the terms "force majeure".

Therefore, the application of force majeure for the contract during the pandemic will be based on case-by-case basis by using the definition provided under Section 8 of the CCC. For example, a business in the restricted area that has been required by the law to temporary close during the pandemic such as spa business, can raise the force majeure clause to suspend or excuse its obligations under the lease contract. However, it is too broad for such business to raise the force majeure clause for the contract of purchasing products for the purpose of business operation. As a result, when the force majeure is not applicable, it is advisable that business operator should negotiate with its counter party to suspend its contractual obligations during the pandemic situation.