



THE EFFECT OF CORONAVIRUS ON YOUR BUSINESS CONTRACTS

COVID-19 AND ITS DELETERIOUS EFFECTS ON GLOBAL TRADE

On the 11th of March 2020, the Director-General of the World Health Organization declared COVID-19 as a pandemic because of the *“alarming levels of spread and severity, and by the alarming levels of inaction.”*¹ Given the spread of the virus across Africa, Europe, South East Asia and the Americas, COVID-19’s effect on global trade and commerce has been significant as countries lock down cities and businesses in an attempt to contain its spread. There have now been confirmed cases of COVID 19 in all of Belize’s neighboring countries including Guatemala, Mexico and Honduras so that the viruses’ imminent effect on Belize is inevitable.

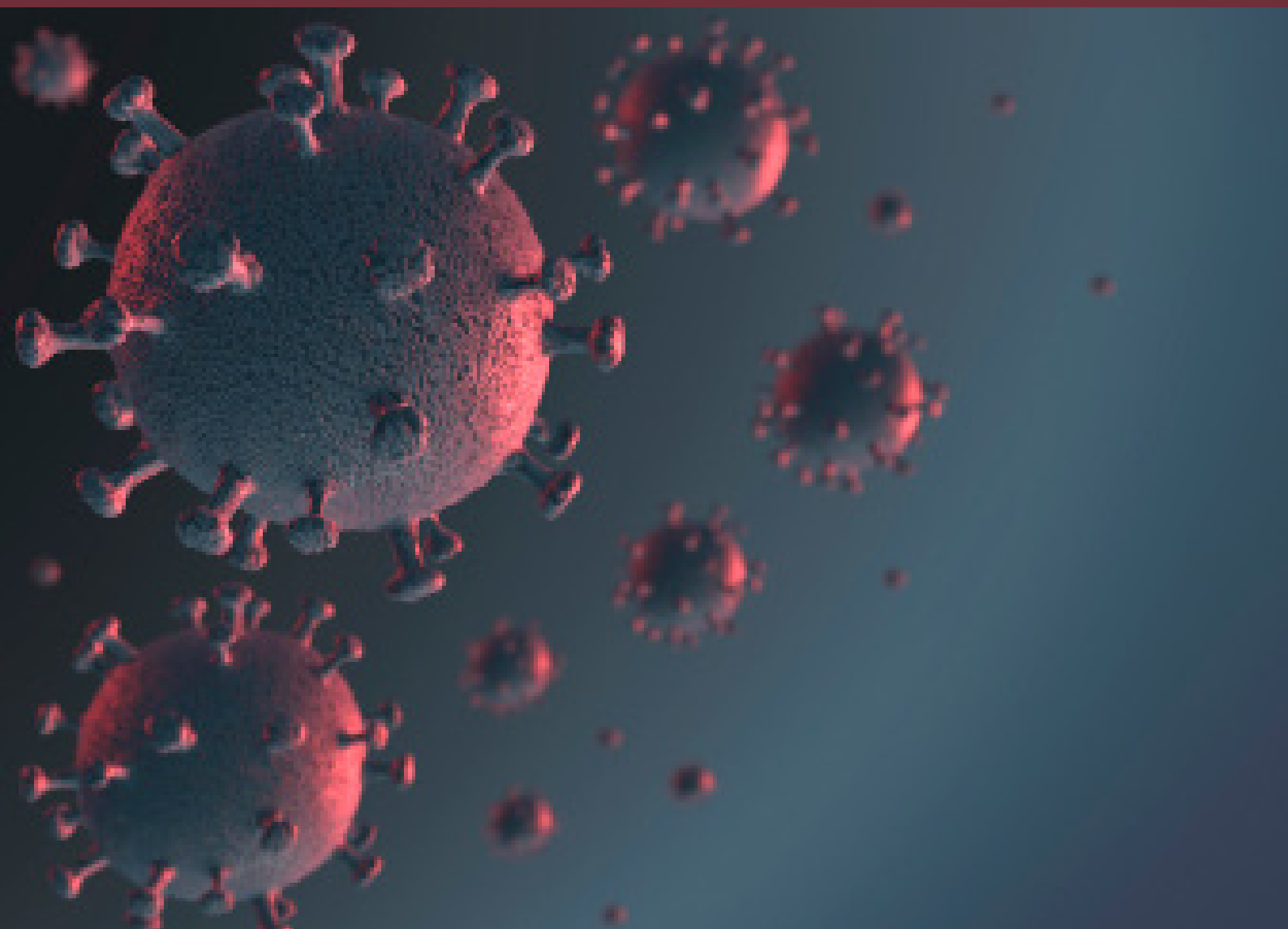
Consequently, it is important to consider what an outbreak of COVID 19 in Belize might mean for existing contractual obligations under contracts governed by Belize Law.

THE INABILITY TO PERFORM CONTRACTUAL OBLIGATIONS

The closing down of businesses and other commercial activities makes it more difficult for businesses to perform their contractual obligations as the global supply chain is disrupted. Under normal circumstances where a breach of a contractual obligation takes place, the innocent party would sue the defaulting party for compensation. However, if the failure to perform a contractually mandated obligation is due to the spread of the COVID-19, the party in default may be able to rely on one of the following:

1. A Force Majeure clause under the contract in question; or
2. The principle of frustration.

Successful reliance on the abovementioned defences would relieve the defaulting party from having to compensate the innocent party for the non-performance of any contractual obligations.



FORCE MAJEURE CLAUSE

Force Majeure, a French word translates to English as “Superior Force.” A Force Majeure Clause excuses a defaulting party from carrying out any contractual obligation rendered impossible by an unavoidable cause. The two primary means by which a Force Majeure Clause may potentially excuse you from having to compensate the innocent party for the non-performance of any contractual obligations due to the COVID-19 are as follows:

1. The Force Majeure Clause may expressly list the outbreak of a pandemic as a supervening event that may trigger the Force Majeure Clause;
2. The Force Majeure Clause may contain a catchall phrase sufficient to include the outbreak of a pandemic such as the COVID-19.

All in all whether your Force Majeure clause would cover the current outbreak of the COVID-19 would be highly dependent on the wording of the clause and the factual circumstances caused by the Pandemic.

FRUSTRATION OF THE CONTRACT BY THE PANDEMIC

A contract becomes frustrated when its performance becomes impossible due to an unforeseen event which is beyond the control of both parties resulting in a radical change in circumstances in which a contract is to be performed.

The ability to rely on the principle of frustration is very narrow since court's do not take lightly, relieving a party from a contractual obligation voluntarily entered into. The principle of frustration could only be invoked if your contract does not contain a Force Majeure Clause or if the Force Majeure Clause contained by your contract does not cover the COVID-19.

Nonetheless it is highly arguable that the COVID-19 would amount to an unforeseen event, and depending on the factual circumstances surrounding your potential inability to perform your contractual obligations, it can be argued that there is a radical change in circumstances in which your contract is to be performed, rendering the contract frustrated and excluding you from liability.

WHAT YOU SHOULD DO NOW

In light of the global Spread of COVID-19, the coming months might bring many assertions and claims of inability to perform contractual obligations due to force majeure and frustration in light of the disruption of trade, commerce and supply chains caused by business closures, quarantines and travel restrictions.

Businesses should therefore consider the following six steps:

1. Consider which existing contracts may be impacted by closures or delays, or where a counter-party may seek to terminate or suspend the contract.
2. Consider which of your existing contracts contain Force Majeure clauses and whether those clauses cover the COVID-19 pandemic. If in doubt, seek legal advice.
3. Consider how the risk associated with this outbreak, or a future outbreak of similar effect, could be mitigated in future contracts through the inclusion of a robust Force Majeure clause.
4. Seek legal advice on whether the COVID-19 pandemic and specific facts surrounding your contractual relations might be sufficient to trigger the principle of frustration.
5. Identify alternative sources of goods and services if possible in order to minimize the impact of the COVID-19 pandemic on your business.
6. Enter into negotiations with contractual counter parts to prepare for the delays and hindrance of contractual obligations.

All in all it is important to remember the importance of commercial relationships and the fact that the COVID-19 pandemic will eventually come to an end and business will resume as normal so that it is important to preserve your existing relationships through effective communications.

This note is a summary for general information and discussion only. It is not a full analysis of the matters presented. This note may not be relied upon as legal advice, and does not purport to represent the views of our clients or the Firm. Godfrey P. Smith S.C., the founder and Senior partner of Marine Parade Chambers LLP and Hector D. Guerra, managing partner of Marine Parade Chambers LLP contributed to the content of this note.

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