

Model corona force majeure clause

Before you start:

- If you want to make use of this clause, first check whether Belgian law applies in your contract. Where do you find this? The contract usually has an 'applicable law' or 'disputes' clause. If no clause has been included yet, please indicate in your contract that Belgian law applies.
- When filling in the clause, you will have to make choices. To illustrate this, we have included a number of examples.
- This force majeure clause remains a model. We recommend that you fill in the clause based on your concrete situation, in joint consultation.
- For more information about force majeure we refer you to <https://www.cultuurloket.be/kennisbank/crisisbegeleiding/overmacht>

FORCE MAJEURE CLAUSE

1.) The Parties recognise that the signature of this agreement takes place in uncertain times due to the COVID-19 coronavirus and the associated health issues, as well as measures to limit the further spread of the virus.

2.) IMPOSSIBILITY OF PERFORMANCE

In the event that government measures to combat the COVID-19 coronavirus or the consequences thereof render the performance of the obligations by one of the Parties impossible, such as, for example

(Describe here, if possible, the concrete situations which the parties agree make a party's obligation impossible)

- E.g. Ban on gatherings

-E.g. Ban on cultural events

-E.g. Ban on international travel

then:

(Choose one of the three hypotheses: check whether it makes sense to (temporarily) suspend the parties' obligations. If it makes sense: hypothesis 1; if it does not makes sense: hypothesis 2; if it makes sense temporarily: hypothesis 3)))

- **hypothesis 1:** the party's obligations are **suspended**. As soon as government measures to prevent the further spread of the COVID-19 coronavirus or the consequences thereof that caused the impossibility of performance cease to exist, the Party shall perform its obligations.

If the obligation had to be performed within a certain period, this period will be extended by the period during which performance was impossible

For **costs** incurred during this period of suspension, the parties agree as follows:

(Choose one of the hypotheses:)

- hypothesis 1: each party shall bear its own costs;
 - hypothesis 2: ... *(Define a different distribution wanted by the parties);*
- **hypothesis 2:** the obligations of that party are **not suspended**, but both parties are immediately released from their contractual obligations.

With regard to **advances** already paid, the parties agree as follows:

(Choose one of the hypotheses:)

- hypothesis 1: the advances are repaid;
 - hypothesis 2: ... *(Define a different distribution wanted by the parties)*
- With regard to the **costs** that a party incurred or to which it committed itself before the impossibility manifested itself, the parties agree as follows:

(Choose one of the hypotheses:)

- hypothesis 1: no costs shall be reimbursed;
 - hypothesis 2: ... *(Define a different distribution wanted by the parties, preferably detailing the costs)*
- **hypothesis 3:** the party's obligations are suspended for **a period of** *(Determine how long it makes sense to wait)* *** months. If the impossibility continues after the expiry of this period, that Party shall be released from its obligations and the other Party shall also be released from its obligations.

During the period of suspension, the following shall apply with regard to **costs**:

(Choose one of the hypotheses:)

- hypothesis 1: each party shall bear its own costs;
 - hypothesis 2: ... *(Define a different distribution wanted by the parties);*

In the event of release after expiry of the period of suspension, the **advances** already paid and the **costs** incurred shall be subject to the following:

- With regard to **advances** already paid, the parties agree as follows:

(Choose one of the hypotheses:)

- hypothesis 1: the advances are repaid;
- hypothesis 2: ... *(Define a different distribution wanted by the parties)*
- With regard to the **costs** that a party incurred or to which it committed itself before the impossibility manifested itself, the parties agree as follows:

(Choose one of the hypotheses:)

- hypothesis 1: **no costs** will be reimbursed;
- hypothesis 2: ... *(Define a different distribution wanted by the parties, preferably detailing the costs)*

3.) SIGNIFICANT INCREASE IN OBLIGATIONS:

In the event that government measures to combat the COVID-19 coronavirus or the consequences thereof significantly add to the performance of the obligations by one of the Parties, such as, for example

(Describe the concrete situations which the parties agree significantly add to the obligation)

Example of a general description: As a result of changes of an economic, financial, technical nature occurring after the signature of the agreement beyond the control of the affected party (name of the parties) and which could not reasonably be expected to occur. That these changes disrupt the economic balance of this Agreement to such an extent, or that the costs of performance are increased, etc. That these changes give rise to disproportionate damage to party (name).

- Specific example: increased costs as a result of health and safety measures, or reduced income as a result of a reduction in the number of spectators.

but not

(describe concrete situations which do not qualify as significantly adding to the obligation)

Then:

(Choose one of the three hypotheses)

- **hypothesis 1:** the parties undertake to renegotiate the agreement based on the following principles

(To be defined by the parties. For example, a distribution of the additional costs. If this is too vague, it will not be enforceable)

- **hypothesis 2:** the fee will be revised as follows:

(To be defined by the parties. If this is too vague, it will not be enforceable)

- **hypothesis 3:** the consequences will be the same as those described under IMPOSSIBILITY OF PERFORMANCE. *(If for a certain situation the consequences as foreseen under 2 are*

wanted.) IMPOSSIBILITY OF PERFORMANCE, it is advisable to describe that situation under the examples provided under point 2) IMPOSSIBILITY OF PERFORMANCE)

4.) NOTIFICATION OBLIGATION:

The party facing the impossibility or significant addition to the performance of its obligation must notify the other party as soon as possible, but in any event no later than (x working days) from the date on which the affected party becomes aware of the force majeure situation or the significant addition to the performance. The affected party shall not only notify the impossibility or significant addition to the performance, but also its intention to invoke this clause.

The notification shall contain all relevant information available to the affected party

(possibly:) In this context, the parties point out that at least the following dates are key moments on which important cost decisions shall be made:

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Description of method of notification: e-mail, post, registered mail, etc.

In the absence of timely notification, this party shall be liable for all costs that the other party could have avoided in the event of timely notification.

(NOTE: Obligations to pay are in principle never impossible. If this were to be desirable, it should be explicitly defined, for example, by specifying, under the examples of IMPOSSIBILITY OF PERFORMANCE, that a certain situation applies as force majeure, both for party X and for party Y which has a payment obligation)