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COVID-19: DECLARATION OF *FORCE MAJEURE* BY THE DPR: CAN OPERATORS, CONTRACTORS AND SERVICE PROVIDERS IN THE NIGERIAN OIL AND GAS INDUSTRY RELY ON THE SAME?



As part of the collective effort to combat the spread of COVID-19 in Nigeria, different regulatory authorities and bodies have, in line with their statutory functions, introduced measures to be adhered to by entities operating within their regulatory sphere. The Department of Petroleum Resources (the “**DPR**” – the regulator of the Nigerian oil and gas industry (the “**Industry**”)) is not left out in the race by government authorities to flatten the COVID-19 curve in Nigeria.

The DPR, in a recent notice to Industry operators, contractors and service providers, introduced measures to be taken immediately in relation to activities at project and construction sites in the Industry. According to the DPR:

- All operators and their contractors are to ensure strict compliance with relevant Government directives and limit the number of personnel at project and construction sites;
- All operators and their contractors are to comply with the directives of Government authorities on social distancing, curfew, lockdown, *etc.* as may be applicable; and
- Personnel should be demobilized from project and construction sites to the extent required to satisfy the above requirements.

Interestingly, the DPR also declared that “the current situation is considered “force majeure” to ensure the safety and welfare of all personnel and to contain the spread of COVID-19”. Undoubtedly, the action of the DPR in introducing these measures is noble and should be applauded. However, a fundamental legal question that arises is whether DPR’s *force majeure* declaration can legally protect entities in the Industry in the absence of specific *force majeure* clauses in their underlying contracts?

Force majeure in an agreement is a contractual clause which provides that one or both contracting parties can cancel their contractual relationship or be excused or suspended from either part or complete performance of their underlying obligations on the occurrence of specified event(s) arising beyond the parties’ control. Therefore, whether an event will qualify as *force majeure* turns on the language of the underlying contract. In construing contractual provisions, Nigerian courts are generally required to confine themselves to the terms expressly stated in the contract – this is based on the doctrine of sanctity of contract under Nigerian law.

While most *force majeure* clauses will typically include ‘epidemic’ and ‘acts of government’ as *force majeure* events, in which case, COVID-19 and the corresponding directives issued by the government authorities (including the DPR) would be covered, it is critical for a party invoking *force majeure* to thoroughly review the *force majeure* clause in the contract and ensure strict compliance with the requirements of the clause. Failure to comply strictly with the *force majeure* clause may expose such party to considerable legal risks, including damages for breach of contract.

Given the contract-based nature of *force majeure*, it is advisable for operators, contractors and service providers in the Industry to obtain sound legal advice on the *force majeure* provisions in their contracts and whether they are contractually entitled to invoke *force majeure*, prior to relying on COVID-19 and/or the DPR’s *force majeure* declaration as the basis for cancellation of contracts, non-performance and/or delayed performance of their contractual obligations.

Qualifications

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