

## CONTRACT

### DOCTRINE OF FRUSTRATION

The doctrine of frustration covers situations when changes in circumstances render it legally or physically impossible to perform a contract, thus some businesses may be excused from performing contracts in light of the earthquake. The doctrine is triggered at the occurrence of an intervening event or change of circumstances so fundamental as to be regarded as entirely beyond what was contemplated by the parties when they entered into the agreement.

Frustration occurs, without the default of either party, when a contractual obligation has become incapable of being performed because the circumstances in which the performance is called for would render it a thing radically different from that which was undertaken by the contract.

### FORCE MAJEURE

In practice, contracts may expressly provide for performance to be excused or rendered impossible by unavoidable causes such as an earthquake. This clause, known as a force majeure clause, will be construed in each case with due regard to the nature and general terms of the contract and with particular regard to the precise words of the clause.

It is important to note that where the contract excuses a party from delays due to unavoidable causes, that party may be deprived of the protection of the clause if they fail to enquire whether such unavoidable causes exists and to inform the other party.

If you think you may have problems in performing a contract or you think another party may not be able to perform its side of the contract, you should speak to us as it is a matter of degree whether a force majeure clause will apply.

### Contact Details

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