



## **Regulations of Force majeure in Mongolia and Government actions on prevention and combatting with Covid19 outbreak**

### ***General introduction***

In accordance with Article 1.2 of Appendix of the Regulation No A/121 on Procedure to issue a Certificate on force majeure and hardship by the Chairman of Mongolian National Chamber of Commerce and Industry(hereinafter “the Chamber”) dated 24 January 2020, a force majeure means the parties are unable to implement their contractual obligation due to the following obstacles which are beyond the reasonable control of parties, unforeseeable circumstances and cannot be predicted, prevent or overcome by scientific and technological achievement. They are:

1. Announced and unannounced war, armed conflict, riot, foreign aggression, sabotage activities, revolution;
2. All kinds of natural disasters / severe storm, hurricanes, earthquakes, strong waves, floods, snowstorms, severe weather, droughts, heavy rain, thunderstorms, fires etc./;
3. Detonation, explosion, damage of the machinery or industrial equipment, and serious electrical damage;
4. All kind of restriction, pandemic, quarantine, closedown and strike at the legal entity of the party wishing to be exempted from all types of sanctions and liabilities;
5. Legal and illegal action and inaction, legal acts, orders, decrees of the state officer, dissolution of the workplace, mobilization of assets and socialization.

The Chamber shall certify the force majeure.

An applicant who wishing to get the certificate<sup>1</sup> related the force majeure shall meet the following requirements:

- Article of the force majeure shall be stipulated in the agreement entered into by the parties;
- To accurately and completely provide the necessary documents to issue certificate in regards with an agreement and its related documents.

The Chamber shall not issue the certificate followings cases:

- Such action and condition of the Applicant are not subject to the force majeure specified in the agreement concluded by parties and regulation;
- The Applicant shall not provide the necessary documents and information;
- The Chamber of force majeure and hardship of the Mongolian National Chamber of Commerce and Industry stated that certification is not required.

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<sup>1</sup> Certificate means document certifying and verifying such individual or legal entity has encountered with force majeure or hardship from the Mongolian national chamber of commerce and industry.



## ***Regulations***

### **Sale and purchase agreement:**

Mongolia acceded to the United Nation's Convention on Contracts for the International sale of goods dated 11 April 1980 in 1977. In accordance with Article 79 of this convention, a party is not liable for a failure to perform any of its obligations if it proves that the failure was due to an impediment beyond its control and that it could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it, or its consequences.

Moreover, the buyer shall be deemed to lose the claiming right in case of a defect of the property was occurred due to the buyer's failure to observe the procedure of transportation, storage, and use, as a result of an emergency or force majeure conditions in accordance with Article 255.1.3 of the Civil code of Mongolia.

### **Commercial agreements:**

In accordance with 7.1.7 of the UNIDROIT principals on international commercial dated 2016, non-performance by a party is excused if that party proves that the non-performance was due to an impediment beyond its control and that it could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it or its consequences.

This UNIDROIT principals may be used in any commercial agreement because it shall be regulated by the customary law.

### **Leasing agreement:**

If the quality of the leased property was lost due to emergency and force majeure circumstance, the rental fee may be changed on the basis of mutually agreed by parties.

### **Service agreement:**

Contractor shall be liable for all risks if results of executed work are destroyed and damaged due to contingency and force majeure before delivery of the results to the Client. Whereas the Client shall be liable for consequences of destruction or damage caused by force majeure or contingency to the work results remaining in the possession of Contractor if it fails to accept them on time in accordance with Article 356 of Civil code of Mongolia.

### **Tort:**

The possessor of the transportation shall not obliged to indemnify in case tort was caused as a result of force majeure during the use of the transportation mean other than aircraft under Article 499 of the Civil code of Mongolia etc.



## Measures against COVID-19

The Government of Mongolia had been made the following decisions in order to prevent from spread of pandemic named as COVID – 19:

1. Suspended the activities of all levels of educational organization, educational center from 27 January 2020 to 30 March 2020 by Resolution No30 of the Government on 26 January 2020. This suspension has extended until 30 April 2020 by Resolution No13 of Chairman of the National Emergency Management Agency on 20 March 2020.
2. Suspended the following activities from 27 January 2020 to 02 March 2020 by Order No A/108 of Governor of the Capital on 27 January 2020:
  - To register assembly;
  - Activities for community meetings, training, sports competitions, trips, arts, culture, cinemas, driving courses, and all kind of gaming house;

This suspension has extended until 30 March 2020 in connection with the outbreak of the COVID – 19 doesn't stop.

3. Movement of the citizen of the People's Republic of China, foreign person and stateless person arriving in Mongolia from China by airways, railways, and highways were suspended by the temporary closure of some border points and on the restriction of movements by Resolution No39 of the Government until 02 March 2020. This suspension has been extended until 30 March 2020.
4. Transferred to the Disaster protection High Availability from 13 February 2020 to 02 March 2020 by Resolution No62 of the Government on 12 February 2020 and decided not to celebrate the lunar new year of Mongolia. This Disaster protection High Availability has extended until 30 April 2020 by Resolution No13 of Chairman of the National Emergency Management Agency on 20 March 2020.
5. In accordance with Resolution No02 of the Chairman of the National Emergency Management Agency on 26 February 2020:
  - Suspended the scheduled flights from Korea and Japan to Ulaanbaatar from 27 February 2020 to 11 March 2020 by Resolution No02 of Chairman of the National Emergency Management Agency. This suspension has been extended until 28 March 2020 by Resolution No04 of the Chairman of the National Emergency Management Agency on 28 March 2020.
  - Foreigners who have been in the Republic of Korea, Japan and Iran for the last 14 days don't cross the border of Mongolia and Mongolian citizen returned from above countries shall be quarantined for 14 days from the date of crossing the border.
6. Suspended the movement of transportation, private vehicles, local scheduled flights, train between state and interstate due to first case of COVID – 19 was confirmed in Mongolia



from 10 March 2020 to 16 March 2020 by Resolution No05 of the Chairman of the National Emergency Management Agency 10 March 2020.

7. In accordance with Resolution No06 of the Chairman of the National Emergency Management Agency on 10 March 2020:
  - Suspended the scheduled flights from Russia, Kazakhstan, and Turkey to Ulaanbaatar from 11 March 2020 to 28 March 2020.
  - Movement of Mongolian citizens who travel into Russia and of the foreign citizens and stateless persons arrive in Mongolia from Russia was stopped from 11 March 2020 to 30 March 2020.
  - Women employees and servants who pregnant and children with 0-12 years shall ensure the circumstance to work from home and shall issue the leave with salary until 30 March 2020.
8. By a temporary amended in the loan classification and loan repayment of the Resolution No A/155-134 of the President of the Central bank and Minister of Finance dated 10 June 2019, classification of the term of loan issued to citizens in the form of hypothec, salary, pension, and other consumer loans shall be temporary decided as followings:
  - Repayment of normal loans shall be changed from 15 days by up 90 days;
  - Repayment of attention loans shall be up between 91 – 120 days;
  - Repayment of non – performing loans shall be more than 120 days.
9. Suspended the international scheduled flights and passenger movement of railways until 30 April 2020 by Resolution No13 of Chairman of the National Emergency Management Agency on 20 March 2020.

### Sample clause to recommend

1. **“Force Majeure”** means an event which is beyond the reasonable control of a Party, unforeseeable circumstances and which makes a Party's performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible in the circumstances, and includes, but is not limited to, natural disasters such as earthquake, storm, fire, thunderstorms, flood, drought, radioactive contamination, the close of the international border crossing (on either side) significant labor unrest, , strikes, lockouts or other industrial action and social emergency situation such as pandemic, war, state of war, quarantine and confiscation or any other action by government agencies. Force Majeure shall not include any event which is caused by the negligence or intentional action of a Party or such Party's agents or employees.
2. The failure of a Party to fulfill any of its obligations hereunder shall not be considered to be a breach of, or default under, this Agreement insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event has taken all



reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of this Agreement.

3. A Party affected by an event of Force Majeure shall take all reasonable measures to remove such Party's inability to fulfill its obligations hereunder with a minimum of delay or minimize the consequences of any event of Force Majeure, as the case may be.
4. Either Party is entitled to suspend the performance of the Agreement obligation due to force majeure within the extent and amount of the interruption. The affected Party shall give a prompt notice of force majeure which shall adequately describe the nature of the force majeure event and the extent of the interruption to the other Party.

### ***Brief conclusion***

Due to the uncertainty of whether the outbreak of COVID – 19 will decrease or not, it is necessary to clearly and specifically regulate the force majeure articles in new Agreement and amendments in Agreement. Therefore force majeure articles shall protect any risks to emerge in future and happening present that beyond the control of parties and unforeseeable circumstances and provide precondition on release from contractual obligation.

For more information or any queries, please feel free to contact V.Bolormaa, Partner of Grata International Law Firm by [bvolodya@gratanet.com](mailto:bvolodya@gratanet.com) or 976 70155031.