Table of Contents:
Force Majeure and Hardship
  Force majeure (exemption) clause
  Grounds of relief from liability
  Duty to notify
  Effects of grounds of relief
  Force Majeure clause - model reference clause
  Comments and observations on Force Majeure clause
  Hardship provisions - Drafting suggestions
  Comments and observations on Hardship provisions

Content:
Force Majeure and Hardship

[...]

[Please note: This is an overruled version. For the 2003 Version please click here]

Page: 8

Force majeure (exemption) clause

Grounds of relief from liability

1. A party is not liable for a failure to perform any of his obligations in so far as he proves.

2. An impediment within paragraph (1) above, may result from events such as the following, this enumeration not being exhaustive.

Page: 9

3. For the purposes of paragraph (1) above, and unless otherwise provided in the contract, impediment does not include lack of authorisations, of licences, of entry or residence permits, or of approvals necessary for the performance of the contract and to be issued by a public authority of any kind whatsoever in the country of the party seeking relief.

Duty to notify

4. A party seeking relief shall as soon as practicable after the impediment and its effects upon his ability to perform became known to him give notice to the other party of such impediment and its effects on his ability to perform. Notice shall also be given when the ground of relief ceases.

5. The ground of relief takes effect from the time of the impediment or, if notice is not timely given, from the time of notice. Failure to give notice makes the failing party liable in damages for loss which otherwise could have been avoided.

Effects of grounds of relief

6. A ground of relief under this clause relieves the failing party from damages, penalties and other contractual
sanctions, except from duty to pay interest on money owing as long as and to the extent that the ground subsists.

7. Further it postpones the time for performance, for such period as may be reasonable, thereby excluding the other party's right, if any, to terminate or rescind the contract. In determining what is a reasonable period, regard shall be had to the failing party's ability to resume performance, and the other party's interest in receiving performance despite the delay. Pending resumption of performance by the failing party the other party may suspend his own performance.

8. If the grounds of relief subsist for more than such period as the parties provide [the applicable period to be specified here by the parties], or in the absence of such provision for longer than a reasonable period, either party shall be entitled to terminate the contract with notice.

9. Each party may retain what he has received from the performance of the contract carried out prior to the termination. Each party must account to the other for any unjust enrichment resulting from such performance. The payment of the final balance shall be made without delay.

Force Majeure clause - model reference clause

Parties who wish to incorporate this clause by reference in their contracts are recommended to use the following wording:

"The Force Majeure (Exemption) clause of the International Chamber of Commerce (ICC Publication No. 421) is hereby incorporated in this contract".

Comments and observations on Force Majeure clause

1. Strictly speaking, this type of clause is best described as an "exemption clause" or "relief from liability clause". However, the French expression "force majeure" is frequently adopted in practice, even in non-French speaking countries. This expression has therefore been included in the short name of the clause. There is no intention thereby to introduce into the clause any French or other specific national doctrine of force majeure.

2. The clause starts from the assumption that a breach of contract or a failure to perform has occurred (Paragraph 1). The failing party is then relieved wholly or temporarily from the sanctions and other effects, such as termination or rescission of the contract, usually following upon a failure to perform, provided that the conditions for granting relief provided for in the clause are met.

3.

Referring Principles:

- VI.3 - Force majeure
- VIII.1 - Definition