

Clause 18: Exceptional Events

Written by Edward Corbett

"*Exceptional Events*" has replaced "Force Majeure" and the provision is now clause 18 rather than clause 19 but otherwise little has changed.

FIDIC appear to have decided that the term "*force majeure*" brought with it too much baggage for those using it in civil law jurisdictions. Many users have pre-conceptions about what force majeure is and is not and perhaps did not consider what FIDIC meant by the term. With the new term, users should approach the provision with a more open mind.

One result of the change in term is that the word "*exceptional*" no longer features in the definition: Force Majeure meant an exceptional event or circumstance. Of course, it would seem perverse to argue that an Exceptional Event did not have to be exceptional; but it is also true that a defined term means what it is said to mean, not whatever the chosen term implies.

One improvement introduced into 18.1 is that strikes and lockouts have been separated out. As these might properly be regarded as the most common form of event that entitle the Contractor to both time and money, it is right that they are not buried in the more exotic "*riot*" item.

The anomaly of having a list of events, all of which give rise to time and money except for one remains. The natural catastrophes item is still on the list. Was there any real doubt that earthquakes, tsunamis, volcanic activity, hurricanes and typhoons were force majeure?

Clause 18.6 is Release from Performance under the Law. The question in relation to the equivalent clause of the 1999 form was whether it relieved a contractor of individual obligations that were legally or physically impossible; or only of the Contract as a whole. It seems clearer that this is an all-or-nothing clause: if it is invoked, the result is termination of the Contract.

Please get in touch at edward.corbett@howardkennedy.com with your thoughts or to discuss any concern



Edward Corbett

Consultant

T +44 (0)20 3755 5900

M +44 (0)7546 695 317

edward.corbett@howardkennedy.com

