



Volume 40 No 2, May 2025

DOI: <https://doi.org/10.20473/ydk.v40i2.49765>

Fakultas Hukum Universitas Airlangga, Jalan Dharmawangsa Dalam Selatan Surabaya, 60286 Indonesia, +6231-5023151/5023252

Fax +6231-5020454, E-mail: [yuridika@fh.unair.ac.id](mailto:yuridika@fh.unair.ac.id)

Yuridika (ISSN: 0215-840X | e-ISSN: 2528-3103)

by <http://e-journal.unair.ac.id/index.php/YDK/index> under a Creative Commons Attribution 4.0 International license.

FAKULTAS HUKUM UNIVERSITAS AIRLANGGA



Article history: Submitted 15 September 2023; Accepted 13 August 2024; Available Online 28 May 2025.

## Force Majeure Clause in Umrah Contract: Safeguarding Malaysian Umrah Travellers Post-COVID-19 Pandemic

Wan Noor Fatihah Wan Kamarudin<sup>1</sup>, Norhasliza Ghapa<sup>2</sup>, Noraida Harun<sup>3</sup>,  
Farhanin Abdullah Asuhaimi<sup>4</sup> and Iyllyana Che Rosli<sup>5</sup>

[haslizaghapa@unisza.edu.my](mailto:haslizaghapa@unisza.edu.my)

<sup>1 2 3 4 5</sup> Universiti Sultan Zainal Abidin, Malaysia

### Abstract

Thousands of Umrah trips were cancelled by the domestic tour operators after the Saudi government restricted travel to the Holy City of Mecca and Medina due to the rapid spread of COVID-19 in March 2020. As a result, how domestic tour operators handle this unique situation varies. Certain tour operators offering Umrah services depended on the force majeure clause in their contract, which released them from fulfilling their obligations under the agreement. However, a small number of businesses did not include force majeure clauses in their Umrah contracts, which allow the Umrah tour operators to excuse themselves from fulfilling their obligations even terminating the Umrah contract without providing the pilgrims with any compensation. Due to unstandardised Umrah contracts prepared by the domestic tour operators, it detrimentally affects the interests of vulnerable pilgrims. Considering this, this study aims to provide a mechanism in safeguarding the interests of Umrah travellers in the event of unforeseen occurrences. As such, the doctrinal study that forms the basis of this article uses a qualitative methodology, with data gathered via library research. The study concludes that in situations where a force majeure incident interferes with the performance of the Umrah contract, the Umrah tour operators have not adhered to any standard procedure. It is urgent for the domestic Umrah tour operators to invoke force majeure clauses in their Umrah contracts.

**Keywords:** Consumer Protection; COVID-19; Force Majeure; Umrah; Unforeseen Circumstances.

### Introduction

The COVID-19 pandemic has surpassed the Middle East Respiratory Disease (MERS) outbreak in 2001 and Severe Acute Respiratory Syndrome (SARS) in

2003, becoming the worst global pandemic since World War II.<sup>1</sup> In spite of the notable occurrences of significant outbreaks, including MERS and SARS, in previous instances, the Kingdom of Saudi Arabia (KSA) had never adopted any measures to restrict the entry of Malaysian pilgrims seeking to perform Umrah.<sup>2</sup> Subsequent to the World Health Organisation's (WHO) official declaration of COVID-19 as a pandemic on 11 March, 2020, a considerable number of nations enacted Movement Control Orders (MCO) or Temporary Entry Restriction Orders (TERO) barring entry of international travellers as well as restricting the movement of local citizens to high risk countries.<sup>3</sup> The KSA reported the first COVID-19 case in March 2020. As a consequence, the number of infections steadily rose every day. The KSA said that as of September 20, 2020, there were 334,605 confirmed cases, 319,154 recoveries, and 4,768 deaths.<sup>4</sup> In an effort to stop the spread of COVID-19, Saudi Arabia banned travel to Mecca and Medina, halting Umrah in March 2020. Travellers who purchased Umrah packages have thus been severely impacted by this situation, suffering significant losses on an emotional, spiritual, and financial level.<sup>5</sup>

Persatuan Agensi Pelancongan Umrah and Haji Malaysia (PAPUH) recorded that since the country's borders have been closed following COVID-19 in 2020, approximately 60,000 pilgrims have been left stranded, and the majority of them are currently in a state of uncertainty, eagerly awaiting responses from travel

---

<sup>1</sup> Tafadzwa Matiza, 'Post-Covid-19 Crisis Travel Behaviour: Towards Mitigating the Effects of Perceived Risk' (2020) 8 Journal of Tourism Futures 99; Toan Luu Duc Huynh, 'The COVID-19 Risk Perception: A Survey on Socioeconomics and Media Attention' (2020) 40 Economics Bulletin.[758].

<sup>2</sup> Ziad A Memish and Annelies Wilder-Smith, 'Global Impact of Severe Acute Respiratory Syndrome: Measures to Prevent Importation into Saudi Arabia' (2004) 11 Journal of Travel Medicine.[127].

<sup>3</sup> Kuok Ho Daniel Tang, 'Movement Control as an Effective Measure against Covid-19 Spread in Malaysia: An Overview' (2022) 30 Journal of Public Health: From Theory to Practice. [583] <<https://doi.org/10.1007/s10389-020-01316-w>>.

<sup>4</sup> Fuad A Awwad, Moataz A Mohamoud and Mohamed R Abonazel, 'Estimating COVID-19 Cases in Makkah Region of Saudi Arabia: Space-Time ARIMA Modeling' (2021) 16 PLoS ONE.[1] <<http://dx.doi.org/10.1371/journal.pone.0250149>>.

<sup>5</sup> Norhasliza Ghapa and others, 'An Analysis on the Consumer Legal Protection in Umrah Package Travel Industry During Covid-19 Pandemic' (2021) 2 The Journal of Management Theory and Practice (JMTP).[28].

agencies regarding the status of their respective travel package.<sup>6</sup> The lack of clarity demonstrated by Umrah travel agencies in addressing matters concerning cancellations, refunds, and compensations indicates a lack of transparency in fulfilling their responsibilities. Consequently, customers are left with no viable means to seek refunds or compensation in such circumstances. As of the present, there is a notable absence of any established standard practice adhered to by domestic tour operators in cases where significant changes in circumstances occur, subsequently affecting the execution of Umrah contracts.

As part of the contractual process, businesses that involved in Umrah package contracts are obliged to provide customers with either a physical or digital copy of the contract agreement. It serves as concrete proof of the mutual understanding reached by the parties. The terms and conditions in that Umrah contract will bind all contracting parties. In his interview, the Omrah Travel Sdn Bhd executive chairman stressed that a black and white agreement may be one of the instruments that may prevent the Umrah pilgrims from being victimised by the unscrupulous Umrah operator with fraudulent packages.<sup>7</sup> These terms encompass various aspects, including the package date, transportation, accommodation, itinerary, liability, responsibilities, and the provisions for force majeure events. Furthermore, the contract agreement may encompass dispute resolution mechanisms, such as arbitration or mediation, which provide consumers with alternative avenues for resolving conflicts without resorting to legal proceedings in the event of fundamental changes that impact the enforceability of the contract. One significant provision that typically addresses fundamental changes in the terms of the contract is the force majeure clause. In Malaysia, only a limited number of tour operators opt to incorporate force majeure clauses in their Umrah contracts as a pre-emptive measure to safeguard the interests of all parties involved.

---

<sup>6</sup> Latifah Arifin, 'Agensi Umrah Persoal Pampasan Kepada Jemaah' (*Berita Harian*, 2022) <<https://www.bharian.com.my/berita/nasional/2022/02/919539/agensi-umrah-persoal-pampasan-kepada-jemaah>> accessed 8 September 2023.

<sup>7</sup> Bernama, 'Govt Urged to Help Address Hike in Umrah Package Prices' (*The Sun*, 2023) <<https://www.thesundaily.my/home/govt-urged-to-help-address-hike-in-umrah-package-prices-KB10550468>> accessed 15 September 2023.

The force majeure clause is a clause in a contract that is intended to handle unforeseeable events or circumstances that are out of the parties' control. It acknowledges that these unforeseen events may make it difficult or impossible for the parties to carry out their obligations under the contract. It grants parties the flexibility to design remedies according to their preferences and allows them to specify the types of events that will be considered as force majeure. The force majeure clause is subjected to negotiation and mutual agreement between the parties involved prior to entering a contract. In order to invoke the force majeure clause, it is crucial to establish the occurrence of a force majeure event. A force majeure incident gives the impacted party the option to amend or end the contract without incurring penalties for doing so. The party seeking to invoke the force majeure clause must prove that the occurrence was covered by the clause and that it made it more difficult for them to carry out their duties. Different travel agencies have different force majeure terms in their Umrah contracts. Force majeure provisions are something that some travel agents may choose to add in their Umrah contracts, while others may decide not to.

To handle cancellation issues, several Umrah travel agencies have chosen to include clauses on force majeure in their Umrah contract agreements. It is crucial to acknowledge that the incorporation of force majeure clauses does not grant complete exemption to the carrier and service providers. Contrarily, some tour operators have chosen not to invoke force majeure clauses in their Umrah contracts and have, instead, decided to cancel the contracts and offer refunds to the impacted Umrah pilgrims. In contrast, specific travel package contracts explicitly state that the travel agency holds no responsibility for payment in situations involving cancellation and force majeure events. Due to the fact that payments had already been made and tickets had been reserved, a small number of travel agencies chose to remain silent on the subject and were unable to fulfil all of the refund requests. Nevertheless, certain travel agencies guarantee a full refund to customers, albeit with deductions for management fees.

Additionally, in some cases, a travel agency may present an alternative package tour or a partial alternative, with the customer being informed of any associated

charges before selecting and proceeding with the additional payment. If no viable alternatives are proposed or if the customer declines all offered alternatives, the travel agency will refund all payments received from the customer, excluding the administrative fee associated with the applicable package tour or relevant portion. This refund will be provided without interest and will serve as a complete discharge of the travel agencies' obligations to the customer. The inconsistencies and variations in the usage of force majeure clauses among Umrah travel packages in Malaysia are causing confusion among consumers.

The broad interpretation of force majeure events poses an additional concern, as it has the potential to give rise to ambiguous situations for consumers. Numerous Umrah travel companies depended on their Umrah contracts, which outline the kinds of situations that could be deemed to be force majeure and prohibit a party from carrying out its contractual responsibilities. It is important to remember that not all travel agents have formal contracts in place, and even those that do may lack force majeure provisions. Tripfez Travel Sdn. Bhd interprets force majeure as an act of God and war.<sup>8</sup> However, this company did not highlight any events that may be classified as force majeure events, and it is open for various interpretations by the Umrah pilgrims. However, it was explicitly mentioned in the digital Umrah contract of Emraz Travel & Tours Sdn Bhd that 'the company will not be held responsible for any failure to comply or for any delay in fulfilling its duties if the failure results from events outside of its control'.<sup>9</sup>

The observed scenarios have brought to light the varied approaches adopted by Umrah tour operators in addressing the issue of force majeure clauses within Umrah contracts during the COVID-19 pandemic. Considering this occurrence, it is critical to map out the true problems with force majeure clauses to manage the contract's efficacy and safeguard the rights of Malaysian Umrah pilgrims. This

---

<sup>8</sup> Tripfez Travel, 'Terma & Syarat' (*Tripfez Travel*, 2023) <<https://www.tripfez.com/s/terms-conditions>> accessed 15 September 2023.

<sup>9</sup> EMRAZ Travel & Tours Sdn. Bhd, 'Terma & Syarat' (*EMRAZ*, 2023) <<https://emraztravel.com/terma-syarat/>>.

kind of research is necessary to give Umrah pilgrims, decision-makers, business owners, and service providers accurate insight into how to interpret and apply force majeure terms in their contracts. Therefore, it is essential to carefully examine the concept of a force majeure in Umrah contracts, especially in determining whether the COVID-19 epidemic qualifies as a force majeure event. Additionally, it is imperative to investigate the effectiveness of the force majeure clause as a legal mechanism intended to safeguard Malaysian Umrah pilgrims, in the aftermath of the COVID-19 outbreak.

The primary goal of this study is to analyse the concept of force majeure and to what extent it can be a mechanism in safeguarding the interests of Umrah travellers in the event of unforeseen occurrences. This study employed mainly qualitative research by conceptual and doctrinal analysis. Conceptual approach is a research method used to analyse and comprehend abstract concepts, ideas, or theories. This approach involves deconstructing these elements into their core components and investigating how they relate to one another, providing a clearer understanding of their underlying principles and connections. The primary objective of employing this method is to generate new knowledge by expanding upon meticulously chosen sources of data merged in accordance with a set of standards.<sup>10</sup> In this paper, the concept of force majeure was examined and compared with the doctrine of frustration and impossibility. The secondary sources of legal materials such as journal articles, books, expert opinions, and legal reports connected to the force majeure events due to COVID-19 pandemic were referred to.

Apart from that, a doctrinal approach was used in this study to examine further the laws governing the force majeure clauses in Umrah contract in Malaysia. Doctrinal research can be conceptualised as research which asks the nature of law is in a particular area.<sup>11</sup> It is library-based research aimed at finding a single

---

<sup>10</sup> Rudy Hirschheim, 'Some Guidelines for the Critical Reviewing of Conceptual Papers' (2008) 9 *Journal of the Association for Information Systems*. [432].

<sup>11</sup> Ian Dobinson and Francis Johns, 'Legal Research as Qualitative Research' in Mike McConville and Wing Hong Chui (eds), *Research Methods of Law* (Second Edi, Edinburgh University Press Ltd 2017) <<http://www.jstor.org/stable/10.3366/j.ctt1g0b16n.7>>.

correct answer to a specific legal issue or questions, intended to conduct targeted research to identify specific information.<sup>12</sup> It is also characterised as the study of legal theories by applying reasoning to the interpretation of statutes and court decisions. The examination of legal concepts, regulations, and guiding principles is the focus. It entails an empirical investigation into how the law functions and how the theory or principle has been applied in actual situations. The creation of legal “doctrines” through the examination of existing legal regulations derived from the works of academic researchers and practitioners is the focus of doctrinal study. The optimal strategy for achieving the primary goal of this research is determined by a thorough examination and analysis of academic literature pertaining to the concept of force majeure.

Primary and secondary legal materials make up the two categories of legal materials used in this study. Legislation such as the Contract Act 1950 (CA 1950) and the Temporary Measures for Reducing the Impact of Coronavirus Disease 2019 (COVID-19) Act 2020 are examples of primary legal material since they are legally binding. In the meantime, official websites, textbooks, scientific works, journal articles, seminar papers and newspapers that are associated with the force majeure events due to the COVID-19 endemic are among the secondary legal documents that offer justifications for the fundamental legal materials.

### **The Concept of Force Majeure**

The concept of force majeure which is derived from civil law ought to be precisely always defined. An event or circumstance that forbids or hinders a party from fulfilling one or more of its contractual obligations is referred to as force majeure, according to the International Chamber of Commerce. This concept encompasses unexpected and unavoidable situations, such as natural disasters, political upheaval, or other extraordinary events, that obstruct a party’s ability to

---

<sup>12</sup> Salim Ibrahim Ali, Zuryati Mohamed Yusoff and Zainal Amin Ayub, ‘Legal Research of Doctrinal and Non-Doctrinal’ (2017) 4 International Journal of Trend in Research and Development 2394 <www.ijtrd.com>.



perform as agreed upon in the contract. However, force majeure concepts in the United States (US) tend to be narrowly interpreted as severe natural disasters based on the 1891 Supreme Court decision in the case of *Gleeson v. Virginia Midland Railway* (1981) 140 U.S. 435. This definition is more rigid compared to the former one in which the degree of natural disaster must be severe. However, there is no definite measurement on the level of severity that needs to be proved.

Common law systems do not recognise force majeure, despite the strict definition of the term used in the US; yet, they share comparable ideas regarding the exclusion of liability owing to changed circumstances.<sup>13</sup> Corbin called this concept a doctrine of impossibility which is used to grant relief to a promisor whose contractual performance fundamentally deviates from what had reasonably been expected of him as a result of an intervening incident.<sup>14</sup> Due to the doctrine's limited scope, only specific kinds of supervening events - such as the demise or incapacity of the person whose services were the subject of the contract, the destruction of the particular item for which the contract was made or was necessary for performance, or the prohibition of performance by a later change in the law - have been recognised.

In layman's terms, a force majeure occurrence is typically defined as an act, incident, or circumstance that is outside of the parties' control. Natural disasters such as earthquake, war, riot, tsunami, hurricanes, and flood are among the force majeure events that have been recognised before. In this case, the question is whether COVID-19 constitutes a force majeure event. According to the European Construction Industry Federation, "the COVID-19 is a force majeure" occurrence, meaning that construction companies can close their sites without being held

---

<sup>13</sup> William Swadling, 'Judicial Construction of Force Majeure Clauses' in Ewan McKendrick (ed), *Force Majeure and Frustration of Contract* (Second Edn, Informa Law From Routledge 2013).

<sup>14</sup> Charles G Brown, 'The Doctrine of Impossibility of Performance and the Foreseeability Test' (1975) 6 Loyola University Chicago Law Journal.[575]. <[http://lawcommons.luc.edu/lucj/vol6/iss3/4%0Ahttp://heinonline.org/hol-cgi-bin/get\\_pdf.cgi?handle=hein.journals/lucj6&section=32%0Ahttps://pdfs.semanticscholar.org/fla8/8819c2ed346c803936e757322a6d913b7ebf.pdf](http://lawcommons.luc.edu/lucj/vol6/iss3/4%0Ahttp://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/lucj6&section=32%0Ahttps://pdfs.semanticscholar.org/fla8/8819c2ed346c803936e757322a6d913b7ebf.pdf)>.



accountable for breach of contract.<sup>15</sup> The Indonesian government recognises the COVID-19 pandemic as a force majeure event that impacts the country's ability to continue fulfilling its obligations under building contracts.<sup>16</sup>

In a recent ruling from the United States District Court for the Southern District of New York in *JN Contemporary Art LLC v. Phillips Auctioneers LLC*, 2020 WL 7405262 (S.D.N.Y. Dec. 16, 2020), Judge Denise Cote interpreted "natural disaster" within a force majeure clause to encompass the COVID-19 pandemic. Drawing upon the existing literature, this study can deduce that the COVID-19 pandemic can be considered as a force majeure event, supported by several justifications. Firstly, its rapid and uncontrollable spread beyond human control signifies an unforeseeable occurrence for all parties involved in the contract. The global scale of COVID-19's impact further emphasises its unforeseen nature. Moreover, the pandemic has imposed movement restrictions declared by numerous countries, thereby hindering the ability of all parties to fulfil their contractual obligations. Additionally, the temporary yet significant effects of the pandemic, including illness, quarantine measures, travel restrictions, business and school closures, and the shift to remote work, exemplify the disruptive consequences caused by COVID-19. It is evident that the severity of the COVID-19 infection has profound implications for society, further strengthening the argument for its classification as a force majeure event.

In the case of *Global Destar (M) Sdn Bhd v. Kuala Lumpur Glass Manufacturers Co Sdn Bhd* (2007) MLJU 91, it was decided that a weak economy does not qualify as "other circumstances" under a force majeure clause, demonstrating the stringent approach that courts take when enforcing a force majeure. According to the aforementioned ruling, even in cases when COVID-19 or the implementation of the MCO significantly impairs a party's financial situation, it is improbable that the court will recognise such an event as a force majeure unless expressly stipulated

---

<sup>15</sup> GCR Staff, 'Covid-19 a "Force Majeure" Event, European Construction Federation Tells Eu' (*Global Construction Review*, 2020) <<https://www.globalconstructionreview.com/covid-19-force-majeure-event-european-construction/>> accessed 24 March 2020.

<sup>16</sup> Seng Hansen, 'Does the COVID-19 Outbreak Constitute a Force Majeure Event? A Pandemic Impact on Construction Contracts' (2020) 6 *Journal of the Civil Engineering Forum*. [201].

in the contract. Furthermore, in the case of *CIMB Bank Bhd v Anthony Lawrence Bourke & Anor* [2019] 2 MLJ, the Federal Court ruled that the judiciary does not possess the authority to modify the instrument it is tasked with interpreting. It is also a well-established legal principle that a party invoking a force majeure clause bears the burden of demonstrating that the circumstances meet the criteria outlines in the clause.

In the case of *Dato' Vijay Kumar Natarajan & Anor v Malaysian Airlines Bhd* [2021] MLJU 407, tickets for a flight from Kuala Lumpur were cancelled because of COVID-19 due to MCO. The customer then requested a refund, but the Airline company refused, stating that the tickets were non-refundable and offering rescheduling or travel vouchers instead due to force majeure. The court granted the airline company's application to dismiss the claims. The main issue was the airline's use of the force majeure clause in the contract which exempts the airline company from refunding tickets for cancellations due to force majeure occurrences. The court ruled that the COVID-19 pandemic and MCO constituted force majeure, hence the airline was not contractually bound to offer a refund. Furthermore, in the case of *Ng Thai v Wong Fah Development Sdn Bhd* [2023] MLJU 1326, the court held to determine that COVID-19 is a force majeure event by evaluating one of the fundamental elements of force majeure, particularly in situations when a contracting party anticipates difficulty in fulfilling its contractual obligations. In the context of the COVID-19 pandemic, a common scenario occurs if the execution of a contract becomes impossible due to the need for self-isolation after an outbreak in the workplace. This situation may result in a workforce shortage due to compliance with regulatory requirements on self-isolation or shortages in material delivery, preventing contract completion. Previous force majeure laws recognised such scenarios and qualified COVID-19 to be considered as a force majeure event provided that the affected party had undertaken all reasonable measures to prevent breaches of existing contractual agreements.

As a result, the court's verdict in the above cases established that the COVID-19 pandemic constituted a force majeure event. Hence, within the scope

of Umrah travel package contracts, any travel agency that includes a force majeure provision in its contracts can utilise said clause to manage the consequences of the travel package's terminations using the remedies agreed.

### **Doctrine of Frustration: How It Differs from Force Majeure?**

Puelinckx claimed that force majeure is not equivalent to frustration.<sup>17</sup> The same opinion was shared by Jack Yong who claimed that force majeure and frustrations are referring to two different concepts.<sup>18</sup> Roman contract law is where the doctrine of frustration originated. The theory was created to eliminate innocent parties' duties in situations where the contract's goal has "ceased to be attainable" and where "things are destroyed without the debtor's act or default".<sup>19</sup> Before the concept arrived in the United States of America, it had originally been employed in England. The doctrine of frustration, as applied in England, absolves the contracting party from non-performance in situations when the performance is materially different from what was first agreed upon because of changed circumstances. Unlike force majeure, frustration needs not be referred to or included in a contract and can potentially be invoked by any party. Besides, these two doctrines have different consequences. All parties will be released from further performance of their contractual obligations upon frustration, returning them to the state in which they were prior to the frustrating event. On the other hand, a force majeure gives the parties the freedom to design their own responses.

Because of British colonisation and the adoption of certain English laws, the common law notion of frustration became deeply ingrained in Malaysian

---

<sup>17</sup> AH Puelinckx, 'Frustration, Hardship, Force Majeure, Imprévision, Wegfall Der Geschäftsgrundlage, Unmöglichkeit, Changed Circumstances' (1986) 3 Journal of International Arbitration.[47] <[https://www.trans-lex.org/128100/\\_/puelinckx-ah-frustration-hardship-force-majeure-imprevision-wegfall-der-geschäftsgrundlage-unmöglichkeit-changed-circumstances-3-jintl-arb-1986-no-2-at-47-et-seq/](https://www.trans-lex.org/128100/_/puelinckx-ah-frustration-hardship-force-majeure-imprevision-wegfall-der-geschäftsgrundlage-unmöglichkeit-changed-circumstances-3-jintl-arb-1986-no-2-at-47-et-seq/)>.

<sup>18</sup> Jack Yong, 'Force Majeure vs. Frustration of Contracts in the Time of COVID-19' (*Lawson Lundell LLP*, 2020) <<https://www.lawsonlundell.com/china-blog/force-majeure-vs-frustration-of-contracts>> accessed 7 September 2023.

<sup>19</sup> Roger Kiley, 'The Doctrine of "Frustration"' (1960) 46 American Bar Association Journal. [1292] <<https://www.jstor.org/stable/25721374>>.

contract law. Though the interpretation of the concept still refers to the common law position, Malaysia's doctrine of frustration is codified in the CA 1950, unlike in England. Section 57(2) of CA 1950 governs the doctrine of frustration in Malaysia. It states that a contract to do an act that, after it is made, becomes impossible or unlawful due to an event the promisor could not prevent, is void when it becomes impossible or unlawful. In essence, Section 57(2) of the CA 1950 tells us that frustration might occur when a contract becomes impossible to fulfil or when a contract becomes illegal after it is signed. The House of Lords' test, established in the *Davis Contractors Ltd. v. Fareham UDC* [1956] AC 696 case, has been applied in the majority of Malaysian cases. This test found that frustration occurs when a contractual obligation becomes impossible to fulfil because fulfilling it would lead to an outcome fundamentally different from what the contract was originally intended to achieve. The changed circumstance needs to be more than just burdensome or costly; it needs to be demonstrably unfair to hold the parties to their agreement.

Two legal doctrines that address unforeseeable circumstances that make it difficult or impossible for parties to perform their contractual commitments are frustration and the force majeure clause. When an event covered by a force majeure clause occurs and is correctly invoked, it typically allows the affected party to suspend, delay, or in some cases, terminate the contract without being liable for a breach. The force majeure clause usually outlines the specific consequences that apply. Meanwhile, frustration has the effect of automatically discharging the contract. It stops any further performance and releases both parties from their responsibilities. Therefore, the conditions under which frustration may be claimed are limited, and it is improbable that any events resulting from COVID-19 will give rise to contract frustration. Therefore, rather than using the doctrine of frustration in the situation of the COVID-19 pandemic, the concept of force majeure is more suitable. The key distinctions between the doctrine of frustration and the force majeure clause are outlined in the table below.

**Table 1:** Summary of main differences between the Doctrine of Frustration and Force Majeure.

| Aspects                                  | Concept of Force Majeure   | Doctrine of Frustration  |
|--|--|--|
| <b>Definition</b>                        | The force majeure clause is invoked when an unexpected event or situation arises, leading to the prevention or obstruction of one party's ability to meet its contractual responsibilities as specified in the contract. | Doctrine that absolves a party from failure to perform in situations when the performance is materially different from what was first planned.       |
| <b>Source of the Principle/ Doctrine</b> | Contract   | Common Law   |
| <b>Nature</b>                            | Explicitly included in a contract.   | Implied by Law.  |
| <b>Effects</b>                           | Both parties can fashion an agreement prior to entering into the contract on how to address the issues.  | Renders performance impossible.  |
| <b>Main elements</b>                     | <ul style="list-style-type: none"> <li>● Beyond reasonable control.</li> <li>● Unforeseen events, but specifically enumerated in the contract as force majeure events.</li> </ul>  | <ul style="list-style-type: none"> <li>● Arises from a radical change in circumstances.</li> <li>● Unforeseeable at the time of contract.</li> </ul> |
| <b>Termination</b>                       | Parties may formulate the terms to address the issues without automatic termination.   | Result in the contract's automatic termination after it is established.  |

### The Principle of Changed Circumstances.

The concept of changed circumstances or extreme onerosity in French, accepts that even while a debtor's performance is not wholly impossible, it should be released when an unforeseen condition causes unreasonable hardship or extreme onerosity.<sup>20</sup> Baranauskas and Zapolskis analysed how English, German and French legal systems address the impact of changes in circumstances on contract performance.<sup>21</sup> Various states have different approaches to the legal concept of

<sup>20</sup> Vernon Valentine Palmer, 'Excused Performances: Force Majeure, Impracticability, and Frustration of Contracts' (2022) 70 American Journal of Comparative Law.[170].

<sup>21</sup> Egidijus Baranauskas and Paulius Zapolskis, 'The Effect of Change in Circumstances on the Performance of Contract' (2009) 4 Jurisprudence.[197].

changed circumstances, as reflected in their courts' jurisprudence.

### **Force Majeure Clause in Umrah Package Travel Contract in Malaysia**

Although we previously briefly addressed the subject of force majeure, it is imperative that we now look more closely at the importance of include force majeure clauses in contracts. According to Janice Ryan, a force majeure clause is a clause in a contract that gives a party the right to terminate its commitments if external events occur that make it impossible, unwise, unlawful, or impractical for it to carry out its end of the bargain.<sup>22</sup> In general, a force majeure clause absolves one or both parties from what would otherwise be considered a breach of contract in the event that such events occur. Relying on a clause that requires a party to be completely prevented by the force majeure event from fulfilling its responsibilities is likely more challenging than relying on one that only requires the party to be impeded or hindered in performing its obligations. This concept is consistent with the ruling in *RHB Capital Bhd v. Carta Bintang* [2012] 10 MLJ 469, where the court emphasised that in the event of force majeure, both parties are released from responsibility or liability when an occurrence like a riot, war, or an act of God like an earthquake occurs.

The Emergency (Essential Powers) Ordinance 2021 (Emergency Ordinance) was officially gazetted on January 14, 2021, with retrospective effect from January 11, 2021. Its purpose is to address the COVID-19 pandemic and includes provisions related to the utilisation of private hospital assets, temporary acquisition of land and buildings, and requests for resources needed to treat COVID-19 patients. The proclamation of a state of emergency was made on 12 January, 2021, by the Yang di-Pertuan Agong Sultan Abdullah Sultan Ahmad Shah (YDPA) on the advice of the Malaysian Prime Minister. While not expressly addressing business transactions, the Emergency Ordinance does contain several provisions that, if used, might have

---

<sup>22</sup> Janice M Ryan, 'Understanding Force Majeure Clauses' (*Venable LLP*, 2011) <<https://www.venable.com/insights/publications/2011/02/understanding-force-majeure-clauses>> accessed 15 September 2023.

an effect on them.<sup>23</sup> For instance, in the case of Umrah contract during COVID-19, the root cause that prevented Umrah pilgrims from traveling and performing their Umrah was due to the movement restriction declared by Saudi Arabia. This scenario prevented Umrah pilgrims, tour operators and service providers performing their obligations and responsibilities as parties to the contract. Determining the cause of the event's incapacity to perform is the most crucial step in showing force majeure.

The enforceability of a force majeure clause in Umrah contract depends on its specific wording and the details of each case. If the clause is worded broadly enough to encompass the COVID-19 pandemic, the party unable to perform under the contract due to the pandemic may be exempt from liability. Common terms seen in force majeure provisions include pandemic outbreak, government impediment to continued transaction, and change in the law that impedes the continuance of the transaction. D Arrasyh,<sup>24</sup> Andalusia, Rayhar<sup>25</sup> and Azzuha<sup>26</sup> are among the travel agents who provide force majeure clauses in their Umrah package travel contract which may excuse them from their obligations of the contract in any event which is out of their control including pandemic, earthquake, riot, war, natural disaster, tsunami, hurricanes, and flood.

If a contract such as an Umrah package travel agreement lacks a specific force majeure clause that adequately addresses breaches or non-performance due to government action or new laws enacted under the Emergency Ordinance, parties may consider utilising the doctrine of frustration and Section 7 of the COVID-19 Act which provides "the inability of any party or parties to perform any contractual obligation arising from any of the categories of contracts specified in the schedule

---

<sup>23</sup> Astro Awani, 'Teks Penuh Pengumuman Khas Darurat Oleh PM Muhyiddin' (*Astro Awani*, 2021) <<https://www.astroawani.com/berita-malaysia/teks-penuh-pengumuman-khas-darurat-oleh-pm-muhyiddin-277288>> accessed 7 January 2024.

<sup>24</sup> D Arrasyh Travel & Tour Sdn Bhd, 'Terma Dan Syarat : Pakej Umrah & Ziarah' (*D Arrasyh Travel & Tour Sdn Bhd*) <<http://darrasyhtravel.com.my/terma-dan-syarat-pakej-umrah-ziarah/>> accessed 15 September 2023.

<sup>25</sup> Rayhar Travels, 'Terma Dan Syarat' (*Rayhar Travels*) <<https://rayhar.com/terma-dan-syarat3>> accessed 15 September 2023.

<sup>26</sup> Azzuha Group Travel & Tours Sdn Bhd, 'Syarat-Syarat Penerimaan Tawaran Perkhidmatan Umrah' (*Azzuha Group Travel & Tours Sdn Bhd*) <<https://azzuhatravel.com/terma-syarat/>> accessed 2 June 2023.



of Part II due to the measures taken under the Prevention and Control of Infectious Diseases Act 1988 (e.g. the imposition of MCO 2.0) to control or prevent the spread of COVID-19 shall not give rise to the other party or parties exercising their rights under the said contract”. Among the agreements covered by the COVID-19 Act are those made by tourism enterprises as that term is defined in the tourist Industry Act (TIA) 1992, as well as agreements pertaining to religious pilgrimages and tourism promotion in Malaysia.

The inclusion of force majeure clauses in travel agency terms and conditions protects both the company’s interests and the rights of their customers. The table below provides a detailed analysis of the utilisation of force majeure clauses. Each travel agency’s approach to incorporating these clauses in their terms and conditions is carefully assessed, highlighting the events or circumstances considered as force majeure and the corresponding actions to be taken. In the subsequent paragraphs, a comprehensive explanation of the findings will be presented, shedding light on the significance of these clauses in safeguarding the interests of both the travel agencies and their customers during unforeseen and extraordinary situations.

**Table 2:** Force Majeure Clause in Umrah Travel Package Contracts

| No. | Travel Agency               | Force Majeure Clause | Terms  | Link  |
|-----|-----------------------------|----------------------|--|---|
| 1.  | Tripfez Travel Sdn. Bhd.    | ✓                    | <b>Item 9.3: Cancellation.</b> <ul style="list-style-type: none"> <li>● “(e) Cancellation by Company: Tripfez reserves the right to cancel Group or Series Tours due to: <i>Force Majeure</i> - any act of God and War”.</li> <li>● “Upon confirmation and the issuance of the notice by Wisma Putra, Tripfez shall offer hereby agreed that the processing time for such refund will be within 60 days”.</li> </ul> | <a href="https://www.tripfez.com/en/s/terms-conditions">https://www.tripfez.com/en/s/terms-conditions</a> |
| 2.  | Ikhlas Com Travel Sdn. Bhd. | ✓                    | <b>Item 13.4: Cancellation</b> <ul style="list-style-type: none"> <li>● “(d) Ikhlas shall not be liable for any failure to comply or for any delay in performing its obligations where the failure is caused by circumstances beyond its control. Such circumstances shall include, but not limited, weather conditions, fire, flood, hurricane, strike, industrial dispute, war, hostilities, poli-</li> </ul>      | <a href="https://ikhlas.com/umrah/en/gb/terms/">https://ikhlas.com/umrah/en/gb/terms/</a>                 |

-tical unrest, riots, civil commotion, lockdown, movement control restriction due to epidemic and pandemic as pronounced by the World Health Organisation, inevitable accidents, supervening legislation or any other circumstances of whatsoever nature beyond the control Ikhlās”.

|    |                                |   |  |   |
|----|--------------------------------|---|--|---|
| 3. | Syaza Travel & Tours           | ✓ | <p><b>Item 5: Force Majeure</b></p> <ul style="list-style-type: none"> <li>● “We shall not be liable for any claims, losses, damages, costs, expenses, delays or loss of enjoyment, of any nature or kind whatsoever, resulting from events beyond our or a supplier’s reasonable control, including but not limited to acts of God, strikes, lockouts or other labour disputes or disruptions, wars, blockades, insurrections, riots, earthquakes, weather conditions, floods or acts or restraints imposed by government authorities”.</li> </ul>  | <a href="http://www.syazatravel.com.my/traveldez/articles/?cat=tnc">http://www.syazatravel.com.my/traveldez/articles/?cat=tnc</a> |
| 4. | Emraz Travel & Tours Sdn. Bhd. | ✓ | <p><b>Item 8: Miscellaneous</b></p> <ul style="list-style-type: none"> <li>● “8.1 The Company shall not be liable for any breach of obligations if the Company is unable to perform its obligations under the Terms &amp; Conditions, or any part thereof, due to the occurrence of events beyond the Company’s control. Such events shall include, but not be limited to:               <ol style="list-style-type: none"> <li>a. War (declared or undeclared), battles, invasions, or actions by foreign enemies.</li> <li>b. Rebellions, revolutions, seizures of power, civil wars, or terrorist actions.</li> <li>c. Natural disasters, including but not limited to earthquakes, floods, spontaneous underground fires, tsunamis, or any other natural calamities.</li> <li>d. Nuclear explosions, radioactive or chemical contamination, or radiation.</li> <li>e. Wave pressure caused by aircraft or any other aerial devices moving at sonic or supersonic speeds.</li> <li>f. Riots, civil commotions, or public disturbances.</li> <li>g. Orders from the Government of Malaysia and/or the Government of Saudi Arabia.</li> </ol> </li> </ul> | <a href="https://emraztravel.com/terma-syarat/">https://emraztravel.com/terma-syarat/</a>   |

|    |                        |   |   |   |
|----|------------------------|---|---|---|
|    |                        |   | <ul style="list-style-type: none"> <li>h. Failures arising from third parties.</li> <li>i. Pandemics or outbreaks of dangerous diseases.</li> <li>j. Other reasons or hazards beyond the Company's control".</li> </ul>   |   |
| 5. | Widad Tours            | ✓ | <p><b>Exclusion Of Liability and Indemnity</b></p> <ul style="list-style-type: none"> <li>● "Widad Tours reserves the right not to accept customers or bookings (or in exceptional cases to cancel confirmed ones) at our discretion and for whatever (legal) reason without the need to justify such refusal. Typical reasons for rejecting a customer or booking include, but are not limited to:<br/>Accommodation request, breach of the Terms and Condition Agreement, <i>force majeure</i> events, trade or economic sanctions, embargoes, legal restrictions, (suspicions of) fraud or theft, suspected criminal activity, suspicious bookings, submission by customer of misleading or erroneous information, credit card problems, inappropriate behavior, threats, insults, violence, refusal to supply information, practical obstacles, communication problems".</li> </ul> | <a href="https://widadtours.com/terms-conditions/">https://widadtours.com/terms-conditions/</a> |
| 6. | Moevd Groups Sdn. Bhd. | ✓ | <p><b>Cancellation and Refund by Moevd Umrah Agency</b></p> <ul style="list-style-type: none"> <li>● "For Group Travel Packages -The Company reserves the right to cancel the tour in the event of a natural disaster, war, strike, riot or directive of the Government of Malaysia beyond the company's control. The company should recommend alternative tourism, preferably to the same destination or another tourism. If the passenger decides not to accept alternative travel, all money paid will be refunded to the passenger after deducting the administration fee to be paid".</li> <li>● "If the company cancels the visit due to lack of passengers or inability to obtain transportation or accommodation, the company will refund all the money paid and also pay compensation".</li> </ul>   | <a href="https://moevd.com/pi/">https://moevd.com/pi/</a>                                       |

|    |   |   |   |   |
|----|---|---|---|---|
| 7. | Nuh Travel & Tours Sdn. Bhd                       | ✓ | <p><b>Item 3: Cancellation by Company</b></p> <ul style="list-style-type: none"> <li>● “We shall endeavour to notify you before the scheduled departure date, if, due to any unforeseen circumstance(s), or <i>force majeure</i> event such as strike, riot, war, any act of God and/or order from the government of Malaysia, any Package Tour or part thereof cannot be finalised, needs to be changed by us or your reservation has to be cancelled”.</li> <li>● “In such case, we may recommend an alternative to the applicable Package Tour or part thereof, to either the same or another destination”.</li> <li>● “If no alternatives are offered or should you decide not to accept any alternative offered, we will refund all payments received from you less the administrative fee chargeable for the applicable Package Tour or part thereof, without interest, in full discharge of our obligations to you. If an alternative is offered and accepted by you that is of a lesser value than the original Package Tour or part thereof that cannot be fulfilled, we will refund the difference in value, without interest, in full discharge of our obligations to you”.</li> </ul> | <a href="https://nuhtravel.com.my/term-condition/">https://nuhtravel.com.my/term-condition/</a> |
| 8. | Andalusia Travel & Tours Sdn. Bhd.                | ✓ | <p><b>Package Itinerary</b></p> <ul style="list-style-type: none"> <li>● “Possibility Of Itinerary Changes Subject To Regulation 9 Of The Fourth Schedule Of The Tourism Industry Act 1992, In The Event Of Any Changes To The Itinerary, And If Attsb (Tourism Agency) Is Required To Arrange An Alternative Itinerary As A Replacement, Attbsb Shall Not Be Held Responsible For Ensuring That The Alternative Itinerary Matches The Cost Or Has Similar Value To The Original Replaced Itinerary”.</li> </ul>  | <a href="https://www.umrahandalusia.com/tnc">https://www.umrahandalusia.com/tnc</a>             |
| 9. | Alwasayet Travel & Tours Umrah Services Sdn. Bhd. | ✓ | <p><b>Item 6: Responsibility</b></p> <ul style="list-style-type: none"> <li>● “6.1. Alwasayet Travels &amp; Tours Umrah Services Sdn Bhd shall not be liable for “<i>force majeure</i>” events, such as natural disasters, floods, fires, riots, wars, storms, earthquakes, or occurrences beyond the control of Alwasayet Travels &amp; Tours Umrah Services Sdn Bhd”.</li> </ul>  | <a href="https://www.alwasayet.com.my/web/">https://www.alwasayet.com.my/web/</a>               |

|     |                                  |   |  |   |
|-----|----------------------------------|---|--|---|
| 10. | Juara Travel & Tours Sdn Bhd     | ✓ | <b>Item 5.2: Amendment to Itinerary</b> <ul style="list-style-type: none"> <li>“Juara Travel &amp; Tours Sdn Bhd will make every effort to avoid changes to the itinerary. However, the Company reserves the right to modify the travel schedule, travel arrangements, or hotel reservations at any time (without compensation) due to unforeseen circumstances, especially during peak periods or in the event of <i>force majeure</i> occurrences”.</li> </ul> | <a href="https://www.juaratravel.com.my/syarikat/fasal-penafian">https://www.juaratravel.com.my/syarikat/fasal-penafian</a> |
| 11. | Omrah Travel Sdn. Bhd.           | ✗ |  | <a href="https://omrahtravel.co/pages/terms-of-service">https://omrahtravel.co/pages/terms-of-service</a>                   |
| 12. | Zahafiz Travel & Tours Sdn. Bhd. | ✗ |  | <a href="https://zahafiztravel.com/terma-syarat-umrah/">https://zahafiztravel.com/terma-syarat-umrah/</a>                   |

A close review of the force majeure clauses specified above discloses a variety of terms, each customised to deal with unexpected circumstances. Tripfez Travel Sdn. Bhd., for example, clearly lists acts of God and War as force majeure events, giving them the right to cancel Group or Series Tours in such cases. Similarly, Ikhlas Com Travel Sdn. Bhd. addresses an extensive list of unforeseen circumstances, which includes natural disasters, instability in politics, pandemics, and other catastrophic situations. Syaza Travel & Tours expands the definition of force majeure by including, among other things, acts of government, earthquakes, and labour disputes.

Emraz Travel & Tours Sdn. Bhd. takes a broad viewpoint, listing an extensive list of events beyond their control, such as wars, natural disasters, pandemics, and government orders. Widad Tours, on the other hand, takes a more general definition, preserving the right to dismiss customers or bookings for a variety of reasons, including force majeure events. Moevd Groups Sdn. Bhd. and Nuh Travel & Tours Sdn. Bhd. have similar clauses that claim their right to terminate tours in the event of natural disasters, wars, and government directives, while highlighting the availability of alternative choices and refunds. Andalusia Travel & Tours Sdn. Bhd. considers regulatory provisions, where itinerary changes may

occur, and the company absolves itself of the responsibility to match the cost or value of replaced itineraries.

Meanwhile, Alwasayet Travel & Tours Umrah Services Sdn. Bhd. and Juara Travel & Tours Sdn Bhd accentuate natural disasters, wars, and unforeseen circumstances as force majeure events, leaving room for itinerary modifications and providing clarity on refund procedures. However, some companies, namely Omrah Travel Sdn. Bhd. and Zahafiz Travel & Tours Sdn. Bhd., have not included a force majeure clause in their agreements. This omission may lead to potential issues in the event of unforeseen and extraordinary circumstances occurring in the future.

In summary, the force majeure clauses displayed by these travel agencies exemplify their commitment to addressing unpredictable occurrences that may disrupt travel arrangements. By outlining these clauses in their terms and conditions, the agencies seek to establish a balanced framework that upholds their operational integrity while recognising the unforeseeable nature of certain events that may impact travel plans.

### **Force Majeure Clause: Legal Mechanism for Safeguarding The Interests Of Consumers**

Force majeure provisions in Umrah package contracts ought to be common practice for Umrah travel agents. The Consumer Protection Act (CPA) 1999, which is applicable to all goods and services offered or supplied to one or more customers in trade, including Umrah package services, demonstrated a favourable development towards stronger consumer protection. As consumers of Umrah package travel services, prospective Umrah pilgrims are entitled to certain rights when they engage into a contract with local tour operators or travel agencies. They have the right to peruse, verify and comprehend the terms and conditions outlined in the contract for Umrah. Nonetheless, not all prospective Umrah pilgrims get the chance to comprehend the stipulations outlined in the contract. The CPA 1999 does not contain a single clause requiring Umrah tour operators and travel agencies to notify their clients of the terms and conditions. In the event

that an occurrence occurs that the parties could not have predicted or controlled, this situation could harm consumers' rights to adequate information, including the implications of the contract.

Therefore, it is significant to emphasise that, to safeguard the rights of Umrah pilgrims, force majeure clauses ought to be inserted in all Umrah contracts. But according to this study, there is no single regulation that mandates domestic tour operators and travel agencies to employ force majeure clauses in their contract. It is common knowledge that when parties lay down a written contract, their intention must be established inside the four walls of the document. Only in cases where it is expressly included in the contract may the force majeure provision be applied and relied upon. A number of tour operators and travel agencies invoke force majeure clauses in their Umrah package travel contract which release them from contractual obligations in the event of unforeseen circumstances. Nevertheless, some may not invoke this clause into their Umrah contract. Therefore, there is no standard practice between Umrah tour operators and travel agents in relation to the adoption of force majeure clauses in their contract.

The Malaysian Association of Travel and Tourism Agents (MATTA), the Association of Bumiputera Travel and Tourism Agencies (BUMITRA) and the Umrah Regulatory Council (PAPUH) should review the existing Code of Ethics and guidelines particularly on the significance of force majeure clauses in Umrah package travel contracts as an instrument for providing better protection to the consumers and travel agents. According to Mohd Afiq and Nuraisyah Chua, force majeure provisions play a crucial role in safeguarding the financial interests of travellers and travel agencies.<sup>27</sup>

If the service was performed erroneously consumers are entitled to remedies

---

<sup>27</sup> Ahmad Afiq Hasan and Nuraisyah Chua Abdullah, 'Doctrine of Frustration as the Second Level of Protection : The Case of Frustrated Travellers' in Suzanna Mohamed Isa Azimon Abdul Aziz, Sakina Shaik Ahmad Yusoff, Rahmah Ismail (ed), *Proceedings of the International Conference on Consumerism* (Perpustakaan Negara Malaysia 2013) <[https://www.researchgate.net/publication/303374329\\_Doctrine\\_of\\_Frustration\\_as\\_the\\_Second\\_Level\\_of\\_Protection\\_The\\_Case\\_of\\_Frustrated\\_Travellers](https://www.researchgate.net/publication/303374329_Doctrine_of_Frustration_as_the_Second_Level_of_Protection_The_Case_of_Frustrated_Travellers)>.



under CPA 1999 Section 60(1). It makes it rather evident that:

‘Where a consumer has a right of redress against the supplier under this Part in respect of the failure of any services or any product resulting from the services to comply with a guarantee under Part VIII, the consumer may exercise the following remedies:

(a) where the failure is one that can be remedied, the consumer may require the supplier to remedy the failure within a reasonable time’.

If, however, the failure cannot be rectified, the consumer may terminate the agreement for the provision of the services or demand damages from the supplier to cover any decrease in the product’s value because of services that falls short of the amount the customer has paid or is obligated to pay for the services. Consumers may notify the seller of their desire to terminate the agreement by words, deeds, or both, and the notice must be made explicit.<sup>28</sup>

Many consumers, especially Umrah pilgrims, sought refunds during COVID-19 because of tour operators’ and travel agencies’ cancellation of their travel packages. However, based on the terms and conditions that have been agreed upon by the contracting parties, varied responses have been made by the Umrah tour operators and travel agencies when the Umrah contract cannot be executed owing to the COVID-19 epidemic. Tour operators and travel agents must take into account the potential consequences of a force majeure event when drafting the force majeure provisions in an Umrah contract. These consequences may include the need for parties to mitigate the event’s effects, an exemption from contract performance for the affected party in whole or in part, an exemption from performance delays, the option to suspend performance or request an extension, or the right to terminate the contract before further losses occur.

## Conclusion

Due to the massive lockdowns implemented in several nations to stop the COVID-19 virus from spreading, the COVID-19 pandemic has had a significant negative impact on a few industries, including the Umrah package travel industry.

---

<sup>28</sup> Section 63 Consumer Protection Act 1999.

Based on the earlier discussion, most of the academic scholars agreed that COVID-19 can be considered as one of the force majeure events which affect the parties' ability to complete Umrah business contracts as agreed. In response to this circumstance, it is vital for travel agents, service providers and consumers to be aware of the crucial significance of incorporating force majeure clauses into an Umrah contract, specifically encompassing the terms epidemic or pandemic. Failure to insert force majeure clauses in any Umrah contract may lead to application of doctrine of frustration, which differs in its concepts and impacts from force majeure. Thus, the contracting parties must meticulously consider the contents of the agreement, ascertain the presence of force majeure clause, and determine the agreed limits of force majeure. If the parties do not regulate force majeure clauses in their contract, they will act in accordance with the provisions of the applicable law.

The findings of this research can serve as valuable input for policymakers to enhance existing regulations, such as the MATTA Code of Ethics for Members, which govern the Umrah travel industry. By incorporating the research outcomes, policy makers can work towards refining and strengthening the legal framework to give better protection for the consumers interests and ensure fair practices within the Umrah package travel sector.

### Acknowledgements

This research was supported by the Ministry of Higher Education (MoHE) of Malaysia through the Fundamental Research Grant Scheme (FRGS/1/2021/SSI0/UNISZA/02/17) granted.

### Bibliography

Arifin L, 'Agensi Umrah Persoal Pampasan Kepada Jemaah' (*Berita Harian*, 2022) <<https://www.bharian.com.my/berita/nasional/2022/02/919539/agensi-umrah-persoal-pampasan-kepada-jemaah>> accessed 8 September 2023.

Astro Awani, 'Teks Penuh Pengumuman Khas Darurat Oleh PM Muhyiddin' (*Astro Awani*, 2021) <<https://www.astroawani.com/berita-malaysia/teks-penuh-pengumuman-khas-darurat-oleh-pm-muhyiddin-277288>> accessed 7 January 2024.

Awwad FA, Mohamoud MA and Abonazel MR, 'Estimating COVID-19 Cases in Makkah Region of Saudi Arabia: Space-Time ARIMA Modeling' (2021) 16 PLoS ONE <<http://dx.doi.org/10.1371/journal.pone.0250149>>.

Azzuha Group Travel & Tours Sdn Bhd, 'Syarat-Syarat Penerimaan Tawaran Perkhidmatan Umrah' (*Azzuha Group Travel & Tours Sdn Bhd*) <<https://azzuhatravel.com/terma-syarat/>> accessed 2 June 2023.

Baranauskas E and Zapolskis P, 'The Effect of Change in Circumstances on the Performance of Contract' (2009) 4 Jurisprudence.

Bernama, 'Govt Urged to Help Address Hike in Umrah Package Prices' (*The Sun*, 2023) <<https://www.thesundaily.my/home/govt-urged-to-help-address-hike-in-umrah-package-prices-KB10550468>> accessed 15 September 2023.

Brown CG, 'The Doctrine of Impossibility of Performance and the Foreseeability Test' (1975) 6 Loyola University Chicago Law Journal <[http://lawcommons.luc.edu/lucj/vol6/iss3/4%0Ahttp://heinonline.org/hol-cgi-bin/get\\_pdf.cgi?handle=hein.journals/lucj6&section=32%0Ahttps://pdfs.semanticscholar.org/fla8/8819c2ed346c803936e757322a6d913b7ebf.pdf](http://lawcommons.luc.edu/lucj/vol6/iss3/4%0Ahttp://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/lucj6&section=32%0Ahttps://pdfs.semanticscholar.org/fla8/8819c2ed346c803936e757322a6d913b7ebf.pdf)>.

D Arrasyh Travel & Tour Sdn Bhd, 'Terma Dan Syarat : Pakej Umrah & Ziarah' (*D Arrasyh Travel & Tour Sdn Bhd*) <<http://darrasyhtravel.com.my/terma-dan-syarat-pakej-umrah-ziarah/>> accessed 15 September 2023.

Daniel Tang KH, 'Movement Control as an Effective Measure against Covid-19 Spread in Malaysia: An Overview' (2022) 30 Journal of Public Health: From Theory to Practice <<https://doi.org/10.1007/s10389-020-01316-w>>.

Dobinson I and Johns F, 'Legal Research as Qualitative Research' in Mike McConville and Wing Hong Chui (eds), *Research Methods of Law* (Second Edi, Edinburgh University Press Ltd 2017) <<http://www.jstor.org/stable/10.3366/j.ctt1g0b16n.7>>.

EMRAZ Travel & Tours Sdn. Bhd, 'Terma & Syarat' (*EMRAZ*, 2023) <<https://emraztravel.com/terma-syarat/>>.

GCR Staff, 'Covid-19 a "Force Majeure" Event, European Construction Federation Tells Eu' (*Global Construction Review*, 2020) <<https://www.globalconstructionreview.com/covid-19-force-majeure-event-european-construction/>> accessed 24 March 2020.

Ghapa N and others, 'An Analysis on the Consumer Legal Protection in Umrah Package Travel Industry During Covid-19 Pandemic' (2021) 2 The Journal of Management Theory and Practice (JMTP).

- Hansen S, 'Does the COVID-19 Outbreak Constitute a Force Majeure Event? A Pandemic Impact on Construction Contracts' (2020) 6 Journal of the Civil Engineering Forum.
- Hasan AA and Chua Abdullah N, 'Doctrine of Frustration as the Second Level of Protection : The Case of Frustrated Travellers' in Suzanna Mohamed Isa Azimon Abdul Aziz, Sakina Shaik Ahmad Yusoff, Rahmah Ismail (ed), *Proceedings of the International Conference on Consumerism* (Perpustakaan Negara Malaysia 2013) <[https://www.researchgate.net/publication/303374329\\_Doctrine\\_of\\_Frustration\\_as\\_the\\_Second\\_Level\\_of\\_Protection\\_The\\_Case\\_of\\_Frustrated\\_Travellers](https://www.researchgate.net/publication/303374329_Doctrine_of_Frustration_as_the_Second_Level_of_Protection_The_Case_of_Frustrated_Travellers)>.
- Hirschheim R, 'Some Guidelines for the Critical Reviewing of Conceptual Papers' (2008) 9 Journal of the Association for Information Systems.
- Huynh TLD, 'The COVID-19 Risk Perception: A Survey on Socioeconomics and Media Attention' (2020) 40 Economics Bulletin.
- Ibrahim Ali S, Mohamed Yusoff Z and Ayub ZA, 'Legal Research of Doctrinal and Non-Doctrinal' (2017) 4 International Journal of Trend in Research and Development <[www.ijtrd.com](http://www.ijtrd.com)>.
- Kiley R, 'The Doctrine of "Frustration"' (1960) 46 American Bar Association Journal <<https://www.jstor.org/stable/25721374>>.
- Matiza T, 'Post-Covid-19 Crisis Travel Behaviour: Towards Mitigating the Effects of Perceived Risk' (2020) 8 Journal of Tourism Futures.
- Memish ZA and Wilder-Smith A, 'Global Impact of Severe Acute Respiratory Syndrome: Measures to Prevent Importation into Saudi Arabia' (2004) 11 Journal of Travel Medicine.
- Palmer VV, 'Excused Performances: Force Majeure, Impracticability, and Frustration of Contracts' (2022) 70 American Journal of Comparative Law.
- Puelinckx AH, 'Frustration, Hardship, Force Majeure, Imprévision, Wegfall Der Geschäftsgrundlage, Unmöglichkeit, Changed Circumstances' (1986) 3 Journal of International Arbitration 47 <[https://www.trans-lex.org/128100/\\_/puelinckx-ah-frustration-hardship-force-majeure-imprévision-wegfall-der-geschäftsgrundlage-unmöglichkeit-changed-circumstances-3-jintl-arb-1986-no-2-at-47-et-seq/](https://www.trans-lex.org/128100/_/puelinckx-ah-frustration-hardship-force-majeure-imprévision-wegfall-der-geschäftsgrundlage-unmöglichkeit-changed-circumstances-3-jintl-arb-1986-no-2-at-47-et-seq/)>.
- Rayhar Travels, 'Terma Dan Syarat' (*Rayhar Travels*) <<https://rayhar.com/terma-dan-syarat3>> accessed 15 September 2023.

Ryan JM, 'Understanding Force Majeure Clauses' (*Venable LLP*, 2011) <<https://www.venable.com/insights/publications/2011/02/understanding-force-majeure-clauses>> accessed 15 September 2023.

Swadling W, 'Judicial Construction of Force Majeure Clauses' in Ewan Mckenderick (ed), *Force Majeure and Frustration of Contract* (Second Edi, Informa Law From Routledge 2013).

Tripfez Travel, 'Terma & Syarat' (*Tripfez Travel*, 2023) <<https://www.tripfez.com/s/terms-conditions>> accessed 15 September 2023.

Yong J, 'Force Majeure vs. Frustration of Contracts in the Time of COVID-19' (*Lawson Lundell LLP*, 2020) <<https://www.lawsonlundell.com/china-blog/force-majeure-vs-frustration-of-contracts>> accessed 7 September 2023.

**HOW TO CITE:** Wan Noor Fatimah Wan Kamarudin, Norhasliza Ghapa, Noraida Harun, Farhanin Abdullah Asuhaimi and Iylyana Che Rosli, 'Force Majeure Clause in Umrah Contract: Safeguarding Malaysian Umrah Travellers Post-COVID-19 Pandemic' (2025) 40 Yuridika.

**--This page is intentionally left blank--**