

## Informative note

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Barcelona, March 20<sup>th</sup>, 2020

# COVID-19: FAQs for Private Agreements in Spain

## Can COVID-19 exempt from the fulfilment of private contracts?

Yes, in cases where the purpose of the agreement has been forbidden, restricted or limited by reason of the declaration of the state of alarm and the measures implemented to combat COVID-19. As this would constitute an unforeseeable or inevitable event, it would be possible to invoke force majeure (art. 1105 Civil Code) or the "rebus sic stantibus" clause (as per existing Spanish Case Law Courts) to try to obtain the resolution, review or suspension of an existing agreement subject to any of those circumstances.

## How different are the causes of force majeure and the "rebus sic stantibus"?

While the cause of force majeure allows to exempt or limit the contractual responsibility of the party who cannot fulfil its obligations, including the termination of the agreement, the clause "rebus sic stantibus" seeks to rebalance benefits amongst the parties, considering the disproportion and the imbalances that the new circumstances have created in one of them.

## What should be done while the State of Alarm remains in force?

Considering that diligence is required to all parties in an agreement, to mitigate potential damage to the other party, is advise to send a statement to the other party alleging the existence of a cause of force majeure which may prevent or hinder the fulfilment of his contractual obligations or the intention to apply the rebus sic stantibus provision.

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### CONTACT

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