

## CONTRACTUAL CLAUSES IN CASE OF GEO-POLITICAL ISSUES

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### BACKGROUND

The last several years, on several occasions, have witnessed geopolitical turmoil affect sporting events. In 2022, we witnessed the Wimbledon Championships ban Russian and Belarusian players from competing<sup>1</sup> and the Union of European Football Associations (UEFA) being dragged to the Court of Arbitration for Sport (CAS) by the Football Union of Russia due to the suspension imposed on the participation of all Russian representatives teams and clubs from UEFA competitions.<sup>2</sup> Geopolitical tensions were also a major factor in Vivo exiting the Indian Premier League title sponsorship; as well as the reason behind the Indian Government banning PUBG Mobile and Battlegrounds Mobile India (amongst several other applications with apparent links to China), amid national security and data privacy concerns owing to the India-China standoff.

After the horrific terror attack in Pahalgam, Jammu & Kashmir, India on April 22<sup>nd</sup>, 2025, the Indian Government has taken several stringent steps such as the suspension of the Indus Waters Treaty; declaring defense advisors in the Pakistani High Commission in New Delhi as Persona Non Grata with them being to leave the country; and putting a bar on Pakistani nationals from traveling to India under the SAARC Visa Exemption Scheme.<sup>3</sup> As far as the sporting world is concerned, the Indian crew working at the Pakistan Super League (PSL) ceased to provide services; and Fancode, a streaming platform, which had the official broadcasting rights for PSL, in India, removed all content of the PSL from its platform.<sup>4</sup> This has also cast a doubt on the future of certain sporting events i.e., whether the Pakistan Hockey Team and the Women's Cricket Team will be permitted to come to India for the Asia Cup (hockey) proposed to be held in Bihar in August, 2025 and the Women's Cricket World Cup proposed to be held in India in October, 2025, respectively<sup>5</sup> or the willingness of the 2 nations to face each other in any sporting competition.

Given the geopolitical turmoil, globally, this article draws focus on the key contractual clauses in agreements in the sports and gaming world, and analyses if there is a need to build language into the relevant rules & regulations and contracts which allows the parties to re-negotiate or withdraw from performance of their obligations in light of changing geo-political circumstances.

### FORCE MAJEURE

#### *What is Force Majeure?*

Literally meaning "*superior force*" in French, events of Force Majeure are events which can neither be reasonably anticipated nor controlled by any person. Force majeure clauses in contracts are aimed at

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<sup>1</sup> <https://time.com/6168852/wimbledon-russia-belarus-ban/>

<sup>2</sup> CAS 2022/A/8709 Football Union of Russia v. Union of European Football Associations et al

<sup>3</sup> Faye D'Souza: [https://www.instagram.com/p/DIy8nTTsULc/?img\\_index=1](https://www.instagram.com/p/DIy8nTTsULc/?img_index=1)

<sup>4</sup> <https://sports.ndtv.com/pakistan-super-league/pakistan-super-league-in-jeopardy-pakistan-government-to-send-back-indian-broadcast-crew-8246342>

<sup>5</sup> <https://www.newindianexpress.com/sport/other/2025/Apr/24/pahalgam-aftermath-sporting-events-in-uncertain-territory>

safeguarding the contracting parties from consequences of breach in circumstances which might render them unable to perform their obligations either temporarily or permanently, for reasons beyond their control, and are typically defined in a contract as *‘the inability of a Party to perform obligations or to enjoy any of its benefits due to any cause or reason beyond the reasonable control of such Party, including but not being limited to an event or condition classified as wars or war like situation (whether actual or threatened and whether conventional or other, including but not limited to, chemical or biological wars or war-like actions), acts of terrorism or threats of terrorism, civil riots, sabotage, hostilities, public disorder, explosions, epidemics, pandemics, lockdowns, work stoppages by order (civil or military) of a government body with appropriate jurisdiction, weather or natural disasters including but not limited to fires, floods, droughts, hurricanes, tornadoes, storms, or earthquakes, acts of God, Court orders, or governmental restrictions and actions, acts and decisions of regulatory and sports authorities’*.

In India, the law relating to force majeure is contained in Section 32 of the Indian Contract Act, 1872, which deals with contingent contracts:

***“32. Enforcement of contracts contingent on an event happening***

*Contingent contracts to do or not to do anything if an uncertain future event happens, cannot be enforced by law unless and until that event has happened. If the event becomes impossible, such contracts become void.”*

The Indian Supreme Court in *Energy Watchdog v. Central Electricity Regulatory Commission & Ors.*<sup>6</sup> held that *“where the Court finds that the Contract itself either implicitly or expressly contains a term, according to which performance would stand discharged under certain circumstances, the dissolution of the contract would take place under the terms of the contract itself and such cases would be dealt with under Section 32 of the Act”*.

***Establishing Force Majeure:***

The party claiming inability to perform its contractual obligations due to an event of force majeure must satisfy certain elements. Firstly, it is on the affected party to establish the occurrence of such an event of force majeure. Second, the affected party must demonstrate that such event was the reason for its inability to perform its obligations under the contract, and third, it must draw a direct link of causation between the event and the impossibility of performance. The contract may specifically state the procedure for invocation of the force majeure clause and the requirements of notifying the other party that the affected party is unable to complete its obligations due to such event of force majeure and accordingly the contract being in abeyance during such time. Further, the contract may provide a timeline within which if the inability to perform the contract continues, the contract shall stand terminated.

**FRUSTRATION**

In some cases, the parties can claim relief under Section 56 of the Indian Contract Act, 1872, which pertains to impossible contracts. If parties enter into a contract which subsequently becomes impossible to perform, Section 56 may be invoked by the affected party. The relevant provision is produced below:

***“Section 56 – Agreement to do impossible act***

*An agreement to do an act impossible in itself is void.*

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<sup>6</sup> [(2017) 14 SCC 80]

*Contract to do an act afterwards becoming impossible or unlawful. – A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful...*"

The Supreme Court in *Energy Watchdog* held that "if frustration is to take place *de hors* the contract, it will be governed by Section 56". The doctrine of frustration comes into play when an event occurs that makes it impossible for parties to perform their contractual obligations, thereby discharging the contract. The affected party must establish that the event has changed the circumstances to the extent that it is now impossible to perform the contract, and it could neither prevent the event nor did it self-induce the impossibility by itself or due to its negligence. The doctrine of frustration came into play during BREXIT<sup>7</sup> and other events leading to frustration may include stoppage of international flights, sealing of borders, non-issuance of visas by the government may fall under this category.

## UNWILLINGNESS TO PERFORM

What a Force Majeure clause and/or the doctrine of frustration typically does not provide protection for is the **unwillingness** of a party to perform obligations on account of an event of Force Majeure, more specifically in cases of geo-political issues wherein the performance of obligations **may not become impossible**, however a party may **no longer be willing to perform** them. The same could be on account of the sudden rise in animosity between countries (like in the case of terror attacks, which also leave little room for long drawn discussions and amicable settlements) or for that matter rise in price on account of change in tariffs.

In the sports and gaming sector, where a plethora of cross-border transactions exist and will continue to take place given the nature of business, the uncertain global climate clearly poses a risk to parties engaging in cross-border activities in the conduct of their sporting objectives and responsibilities. Thus, there is a need to rethink the contractual clauses governing the relationship between parties from different nations.

In the case of suspension of Russian representatives by UEFA, while no explicit rules existed with regard to the invocation of such suspension, the CAS deemed UEFA's actions as (i) reasonable, proportionate and arguably necessary to provide safe, secure and orderly international football events for European football's stakeholders; (ii) those that were taken to achieve UEFA's statutory objective; and (iii) were broadly interpreted as **falling under its discretionary power**. However, such discretion, which may exist with an International Sporting Organization consisting of various members, does not typically exist in contractual relationships. Thus, there is a need to create a clear and precise source of power with the parties.

One way to achieve this would be to consider writing clear clauses/rules which take into account geo-political events as a ground to suspend or terminate the obligations of parties. In an industry that pretty much operates within the confines of a strict set of rules (where being overweight by 100 grams can lead to disqualification), a dedicated clause / incorporation of rules in statutes addressing geopolitical events

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<sup>7</sup> *Canary Wharf (BP4) T1 Limited & Ors. v. European Medicines Agency*

could go a long way. We draw inspiration from the reputational clauses that exist in sponsorship/endorsement agreements but expand the scope and context of the same.

**Mentioned hereinbelow is a proposed clause which might be worth consideration:**

***Definition:***

For the purposes of this Agreement, “**Geo-Political Events**” shall mean any event, occurrence, circumstance, or development—whether occurring domestically or internationally—that arises from or relates to political, diplomatic, national security, or regulatory developments, and which materially affects or, in the reasonable and good faith opinion of a Party, may affect the feasibility, legality, commercial reasonableness, or reputational prudence of continued performance under this Agreement.

Without limitation, “**Geo-Political Events**” shall include:

- (a) armed conflict, war (whether actual or threatened and whether conventional or other, including but not limited to, chemical or biological wars or war-like actions), civil unrest, or other hostilities;
- (b) economic or trade sanctions, embargoes, export controls, or investment restrictions imposed by any governmental or supranational authority;
- (c) deterioration or severance of diplomatic or economic ties between the countries of incorporation or principal operations of the Parties;
- (d) regime change, government instability, or imposition of martial law;
- (e) acts of terrorism, sabotage, or cyber warfare with political implications;
- (f) legislative, judicial, or executive action that prohibits, restricts, or materially impedes transactions, cooperation, or trade with persons or entities of a particular nationality or political affiliation;
- (g) any other circumstance where a Party reasonably determines that continued performance: (i) is inconsistent with applicable law, regulation, or governmental guidance in its jurisdiction; (ii) would contravene internal policy, compliance, or risk management standards, including trade compliance or foreign policy alignment; or (iii) would be incompatible with public positions adopted by its government or relevant authorities, such that continued performance may be reasonably perceived as non-alignment or insensitivity to national interest or public sentiment.

***Suspension of Obligation:***

In the event a Geo-Political Event occurs, a Party may, by giving written notice to the other Party:

- (a) suspend the performance of any or all of its obligations under this Agreement if such Geo-Political Event: (i) materially hinders or prevents its performance; or (ii) does not prevent performance but gives rise to concerns of reputational, regulatory, or policy-based misalignment in the context of prevailing geopolitical conditions.
- (b) The suspension shall be effective for the duration of such Geo-Political Event or until the basis for suspension ceases to exist, as determined in good faith by the Party serving notice.

***Termination for Prolonged or Persistent Events***

If the Geo-Political Event and its impact continue for a period of thirty (30) consecutive calendar days or more, a Party shall have the right to terminate this Agreement, in whole or in part, by providing written notice to the other Party. Such termination shall be effective upon receipt of such notice or on such later date as specified therein.

### ***No Liability for Suspension or Termination***

Neither the suspension nor the termination of this Agreement pursuant to this Clause shall give rise to any liability for damages, penalties, or indemnities, except for obligations validly accrued and due prior to the effective date of suspension or termination. The Parties agree that such actions shall be deemed taken in good faith and in accordance with prudent business judgment and applicable obligations under law and institutional policy.

### **CONCLUSION**

Given the rising frequency and impact of geo-political events on sports and gaming—ranging from player bans to sponsorship disruptions—there is a growing need to provide some form of clear directives, similar to those written during the COVID-19 in relation to hardship clauses. The establishment of some form of paperwork (rules / contractual language) around it will also provide assistance where getting into interpretations such as the use of '*discretionary powers in the interest of achieving the ultimate goal*' may not always be possible, especially in cases where there is urgency (there is a reason why CAS sets up an ad hoc division at the Olympic Games, which, under normal circumstances is bound to give decisions within 24 hours).

While an attempt has been made to draft what a potential clause may look like, generically, each transaction is unique and may have its own peculiarities which would demand revisions and nuances to be tailored specific to the business, such as building in clauses for reduction in fee on account of loss of fan base in a particular territory - something that could have been relevant in the case of a global sponsorship agreement executed in relation to PUBG when the ban was placed on it in India (a major territory in terms of user base). As international sporting and gaming ventures become more deeply entangled with global politics, there is a growing need to move beyond traditional legal frameworks and adopt more creative, forward-thinking approaches like including clearer and more responsive contractual protections that allow parties to navigate these disruptions while also upholding the national alignments with greater certainty, fairness and speed.