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Coronavirus and *Force Majeure* Declarations

LNG Buyers and Sellers Confront the Effects of the Coronavirus in Asia and Across the Globe

Roughly three weeks after the World Health Organization declared the coronavirus to be a “public health emergency of international concern,” the outbreak has begun to disrupt global supply chains severely.¹ The virus, now officially named “Covid-19,” remains first and foremost a public health emergency. Since the first cases were reported in December 2019, it has sickened more than 72,000 people, killed nearly 2,000, and spread to every province and region in China—and from there to 26 other countries.

Chinese authorities have taken a number of steps to contain the coronavirus, and the Chinese economy is feeling the effects. China has completely quarantined a number of cities including Wuhan—the epicenter of the outbreak and the country’s industrial and manufacturing heartland. Varying degrees of domestic travel restrictions now affect an estimated 780 million people: they have kept many workers confined to their homes and halted the movement of goods. Many factories have ceased operations as a result.

As the coronavirus crisis worsens in the coming months, the effects on the global supply chain and energy demand are expected to intensify. In the liquefied natural gas (“LNG”) sector in particular, some local Chinese gas utilities are reporting a 10%-40% decrease in demand as many commercial operations have been forced to a standstill.²

In these circumstances, many Chinese parties are considering *force majeure* declarations as potential relief from their contractual obligations. *Force majeure* provisions are common in commercial contracts—particularly the types of long-term sales and purchase agreements (“SPAs”) used in the LNG industry. The purpose of a *force majeure* clause is to temporarily or permanently excuse the parties from performance of their contractual obligations, upon the occurrence of an event beyond their



control that has prevented or impeded contract performance.³ While *force majeure* is a recognized concept in most legal systems, it usually does not have a precise legal definition. As a result, most contracts include a definition of *force majeure* and a non-exhaustive list of both illustrative *force majeure* events and events that do not constitute *force majeure*.⁴ The Chinese body in charge of foreign trade and investment, the China Council for the Promotion of International Trade, has begun issuing *force majeure* certificates to Chinese companies.⁵ These certificates are likely to be of limited effect, as *force majeure* is a contractual issue, but they may be used as evidence to support *force majeure* claims in future disputes.

In the LNG market, the China National Offshore Oil Corp. (“CNOOC”), which operates nearly half of China’s LNG import terminals, invoked the *force majeure* clauses in multiple SPAs with overseas suppliers for the months of February and March, 2020.⁶ Other Chinese LNG buyers are considering whether to invoke *force majeure*.⁷ PetroChina Co. postponed LNG deliveries at three of its facilities, stating that it lacked sufficient workers to offload the shipments.⁸ CNOOC also has issued *force majeure* notifications to commodity trading houses Trafigura and Middle East Gas.⁹

LNG sellers who have contracts with Chinese buyers must carefully weigh the legal and business consequences of accepting or rejecting a *force majeure* declaration based on the coronavirus outbreak. Some buyers appear to have accepted CNOOC’s *force majeure* declarations, while France’s Total SA and Royal Dutch Shell have rejected them.¹⁰ Other sellers are actively working with Chinese companies to avoid a *force majeure* declaration altogether by affording the Chinese party certain accommodations, such as extra time to perform.

King & Spalding is uniquely positioned to guide LNG companies through the coronavirus crisis, including potential *force majeure* declarations. Our LNG practice is one of the most active and experienced in the world. Our team is deep, with more than 100 lawyers who regularly handle LNG matters, and we have been counselling clients on LNG projects, transactions, and disputes globally from the early 1990s through the industry’s recent unprecedented growth. We have handled more than 120 LNG projects in almost 50 countries across six continents, and are top-ranked globally in LNG projects by *Chambers Global*.

ABOUT KING & SPALDING

Celebrating more than 130 years of service, King & Spalding is an international law firm that represents a broad array of clients, including half of the Fortune Global 100, with 1,100 lawyers in 21 offices in the United States, Europe, the Middle East and Asia. The firm has handled matters in over 160 countries on six continents and is consistently recognized for the results it obtains, uncompromising commitment to quality, and dedication to understanding the business and culture of its clients.

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¹ Gh World Health Organization, *Statement on the second meeting of the International Health Regulations (2005) Emergency Committee regarding the outbreak of novel coronavirus (2019-nCoV)*, January 30, 2020, available at <https://www.who.int/news-room/detail/30-01-2020-statement-on-the-second-meeting-of-the-international-health-regulations-%282005%29-emergency-committee-regarding-the-outbreak-of-novel-coronavirus-%282019-ncov%29>.

² Cindy Liang, Shermaine Ang, Srijan Kanoi, and Eric Yep, *Analysis: LNG market turmoil to worsen as coronavirus impact deepens*, S&P GLOBAL (Feb. 10, 2020), available at <https://www.spglobal.com/platts/en/market-insights/latest-news/natural-gas/021020-lng-market-turmoil-to-worsen-as-coronavirus-impact-deepens>.

³ James Bailey & Rachel Lidgate, *LNG – a minefield for disputes?* in LIQUIFIED NATURAL GAS: THE LAW AND BUSINESS OF LNG, (Paul Griffin ed., 3d ed. 2017), p. 248.

⁴ *Id.*

⁵ Cindy Liang, Shermaine Ang, Srijan Kanoi, and Eric Yep, *Analysis: LNG market turmoil to worsen as coronavirus impact deepens*, S&P GLOBAL (Feb. 10, 2020), available at <https://www.spglobal.com/platts/en/market-insights/latest-news/natural-gas/021020-lng-market-turmoil-to-worsen-as-coronavirus-impact-deepens>.

⁶ Jan Wolfe, *Explainer: Companies consider force majeure as coronavirus spreads*, REUTERS (Feb. 10, 2020), available at <https://www.reuters.com/article/us-china-health-legal-explainer-idUSKBN205059>.

⁷ Stephen Stapczynski, *China LNG Force Majeure Rejected as Virus Chaos Sparks Dispute*, BLOOMBERG (Feb. 6, 2020), available at <https://www.bloomberg.com/news/articles/2020-02-07/china-lng-force-majeure-rejected-as-virus-chaos-sparks-dispute>.

⁸ Stephen Stapczynski, *CNOOC refuses LNG cargoes, declaring force majeure over coronavirus*, available at <https://www.worldoil.com/news/2020/2/6/cnooc-refuses-lng-cargoes-declaring-force-majeure-over-coronavirus>

⁹ Cindy Liang, Shermaine Ang, Srijan Kanoi, and Eric Yep, *Analysis: LNG market turmoil to worsen as coronavirus impact deepens*, S&P GLOBAL (Feb. 10, 2020), available at <https://www.spglobal.com/platts/en/market-insights/latest-news/natural-gas/021020-lng-market-turmoil-to-worsen-as-coronavirus-impact-deepens>.

¹⁰ Stephen Stapczynski, Mark Burton, and Jaqueline Davalos, *China Renegs on Commodity Deals, Worsens Global Trade Chaos*, BLOOMBERG (Feb. 6, 2020), available at <https://www.bloomberg.com/news/articles/2020-02-06/chinese-gas-buyer-cnooc-declares-force-majeure-on-lng-contracts>; Stephen Stapczynski, *China LNG Force Majeure Rejected as Virus Chaos Sparks Dispute*, BLOOMBERG (Feb. 6, 2020), available at <https://www.bloomberg.com/news/articles/2020-02-07/china-lng-force-majeure-rejected-as-virus-chaos-sparks-dispute>.