

Intended learning objectives



To understand the concept of force majeure and its effect on a PSA

To familiarise participants with the termination clause and its importance



Force majeure

- Force majeure deals with unavoidable catastrophes that prevent or restrict either of the parties from performing the contract.
- For events to constitute force majeure, they must be unforeseeable, external to the parties of the contract, and unavoidable.

Source: (<https://www.investopedia.com/terms/f/forcemajeure.asp>)

Force majeure



- Examples of Force majeure events include: Act of war, hostility, insurrection, storm, flood, earthquake, hurricane, tornado, tsunami, strikes, energy black outs, airport terrorist attack, etc
- Some PSAs list the events that amount to force majeure eg Uganda, while others simply make reference to the concept eg Kenya and Indonesia
- Party affected by force majeure must notify other party and state the cause
- Party must do everything reasonable to remove the cause and resume contract

Force majeure



Effect on PSA

- Suspends performance by affected party of obligations under contract except those related to payments (royalty, annual charges, rent or fees)
- Contract period extended by amount of time force majeure event subsists
- Does not terminate PSA (*exception in Kenya where parties may terminate PSA if force majeure event continues for a year*)



Termination Clause

Termination Clause



- Termination of a contract refers to ending the contract before the parties have fulfilled their obligations
- The terminating party must give the other party notice in writing eg Indonesia 90 days notice
- Most PSAs list circumstances which may lead to its termination, these include if one party:
 - ✓ Feels that circumstances do not warrant continuation of petroleum operations
 - ✓ Commits a material breach of the PSA (*material breach is one that is significant enough to destroy the value of the contract and gives the aggrieved party the right to sue for breach of contract*). Source: <https://definitions.uslegal.com/m/material-breach/>

Termination Clause

- ✓ Fails to make a monetary payment required under the PSA
- ✓ Violates materially or repeatedly the national laws
- ✓ Becomes bankrupt, is liquidated or makes a composition with its creditors
- ✓ Fails to provide or maintain a security required by the PSA
- Termination does not extinguish rights, obligations liabilities accrued/incurred prior to termination



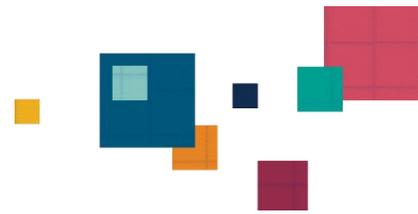
Termination Clause

- In a number of PSA the termination clause is skewed in favour of the government, for example:
 - ✓ Indonesia – Contractor who desires to terminate PSA must consult with Pertamina
 - ✓ Uganda and Kenya – Right to terminate is reserved for the government
- Note that contract law gives both parties the right to terminate a contract for a fundamental breach by the other party (*one party fails to perform an obligation which makes it impossible for the other party to carry out its responsibilities*)

Importance of termination clause: possible recommendation when audit findings reveal egregious breaches of the PSA



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