



## **TMI Eyes No. 26: Force Majeure – Earthquakes as a Case Study**

On March 28, 2025, Thailand experienced earthquakes that disrupted lives, property, and business operations. Although such events are rare in Thailand, their impact can be far-reaching. In this article, TMI explores a key legal concept force majeure, especially about contracts and obligations affected by natural disasters, and what businesses and operators should consider.

### **What Is Force Majeure?**

Under Thai law, force majeure is defined in Section 8 of the Civil and Commercial Code as an event that could not be prevented even though a person with due care has taken all appropriate measures. This typically includes natural disasters and events such as earthquakes, floods, wildfires, and pandemics. Thus, the key characteristics of a force majeure event are:

- 1) It is beyond the control of the parties.
- 2) It is unforeseeable or difficult to predict.
- 3) It cannot be avoided even with reasonable care and diligence.

### **Legal Impact of Earthquakes as Force Majeure**

An earthquake is a force majeure event. In principle, either by the Civil and Commercial Code, or contract terms, a party affected by such an event and unable to perform its contractual obligations as a result may be protected and entitled to relief, and generally not liable for any failure to perform.

TMI takes a closer look at the implications for common types of contracts:

#### **1. Insurance Contracts**

Parties must first examine whether earthquake coverage is included in their insurance policy. Some standard property or building insurance policies may exclude earthquakes unless specifically added. If coverage exists, the insured must collect and provide proof of the damage and demonstrate that it was directly caused by the earthquake. It is important to note that insurers may deny claims where the loss cannot be attributed to the event.

#### **2. Construction Contracts**

Earthquakes may cause delays or damage to partially completed structures—as seen in a recent total collapses. If a construction contract contains a force majeure clause, and it is proven that the damages or

collapse resulted from the earthquake—not from design defects, poor materials, or construction process, the contractor may be entitled to time extensions for completion, relief from delay penalties, or even termination of the contract without liability if performance becomes impossible.

### **3. Manufacturing and Sale Agreements**

If a factory is affected and cannot produce or deliver goods, a force majeure clause may temporarily excuse performance, provided the non-performance is directly due to the earthquake and unavoidable.

Without a force majeure clause, parties may seek relief under general civil law, but this is \*\*more difficult to prove\*\* and may lead to disputes.

### **4. Lease Agreements**

The key of lease agreements is that a lessor provides leased premises to the lessee and the lessee can use premises. If leased premises are damaged or unusable due to an earthquake, tenants may be entitled to repairs, rent reduction or suspension, or, lease termination, depending on severity (Sections 544–548 of the Thai Civil and Commercial Code allow tenants to cancel the lease if the leased premises become wholly unfit for use.)

### **TMI's Recommendations**

In the wake of a force majeure event such as an earthquake, parties—whether businesses, landlords, tenants, contractors, or insurers should take proactive legal and commercial steps to protect their rights and manage risks.

For those affected by the earthquake, they should:

- Review the force majeure clause to determine whether earthquakes are explicitly listed. If not, assess whether terms like “natural disasters” or “acts of God” apply. If the clause is unclear or absent, consider relief under general Thai civil law.
- Promptly notify the other party in writing, as many contracts require timely notice.
- Collect and preserve evidence of damage, including photos, reports, and communications.
- Make reasonable efforts to minimize disruption, such as sourcing alternative suppliers, relocating operations, or performing temporary repairs.
- If performance remains impossible, negotiate solutions, such as extension of deadlines, reduction of scope or volume, temporary rent reductions or deferments, mutual termination with agreed compensation, etc.


For Long-Term and Future Practices, TMI recommends that parties

- Add a comprehensive force majeure clause tailored to their industry,
- Set out clear procedures for notice, evidence, mitigation, and dispute resolution.
- Consider including material adverse change clauses or termination rights triggered by specific events,


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