



**COVID-19 Defaults and Legal Remedies:  
*Force Majeure and Other Principles  
(Japan and Other Asian Countries)***

**SIAC-AJC Webcast**

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# Legal Remedies available in Japan

## ■ *Force Majeure* Clauses and “Non-Attributable Grounds”

– If there is a relevant *Force Majeure* Clause:

- Whether a default triggers the clause is essentially a question of contract interpretation.
- The approach taken when interpreting a contract in Japan may not be as strict as that in some other jurisdictions (e.g., English law).

– If there is no relevant *Force Majeure* Clause:

- If the default is due to “**grounds not attributable to the obligor**”, the obligor would be exempted from damage claims and termination of contract.\*

\*In regard to **termination of contract**, this is only applicable to contracts executed **before 1 April 2020**. See next slide.

- “Non-Attributable Grounds” may be **broader than *force majeure***.
- **Monetary claims are not subject to *force majeure* defense! (Art. 419(3))**
- There might also be other relevant laws (e.g., the Subcontract Act).

# Amended Civil Code of Japan

- The part of laws of obligations in the Civil Code of Japan has been thoroughly amended recently, and the new Civil Code is applicable to contracts executed on and after 1 April 2020.

- Exemption from damage claims due to “Non-Attributable Grounds” is explicitly stipulated and clarified.

“Article 415 (1) If an obligor fails to perform consistent with the purpose of the obligation or the performance of an obligation is impossible, the obligee may claim compensation for loss or damage arising from the failure; provided, however, that this does not apply if the failure to perform the obligation is **due to grounds not attributable to the obligor in light of the contract or other sources of obligation and the common sense in the transaction.**” ←The semiofficial translation sounds a bit strange, but case by case analysis is required anyway.

- A contract may be terminated by the obligee regardless of the existence of “Non-Attributable Grounds”.

# Different approaches among Asian countries

- It is crucial to understand that there may be very different approaches in some other jurisdictions:
  - Special laws providing for remedies in regard to COVID-19 situations have been enacted in some countries (e.g., Singapore, Malaysia).
  - Some countries have laws and provisions defining/stipulating *Force Majeure* (e.g., Philippines, Indonesia).
  - Some countries adopt a more strict attitude towards interpretation of *Force Majeure* clauses in contracts (e.g., Singapore).
  - Absent applicable *Force Majeure* clauses in contracts, one may have to rely on the ground of frustration (e.g., Malaysia).
- There is also a question of whether an obligor may claim for incurring additional costs as a result of a *Force Majeure* event (cf. FIDIC guidelines referring to Change in Legislation clauses).