

THE IMPACTS OF CORONAVIRUS DISEASE (COVID-19) ON PRE-EXISTING CONTRACTS IN NIGERIA*

Abstract

The new Coronavirus disease has taken the entire world by storm, spreading like a wildfire. Consequently, various business plans and global events were cancelled, contracts were aborted and up until the moment performance of contractual obligations are being frustrated or hindered. This paper seeks to examine the measures taken by the Nigerian government in order to combat the virus. It further examines the effects of the Corona Virus pandemic on pre-existing Contracts such as contract of loans, mortgages and tax liabilities.

Keywords: Coronavirus Disease, Pre-Existing Contracts, Nigerian Governments, Stimulus/Palliatives, Force majeure

1. Introduction

The novel Coronavirus also known as COVID-19 has taken the entire world by storm, spreading like a wildfire. The World Health Organization has consequently declared it a pandemic.¹ The troubles expected to be dealt with during and even after this coronavirus phase has led to the conclusion that humanity has not faced a disaster of this magnitude since at least the World War II.² Apart from its obvious threat to human health and life, COVID-19 poses arguably more significant economic risks. Governments the world over have been taking major unprecedented steps to curb the continued spread of the virus; these steps range from closing down of businesses³ and borders to complete lockdown of major cities⁴ in a bid to prevent more spread of the infection and in order to manage the health concerns of those who have been infected. As a result thereof, various business plans and global events were cancelled, contracts were aborted and up until the moment performance of contractual obligations are being frustrated or hindered.

Due to fear and uncertainty, and to rational assessment that firm's profits are likely to be lower due to the impact of COVID-19, global businesses were adversely affected and millions of people already lost their jobs. The International Air Transportation Association (IATA) stated that the air travel industry would lose about US\$113 billion if the COVID-19 outbreak was not quickly contained.⁵ The International Monetary Fund (IMF) downgraded its growth projection for the global economy as the COVID-19 outbreak threw its earlier projection into serious doubt. The tourism industry, hotel businesses and international events worth Billions of Dollars were cancelled due to the pandemic. The flow of goods through global supply chains vastly reduced significantly given that China was the world's largest manufacturer and exporter, and the Chinese government ordered the closure of major factories in the country. Many governments of several nations of the world including in Nigeria⁶ ordered a stay at home to control the spread of the virus. Such stay-at-home orders affected legal services industry in many countries of the world and also among others planted the seeds of recession in several countries. There was a general consensus among economists that the coronavirus pandemic may likely plunge the world into a global recession.⁷ This paper therefore seeks to examine the measures taken by the Nigerian government in order to combat the virus. It will further examine the effects of the Corona Virus pandemic on pre-existing Contracts such as contract of loans, mortgages and tax liabilities.

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¹<https://www.who.int/emergencies/diseases/novel-coronavirus-2019/events-as-they-happen> <accessed on 5th 6May, 2020.

²Statement of the IMF's managing director, Kristalina Georgieva, during a WHO press briefing on April 3rd 2020, <https://www.imf.org/en/News/Articles/2020/04/03/tr040320-transcript-kristalina-georgieva-participation-world-health-organization-press-briefing> (accessed 5/5/2020).

³<https://www.cnbc.com/amp/2020/04/14/7point5-million-small-businesses-are-at-risk-of-closing-report-finds.html> (accessed 5/5/2020).

⁴<https://www.businessinsider.com/countries-on-lockdown-coronavirus-italy-2020-3%3famp> (accessed 6/5/2020).

⁵Patrick Appleton 'https://airlines.iata.org/news/potential-for-revenue-losses-of-113bn-due-to-covid-19-%E2%80%9Ccrisis%E2%80%9D' accessed 25 April, 2020.

⁶ For example, President Muhammadu Buhari announced the lockdown of 3 states i.e Lagos, Ogun and the Federal Capital Territory, Abuja on the 13th day of April, 2020. Other State Governors also announced various measures including total or partial lockdown to contain the spread of the Corona pandemic.

⁷ Financial Times: Global recession already here, say top economists <https://www.ft.com/content/be732afe-6526-11ea-a6cd-df28cc3c6a68>

2. Measures and Directives of the Nigeria Government on Covid-19

On account of the rising cases of Covid-19, the Nigeria Government issued various directives and Orders to help contain the spread. As part of Nigeria's effort to curb the spread of Coronavirus disease in the country, President Muhammadu Buhari made the COVID-19 Regulation 2020 (the 'Regulation') pursuant to the powers conferred on him by Sections 2, 3 and 4 of the Quarantine Act.⁸ The Regulation, amongst others, imposed significant restrictions on the movement of persons and goods virtually all over the country, especially in 3 states of Lagos state, Ogun state, and the Federal Capital Territory).⁹ The respective state governments also imposed varying degrees of restrictions on movement of persons and goods, including public gatherings and markets within their states. The effects of the various restrictions on businesses prompted the Federal Government of Nigeria ('FGN') to introduce fiscal and economic stimulatory measures to ameliorate the impact on businesses and save the economy from collapse. Similarly, several measures were rolled out in order to mitigate the effect of the pandemic on the economy and various businesses in Nigeria. Of particular note is the financial framework taken out as measures by the Central Bank of Nigeria and the Federal Government of Nigeria on economic stimulus measures, tax measures, custom measures.

3. Central Bank of Nigerian Measures for Economic Stimulus

The Central Bank of Nigeria on the 16th day of March, 2020 announced through a circular numbered FPR/DIR/GEN/CIR/07/049¹⁰ new measures to help cushion the effects of Covid-19 on the Nigeria economy and these measures range from:

- i. A 1 year extension of a moratorium on principal repayments for Central Bank of Nigeria intervention facilities;¹¹
- ii. Reduction of the interest rate on intervention loans from 9 Percent to 5 Percent;
- iii. Implementation of a three-month repayment moratorium for all Trader Moni, Market Moni, and Farmer Moni loans. Similar moratorium to be given to all Federal Government funded loans issued by the Bank of Industry, Bank of Agriculture and the Nigeria Export-Import Bank.¹²
- iv. Strengthening of the Loan to Deposit ratio policy (i.e. stepped up enforcement of directive to extend more credit to the private sector);
- v. Creation of N50 billion target credit facility for affected households and small and medium enterprises;
- vi. Granting regulatory forbearance to banks to restructure terms of facilities in affected sectors;
- vii. Improving Foreign Exchange supply to the CBN by directing oil companies and oil servicing companies to sell FX to the CBN rather than the Nigerian National Petroleum Corporation;
- viii. Additional N100 billion intervention fund in healthcare loans to pharmaceutical companies and healthcare practitioners intending to expand/build capacity;
- ix. Identification of few key local pharmaceutical companies that will be granted funding facilities to support the procurement of raw materials and equipment required to boost local drug production;
- x. N1 trillion in loans to boost local manufacturing and production across critical sectors.¹³

Apart from the above, the Central Bank of Nigeria directed that for on-lending facilities, financial institutions are to engage International development partners and negotiate concessions to ease the pains of the borrowers.¹⁴ As an impetus for the health sector, the Central Bank also adopts the policy for the provision of credit assistance for the health industry to meet the potential increase in demand for health services and products by facilitating borrowing conditions for pharmaceutical companies, hospitals and practitioners.

4. The Concept of Force Majeure and Frustration in respect of Contractual Obligations

Before delving into the discussions on the effect of Covid-19 on loans, mortgages and tax liabilities, it is important to first explain in details the two basic concepts of Force Majeure and Frustration and to know whether they apply

⁸ See the Quarantine Act, accessed from <http://lawsofnigeria.placng.org/laws/Q2.pdf> on 12th May, 2020.

⁹ Ikeyi Shittu & Co *Nigerian governments' initial measures and palliatives to businesses in the wake of COVID-19 pandemic* <https://iclg.com/briefing/11546-nigerian-governments-initial-measures-and-palliatives-to-businesses-in-the-wake-of-covid-19-pandemic>

¹⁰ <file:///C:/Users/YOGA/Desktop/CBN%20POLICY%20MEASURES%20IN%20RESPONSE%20TO%20COVID-19%20OUTBREAK%20AND%20SPILLOVERS.pdf> Accessed 15 April, 2020.

¹¹ Ibid.

¹² <https://iclg.com/briefing/11546-nigerian-governments-initial-measures-and-palliatives-to-businesses-in-the-wake-of-covid-19-pandemic> accessed 23 April, 2020.

¹³ Ibid.

¹⁴ KPMG *Government and Institution Measures to Covid-19* <https://home.kpmg/xx/en/home/insights/2020/04/nigerian-government-and-institution-measures-in-response-to-covid.html> accessed 20 April, 2020.

to each of loans, mortgages and tax liabilities. Even though both concepts of force majeure and frustration aim to achieve very similar objectives, there exist salient and important differences bothering on jurisdictional applicability and likelihood of being successful as excuse for non-performance. Force-majeure as a term has its origin in French language with its literary meaning as ‘a superior force’. In contract law context, ‘force-majeure’ can be defined as ‘an event or effect that can be neither anticipated nor controlled; especially, an unprecedented event that prevents someone from doing or completing something that he or she had agreed or officially planned to do. The term includes both, acts of nature (e.g. floods and hurricanes) and acts of people (e.g. riots, strikes and wars).¹⁵ Therefore, ‘force-majeure’ refers to ‘events outside the control of the parties and which prevent one or both the parties from performing their contractual obligations.’¹⁶

The *force majeure* doctrine relates to supervening unforeseen events that make performance impossible. It covers cases of subsequent impossibility, i.e. external supervening events occurring after contract formation, that are beyond the control of the aggrieved party such as earthquakes, floods, fires, droughts, civil riots, terrorist attacks, etc.,¹⁷ which render the performance of a party’s contractual obligations not just excessively onerous but impossible, whether on a temporary or permanent basis.¹⁸ In civil law countries, such as the United Arab Emirates, China, France etc., force majeure may be pursued by a party to a contract as a matter of law even without being expressly set out in a contract since force majeure is a doctrine recognized under the civil law. The United Arab Emirates Civil Code¹⁹ for example, sets the definition and boundaries of a force-majeure event, and the consequences it triggers. It therefore means that a contract in such a jurisdiction, even if devoid of a force majeure clause, will still be able to rely on same. On the contrary, in common law countries (such as the USA, England and Nigeria) the concept does not have a general meaning and will only operate if inserted into the contract, and according to the plain terms of the clause inserted in the contract. Therefore, failure of parties to insert same into the contract at the point of formation will put the doctrine completely beyond the scope of the parties since common law does not intrinsically recognize force majeure. Common law jurisdictions like Nigeria will respect the parties’ wishes and enforce force majeure clauses if the parties have willingly inserted same in their contract either expressly or impliedly. As such, the Court of Appeal in the case of *N.I.B Investment West Africa v. Omisore*²⁰ held that: ‘When parties make a contract, it is within their prerogative to make their own law to which they are subject. The contract also creates the rights and obligations which bind them.’ The rules and the practice of international long-term contracting have led to the general understanding that the *force majeure* excuse for non-performance as a transnational doctrine and as a contractual clause is based on the following four cumulative requirements:

- (a) *Externality* - the occurrence of an external event for which the obligor has not assumed the risk;
- (b) *Unavoidability/Irresistibility* - the occurrence of the external event was beyond the obligor’s (typical) sphere of control/the ordinary organization of his business and was absolute;²¹
- (c) *Unforeseeability* - the event *and* its consequences, i.e. the adverse impact on the obligor’s ability to perform, could not reasonably have been avoided or overcome by the obligor, e.g. by alternative and commercially reasonable modes of performance, procurement or transportation, or other safety measures; and
- (d) *Causation* - the obligor’s non-performance was, as a ‘matter of commercial reality’,²² caused by the external event and not by the obligor’s own fault, e.g. by self-inflicted production problems, defective goods or packaging etc.²³

The COVID-19 pandemic has the potential of meeting this four-legged test since the pandemic clearly is an external event which was also unforeseeable, at least with respect to contracts concluded before February 2020. Also, it was shown in a comprehensive risk analysis study that the occurrence of a hypothetical viral pandemic such as COVID-19 was qualified as ‘conditionally probable’, i.e. as an event which, statistically, would occur

¹⁵*Black’s Law Dictionary*, 11th Edition; @ Pg. 788.

¹⁶See P. Ramanatha Aiyar’s *Advanced Law Lexicon*, 5th Edition; @ Pg. 2077.

¹⁷See the non-exhaustive list of *force majeure* events in TransLex-Principle VI.3 (c), www.trans-lex.org/944000 <accessed 5/5/2020>.

¹⁸See, e.g., *Thames Valley Power Ltd. v. Total Gas & Power Ltd.* [2005] EWHC 2208 (Comm.), [2006] 1 Lloyd’s Rep. 441 [451], excerpts available at: www.trans-lex.org/307500 <accessed 5/5/2020>.

¹⁹ Federal Law Number 5 of 1985.

²⁰ (2006) 4 NWLR (Pt. 969) 172 at 200-202.

²¹ CAP Case No. 3150, 39 Y.B. COMM. ARB. 65, 72 (2014) (Paris Chamber of International Arbitration), excerpts available at: www.trans-lex.org/203150 (accessed 5/5/2020).

²² Alan Berg, ‘The detailed drafting of a force majeure clause’, in *Force Majeure and Frustration of Contract* 63, 71 (Ewan McKendrick ed., Lloyd’s of London Press 2nd ed. 1995).

²³ *Classic Maritime Inc v. LimbunganMakmur SDN BHD* [2019] EWCA Civ. 1102, para. 45

once in a period of 100 to 1,000 years.²⁴ The same study further makes it clear that the COVID-19 scenario was not foreseeable *per se*, given that no one could predict *when* and *where* such a pandemic would occur.

If the *force majeure* doctrine invoked by a non-performing party has met the four requirements outlined above, contractual performance is, depending on the nature and duration of the supervening external event, partially or totally,²⁵ temporarily or permanently, suspended, with the aggrieved party being under an obligation to continue to perform only insofar as this is reasonable under the circumstances.²⁶ An ideal force majeure clause normally lists the events that fall into the category followed by a sweep up/omnibus provision that aims to capture likely occurrences probably not covered by the list of events. The typical list of events include: Acts of God, war, belligerent action, hostilities, terrorist acts, governmental decisions, riots, civil commotion, strikes, fire, flood, earthquakes, epidemic etc. The omnibus provision which seeks to encapsulate scenarios not included in the lists usually comes in the form of: ‘any other cause beyond the party’s control’ or ‘events similar to those listed in the provision’. There are two possible instances to determine whether a force majeure clause covers a pandemic. These are:

- a) If the contractual definition of force majeure event expressly includes a pandemic. Inclusion of pandemic to the list of force majeure events will provide clarity as to whether COVID-19 outbreak would trigger a force majeure clause in a contract; or
- b) If the force majeure clause covers extraordinary events or circumstances beyond the reasonable control of the parties. Such general/omnibus, ‘catch-all’ wording may be invoked if it is established that the factual circumstances caused by the pandemic are beyond reasonable control of the affected party and makes sense in the context of the listed scenarios.

What constitutes force majeure varies widely between contracts. The courts have taken a very narrow approach to construction of force majeure clauses, by holding that the force majeure clauses can be applied only if the obligations have actually become impossible to perform and not merely when they are more difficult or less profitable. This important point on narrow construction of force majeure clauses is seen in the decision of the High Court of England & Wales in *Tandrin Aviation Holdings Ltd v Aero Toy Store LLC*;²⁷ In this case, the defendant sought to justify its refusal to accept delivery of an aircraft on the basis that unanticipated, unforeseeable and cataclysmic downward spiral of the world’s financial markets constituted ‘*any other cause beyond the seller’s reasonable control*’ stated in the force majeure clause of the contract, arguing that this consequently has the effect of postponing the complete purchase. The judge rejected this argument holding that the phrase had to be read in the context of the entire clause and that nothing in any of those specific examples in the clause was even remotely connected with economic downturn or market circumstances.

Generally, a change in economic or market circumstances affecting the profitability of a contract or the ease with which the parties’ obligations can be performed will not be regarded by the courts as constituting a force majeure event. Whether the particular event which has occurred triggers a *force majeure* clause will depend on the wording of that clause, i.e., whether the event which impedes performance is listed in the clause. The above shows that while the omnibus clause has the power of bringing unlisted scenarios and into the fold of events that trigger force majeure, the said omnibus clause will be narrowly constructed strictly in relation to and in the context of the listed scenarios. Hence, typically, the force majeure event is not the pandemic in itself, but the factual or legal effects of the public health crisis. Factual effects may involve illness, or quarantine or even death of key personnel, production facility closures, or interruption of supply chains. Legal effects relate to lockdowns, curfews, travel restrictions and other measures by governments and public authorities which are issued in reaction to the crisis. The precise effects of invoking a *force majeure* clause may depend on the duration of the event triggering the clause. If it is of limited temporary effect, then contract performance might merely be suspended which may apply in many cases regarding the consequences of the COVID-19 pandemic, for example, if the production of the sold goods can be resumed after the end of the effects of the pandemic on business life, unless the nature of the performance is such that catching up on it at a later date makes no sense for the buyer,²⁸ but if its duration cannot

²⁴ Conducted by the German government-related *Robert-Koch Institute* together with a number of German government agencies, which was published by the German Parliament in January 2013.

²⁵ *Anaconda-Iran, Inc. v. Iran*, 13 Iran-U.S. Cl. Trib. Rep. 199, 211-212 (1986), excerpts available at: www.trans-lex.org/231800 <accessed 5/5/2020>.

²⁶ *Touche Ross v. Iran*, 9 Iran-U.S. Cl. Trib. Rep. 284, 298 (1985), excerpts available at: www.trans-lex.org/231500 <accessed 5/5/2020>: ‘While the valid invocation of *force majeure* provides a defense against a possible claim for breach of contract based on failure to perform, it does not, in the circumstances of this case, relieve the invoking party of the obligation to continue to do whatever is still reasonable to carry out its duties under the contract.’

²⁷ *Tandrin Aviation Holdings Ltd v Aero Toy Store LLC*; [2010] EWHC 40 (Comm)].

²⁸ Julia Heinich, *L’incidence de l’épidémie de coronavirus sur les contrats d’affaires: de la force majeure à l’imprévision*, RECUEIL DALLOZ 2020 note 13 @ 613.

be determined, the contract may be terminated. The doctrine of frustration on the other hand is based on the maxim '*les non cogit ad impossibilia*' which means that the law will not compel a man to do what he cannot possibly perform. It is a common law principle that is applicable to parties in common law jurisdictions even if not provided for in a contract. As reiterated above, a contract operational in a common law jurisdiction that has proper provisions for unforeseen or unpredictable circumstances through the usage of a force majeure or other similar clauses will have no need to resort to defense of frustration since such force majeure clause will be properly recognized and consequently render the deployment of doctrine of frustration unnecessary.

The doctrine of frustration applies in very narrow circumstances where an event occurs after a contract has been concluded which makes the contract impossible to perform²⁹ (e.g., due to the loss of the subject-matter of the contract, or commercial impossibility), or would make performance 'radically different'³⁰ from what was agreed in the contract. Mere financial hardship for one of the parties would not suffice. The event in question must have been unforeseen, or even unforeseeable,³¹ by the parties, and neither party must have directly or indirectly brought about the event relied on. Where the doctrine operates, the effect is that the contract is terminated as a matter of law. The threshold for engaging the doctrine of frustration is high,³² and it will not assist if one of the parties has assumed the risk of the event occurring, or its consequences,³³ under the contract. The COVID-19 pandemic provides the strongest imaginable test for the viability and comprehensiveness of these important doctrines in modern times, both on the domestic and the international level. Most scenarios caused by the pandemic will involve the *force majeure* doctrine and its domestic counterparts. Undoubtedly, the robustness and strength of the contract laws around the world in providing workable solutions will be tested by the COVID-19 pandemic.

5. Loan and Mortgage Repayment during Covid-19 Lockdown

A likely effect of the COVID-19 pandemic is the likelihood of litany of cases due to failure of debtors to meet up with their scheduled repayment obligations. Many of these failures will be attributed to the pandemic and may thereby result in raising the defense of force majeure.³⁴ As noted above, the concept of force majeure is usually not implied in contracts as it must be expressly stated and it rarely applied to financing arrangements and even where it is contained in financing agreements, it is unlikely that a borrower will be able to rely on same to avoid or suspend debt service obligations. The disputes that sprang up between Donald Trump and Deutsche Bank that was widely discussed by the international media in 2009 would have been a good authority on this topic. The Deutsche Bank Trust Company Americas, as lead lender, financed an entity wholly owned by Donald Trump for construction and development of the Trump International Hotel and Tower in Chicago. On November 6, 2008, one day before the loan's maturity date, Trump filed a suit in Queens County against Deutsche Bank and other lenders arguing that the global economic recession is a force majeure event as per their Financing Agreement and wanted the maturity date of the loan to be extended until the cessation of the 'force-majeure'. Trump and Deutsche Bank announced on March 3, 2009 that they have suspended their lawsuits, so we could never hear the court's take on the argument.³⁵

However, in the absence of express force majeure provisions in a loan facility agreement, parties may be able to invoke the common law doctrine of frustration. In *A.G Cross River v. A.G Fed. & Anor*,³⁶ the Supreme Court has explained the doctrine of frustration as the premature determination of a lawfully entered agreement as a result of an intervening event or change of circumstances so fundamental as to be regarded by law both as striking at the root of the agreement and entirely beyond what was contemplated by the parties when they entered into the agreement. It has been argued that a party must fulfill his contractual obligations in so far as they have fallen due before the frustrating event, but is excused from performing those obligations that were due for performance after the frustrating event.³⁷ While this frustrating event may not be able to discharge the debtor from any repayment

²⁹ *Taylor v Caldwell* (1863) 3 B & S 826.

³⁰ See *Davis Contractors Ltd v Fareham UDC* [1956] AC 696 and *The Sea Angel* [2007] EWCA Civ 547.

³¹ *Walton Harvey Ltd v Walker and Homfrays*[1931] 1 Ch 274; *Amalgamated Investment and Property Co Ltd v John Walker & Sons Ltd* [1977] 1 WLR 164.

³² *The Sea Angel* [2007] EWCA Civ 547.

³³ See *Canary Wharf v European Medicines Agency* [2019] EWHC 335, a case arising out of the UK's withdrawal from the EU. The European Medicines Agency, which was headquartered in London, moved to Amsterdam and sought to escape a 25-year lease on its premises. The judge concluded that, whilst withdrawal from the EU was not foreseeable in 2011, when the lease was entered into, the parties has foreseen the possibility that the EMA might vacate its premise early and provided for this in the lease. Consequently, the lease had not been frustrated.

³⁴ This refers to '*events outside the control of the parties and which prevent one or both the parties from performing their contractual obligations.*'³⁴

³⁵ 'Trump v. Deutsche Bank: Does the Credit Crisis Constitute a Force Majeure Event?'; by Stuart D Kaplan, published in www.martindale.com. <Accessed 5/5/2020>

³⁶(2012) LPELR-9335(SC)

³⁷I. E. Sagay, *Nigerian Law of Contract*, Spectrum Law Publishing, Ibadan, 2nd Ed, 2000. Pg 606

obligations completely, there is every likelihood that it will result in restructuring of the repayment schedules which may be in the form of a waiver or postponement of repayment. The parties to a loan agreement will no doubt need to review and renegotiate some specific clauses in the agreement.

Despite the unlikelihood of successful reliance on the doctrine of force majeure in loan agreements, it is remarkable to note that governments around the world have been taking proactive steps to mitigate the effects of the coronavirus on individuals' and businesses' ability to repay their loans. The Monetary Authority of Singapore (MAS) on 31st March 2020 together with the Association of Banks in Singapore and other relevant stakeholders announced that individuals with residential property loans who are cash-strapped and find it difficult during this period to pay either the principal payment or both the principal and interest can defer the payments up to 31st of December 2020. Similar to individuals, SMEs with secured term loans facing temporary constraints on their cash flow during this period can similarly defer principal payments on their secured term loans up to 31 December 2020.³⁸

In Nigeria, Guarantee Trust Bank also announced a 90 days moratorium on SME loans to help small businesses stay on their feet during the lockdown and quickly recover afterwards.³⁹ The Bill passed by the House of Representatives on Tuesday 24 March 2020 seeks to amongst other things introduce a moratorium on mortgage obligations for Nigerians under the National Housing Fund.⁴⁰ However, the limitation of the applicability of the moratorium to only contributors to the National Housing Fund fell short of expectation as non-National Housing Fund contributors who have borrowed from banks are in no less dire position than their National Housing Fund counterparts and as such should be given the opportunity to benefit from the proposed law.

6. Tax Obligations during the Period of Covid-19

Taxation presents a unique problem when viewed in line with the prior discussions on force majeure and frustration since the unifying elements of both doctrines is that they (force majeure and frustration) are strictly contractual concepts. Taxation does not follow the same route since citizens and corporations pay taxes not because they are contractually bound to do so but because it is a constitutionally imposed duty.⁴¹ Hence, while citizens can approach the court to challenge the propriety of paying taxes during the current strange situations in which we have found ourselves, whatever relaxation and easements that can legally come at this point has to be unilaterally decided by the various governments. In line with this, as a palliative move, the Executive Chairman of the Federal Inland Revenue Service (FIRS) on 23rd March 2020 sent out a notice informing taxpayers that the FIRS has extended the timeline for filing VAT and Withholding Tax (WHT) returns from 21st day to the last working day of the month, following the month of deduction. The notice similarly included an extension of the due date for filing companies' income tax (CIT) by one month.⁴² Some states have also followed suit, for example, the Lagos State Internal Revenue Service (LIRS) also issued a public notice extending the deadline for filing annual returns for individuals to 31st of May 2020.⁴³ All other states need to emulate these laudable actions and announce similar measures in the midst of business closures, lay-offs and inability of employers to meet up with the monthly obligations to their employees. Internationally, Bulgaria has granted companies a 3-month extension of timeline to file their tax returns in addition to extending the timeline for payment of taxes. Similarly, France, Netherlands, Austria and Belgium have announced plans to grant a waiver of interest and penalty for late payment of income taxes during the pandemic.⁴⁴ Germany has announced measures to allow businesses defer tax payments if such payment will affect the business' survival.⁴⁵ These actions show that the various tax authorities in Nigeria are barely scratching the surface as it is and need to do a lot more for their citizens while the current situation persists.

³⁸<https://www.lexology.com/library/detail.aspx?g=3b52dd8b-5337-48f8-970a-4b0de6ab99e4> <accessed on 5/5/2020>.

³⁹<https://www.vanguardngr.com/2020/04/covid-19-gtbank-gives-90-days-moratorium-on-smes-loans> <accessed on 5/5/2020>.

⁴⁰<https://www.iclg.com/briefing/11546-nigerian-governments-initial-measures-and-palliatives-to-business-in-the-wake-of-covid-19-pandemic> <accessed on 5/5/2020>.

⁴¹ See for example, the list of taxes payable to each of the tiers of government under the Constitution and particularly, the Taxes and Levies (Approved List of Collection) Act, Laws of the Federation of Nigeria.

⁴² See <https://www.andersentax.ng/covid-19-firs-extends-cit-vat-wht-filing-deadlines> <accessed on 5/5/2020>.

⁴³ See https://www.pwcnigeria.typepad.com/tax_matters_nigeria/2020/03/lirs-extends-deadline-for-personal-income-tax-returns-by-2-months.html <accessed on 5/5/2020>.

⁴⁴ See <https://www.bruegel.org/publications/datasets/covid-national-datasets/> <accessed on 5/5/2020>.

⁴⁵ See <https://www.avalara.com/vatlive/en/vat-news/germany-vat-holidays-for-coronavirus-outbreak-.html> <accessed on 5/5/2020>.

7. Conclusion

Given the global and unprecedented scale at which the corona virus pandemic has affected national and international transactions including loans and mortgages amongst others, the aftermath of the coronavirus pandemic will generate years, if not decades, of post-pandemic litigation and arbitration focusing on the application of the concepts of Force Majeure and Frustration as they affect contractual transactions. The lockdown imposed by the Federal and various state governments as a means of curbing the threats posed by Covi-19 has no doubt adversely affected business concerns. Government and financial institutions need to roll out more measures in order to protect businesses in Nigeria given the fact that majority of these businesses rely on credit facilities for their start-up which the pandemic has in one way or the other frustrated the agreed repayment plans.