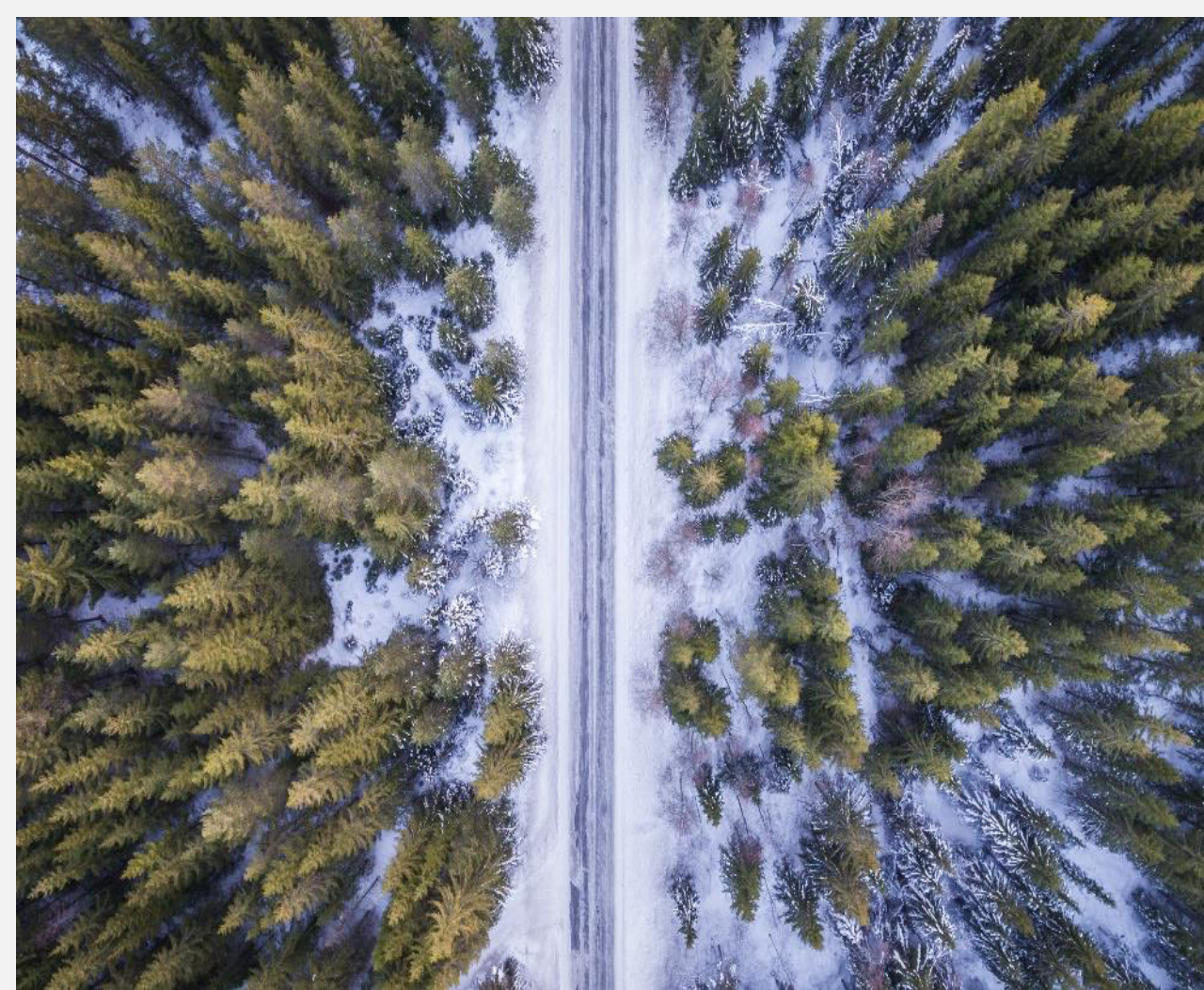



# Impact of Covid-19 on the renewable energy industry

Ahmed Meziou





## TOPICS

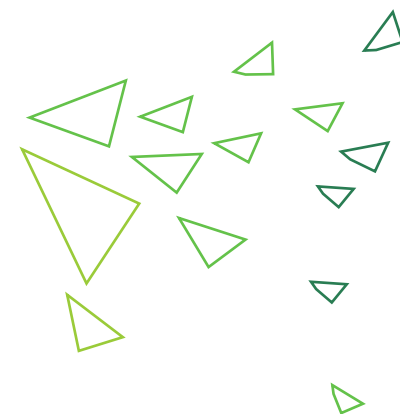


I. How the COVID-19 is impacting the renewable energy industry during and after the crisis? What this means for projects under development, construction and operation?

II. Whether developers and contractors may claim a *Force Majeure* (FM) as a result of COVID-19-induced disruptions and consequential reliefs?



How the COVID-19 is impacting the renewable energy industry during and after the crisis? What this means for projects under development, construction and operation?



- I. PROJECTS UNDER DEVELOPMENT
- II. PROJECTS UNDER CONSTRUCTION
- III. PROJECTS UNDER OPERATION



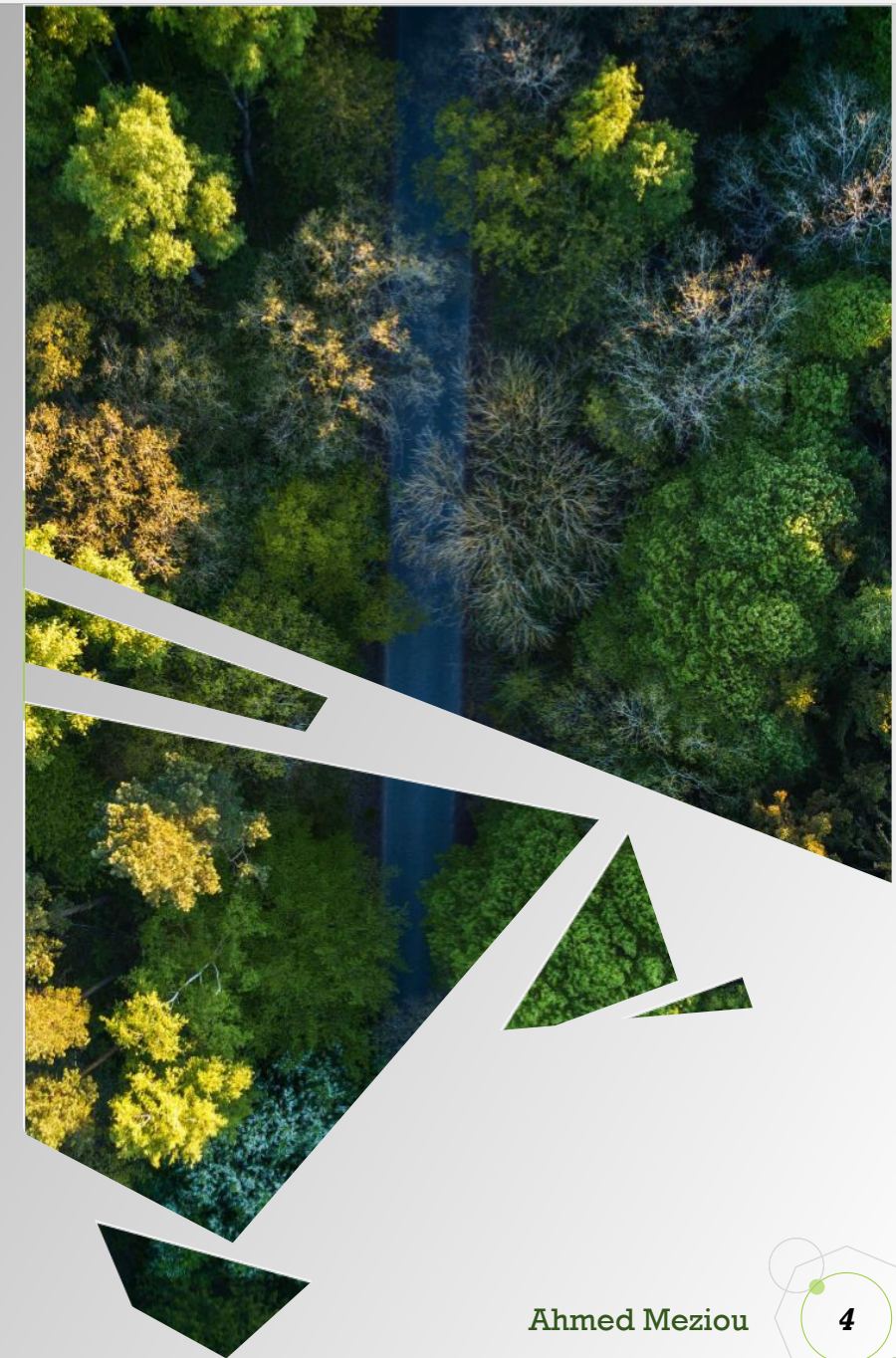
# Projects under Development

Projects under development may be more exposed to the impacts of COVID-19, particularly where no legally binding commitments have been made.

Key issues which the parties may face in projects:

- Access to the site to assess a multitude of risks;
- Highly quoted prices for material and equipment;
- Lenders commitment of funds and their ability to adequately assess the risks ;
- Ability to put in place a well-defined regime to deal with the consequences of COVID 19; and
- Ability to bring all project parties and advisors to come online and work towards meeting hard deadlines in structuring a project.

The above may adversely affect the economics of the project and result into higher tariffs and not bankable projects.







## Projects under Construction

The disruption caused by COVID 19 may create situations which, if resulted into delays in meeting key construction and work milestones or defaults under the funding arrangements could have several consequences (penalties, loss of incentives.)

**Developers and Offtakers** (if their objectives are aligned) may attempt pass the liability and consequences to contractors, seek reliefs, or reschedule project milestones.

**Would such attempts result into successful claims?**

It depends on how robust the provisions of the agreements are (delay LDs, exemptions)



# Projects under Construction

Developers and lenders may need to discuss the consequences of the delays on their funding arrangements (defaults, restrictions on utilisations, etc.).

International Financial Institutions allocated multi-billion fast-track financing to assist private sector companies and countries in their efforts to tackle COVID-19.

## What is the leverage?

The leverage is a robust finance documentation which reflects reasonable expectations of finance parties in line with international best practices and capable of accommodating multiple evolving situations.



# Projects under Operation

Government continues to implement new legislation/regulations in response to the consequences of COVID-19.

Governments might attempt to reduce electricity supply generated by independent power producers by issuing regulations and orders. This may be due to:

- The fall in electricity demand caused by the containment measures taken by most of the countries.
- The fall in oil prices which may be seen as an opportunity for countries heavily relying on fossil fuels.

Such attempt may not be successful or lawful and could constitute a change in law.





## FORCE MAJEURE

Developers and Contractors will consider whether they can claim Force Majeure as a result of COVID-19-induced disruptions?







# What is a Force Majeure ?

- Local laws in selected civil law countries provides for a definition of Force Majeure.
- No general principle of Force Majeure under English law. The agreements shall provide for a definition of Force Majeure which scope will be limited to that set out in Force Majeure clauses.

An unforeseeable circumstance, such as the recent outbreak of the COVID-19, which may prevent a party from fulfilling its contractual obligations, may fall within the definition of “Force Majeure” in certain contracts and certain circumstances.





## FM Clause and risk allocation

FM clauses are specific to each agreement and operate as a risk allocation mechanism in order to govern situations which are beyond the control of the parties, such as the outbreak of diseases, war, or natural disasters.





## Whether the **COVID-19** outbreak constitutes a **FM** event?

- Whether the COVID-19 outbreak constitutes a FM event depends on the specific wording and scope of the provisions in each agreement.
- If the FM clause expressly covers epidemics, diseases or public health emergencies, then COVID-19 is likely a FM.
- If the FM clause expressly covers “acts of government”, then the containment measures and the closure of borders are FM events.






## **What about agreements subject to local laws in civil-law countries?**

Unlike under English law where there is no general principle of FM, COVID-19 might automatically be deemed a FM event under local laws in selected civil-law countries although:

- the relevant agreement does not expressly cover epidemics or pandemics; or
- the agreement does not include FM clauses.

Generally, any event that is unforeseeable, unavoidable and beyond the control of the party could be considered as a FM event under local laws.



A hand holding a glowing lightbulb against a sunset background. The lightbulb is illuminated from within, casting a warm orange glow. The background is a soft, out-of-focus sunset with hues of orange, pink, and blue. The hand is visible at the bottom, holding the base of the bulb.

## What needs to be checked when a Developer/Contractor invokes FM due to COVID- 19?

If FM is invoked, the Developer/Contractor should review the terms of the agreements to determine:

- Whether there is a direct link between the outbreak and the impossibility to perform contractual obligations.
- what the notice periods are
- if they are entitled to any compensation during the FM event
- if there is an obligation to mitigate the effect of the FM event
- whether insurances (business interruption insurance or FM insurance) may cover any of the expected losses
- the rules governing early termination if the FM event persists



# What happens if there is no FM clause or the FM clause do not allow relief? Other clauses?

## Frustration of a Contract's Purpose

A party may be excused from its contractual obligations under the doctrine of frustration of the contract purpose if the event giving rise to such doctrine is not reasonably foreseeable, and radically change the terms from what the parties had agreed to.

## Material Change Clause

It deal with a change in circumstances resulting from a reasonably expected event which materially alters that contract's terms. The contract itself may allocate risk based upon reasonably expected changes which impact a party's performance under the agreement.

## Hardship Clause

It addresses a situation when as a result of general exceptional and unpredictable events, the performance of a contractual obligation, becomes excessively onerous in such a way as to threaten a party with exorbitant loss.





# Thank You

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