

Requests for Force Majeure - Guidance Document

Q. What is the definition of *Force Majeure*?

R: A *Force Majeure* is a legal instrument which may be used in order to be exempted from one's contractual obligations due to exceptional circumstances/events which are beyond the control of the contractee.

Q. When and why should I submit a request for *Force Majeure*?

R: In cases where an exceptional circumstance/event arises, which is beyond the control of the farmer/beneficiary/economic operator and which impedes that farmer/beneficiary/economic operator from fully carrying out his/her contractual/legal obligations, then a request for *Force Majeure* should be submitted in order to request an exemption from such obligations until the exceptional circumstance/event is resolved. If such a request is accepted, then the farmer/beneficiary/economic operator will avoid the imposition of sanctions/penalties/forfeitures in cases where checks carried out by the Agency find breaches with respect to the contractual/legal obligations affected by the *Force Majeure*.

R. A *Force Majeure* Request Form is to be submitted by no later than thirty (30) working days since the date of the exceptional circumstance/event necessitating such request arises, or since the date when the farmer/beneficiary/economic operator became aware of such exceptional circumstance/event. For the latter possibility, additional evidence may be required to prove the date on which farmer/beneficiary became aware of the exceptional circumstance/event. Request Forms submitted beyond this timeframe will not be considered by the Agency. In this regard, farmers/beneficiaries/economic operators necessitating such request are advised to visit the Agency's Front Office for guidance immediately upon becoming aware of the exceptional circumstance/event. Alternatively, one may also call on 22 926 148 for guidance.

R. To obtain the Force Majeure Form, please make a request by sending an email to arpa.mafa@gov.mt or by visiting the ARPA Front Office.

Q. How must the Force Majeure Request Form be filled-in?

R. All sections are to be filled in completely, as incomplete forms or those without any supporting evidence will not be considered. It is in the client's interest to submit a comprehensive and clearly stated Force Majeure request, with valid reasons supported by evidence as possible. Supporting documentation substantiating such a request must be submitted along with the filled-in form. Such supporting documentation may include photographs, letters, contracts, certificates, etc. Clients are to note that the primary findings of ARPA's own verifications and controls form the basis of the decisions taken which may be contested, and that for successful outcomes the Board requires compelling evidence

to be provided which rebuts or sheds new light upon such findings. Decisions which are contested and shown to have been based on mistaken, erroneous or incomplete information or data, will be redressed by the Board.

R. For assistance and support with respect to the procedure and submission of the Force Majeure Request Form, you may visit or contact ARPA's Front Office via telephone 22 926 148.

Q. Where do I submit my filled-in Force Majeure Form?

R. The original signed Force Majeure Request Form, along with the necessary supporting documentation, is to be submitted at ARPA's Front office by hand or by post at one of the following addresses:

Malta Front Office

Front Office Agriculture and Rural Payments Agency (ARPA) Pitkali Markets
TA' QALI L/O ATTARD
Malta

Opening Hours:

1st October – 15th June:

Monday - Thursday 07:00 – 12:30

Friday 11:00 – 15:00

16th June – 30th September:

Monday – Friday 07:00 – 11:30

Tel 2292 6148

Gozo Front Office

Gozo Office Government Experimental Farm, Mgarr Road
XEWKIJA
Gozo

Opening Hours:

Monday – Friday 07:30 – 12:30

Tel 2215 6979

Q. Who decides on accepting/rejecting my request for Force Majeure? Can I appeal the Board's decision?

R. Final decisions are taken by ARPA. In instances where requests for Force Majeure are referred to the ARPA Force Majeure Board, decisions are taken on the basis of the recommendation provided by the Board. The final verdict will be communicated via an official letter sent by ARPA to the person who submitted the request for Force Majeure and is to be considered as final and thus cannot be appealed.

Q. What are the types of cases of Force Majeure which are considered by the Force Majeure Board?

R. The types of cases of Force Majeure which are considered by the Agency's Force Majeure Board are listed in the Force Majeure Request Form, and include the following:



- Death of farmer/beneficiary
- Inability for farmer/beneficiary to continue with agricultural activity due to injury or illness
- The farmer/beneficiary's fields (or part of) have been taken over for public use, if the expropriation could not have been anticipated on the day of submission of the request for Force Majeure
- The farmer/beneficiary's fields (or part of) have been taken by the landowner, if the expropriation could not have been anticipated on the day of submission of the request for Force Majeure
- The farmer/beneficiary no longer has access to the fields (or part of) due to third parties, if the expropriation could not have been anticipated on the day of submission of the request for Force Majeure
- The farmer/beneficiary may no longer carry out agricultural activity due to a natural disaster
- Accidental damages to the farmer/beneficiary's holding structures
- Spread of disease in livestock/plants
- Severe Climatic conditions
- Cases of extradition
- Cases of imprisonment
- Cases where the farmer/beneficiary is held abroad due to circumstances beyond his/her control, and provides evidence that the activity on the holding could not be continued by another person on his/her behalf.
- Cases where there are unforeseen delays in shipment for economic operators

The above list is to be considered as indicative, and is not exhaustive in setting out the validity of requests for Force Majeure.

Q. What are the types of requests for Force Majeure which are NOT considered by the Force Majeure Board?

R. Lack of evidence presented – Force Majeure Request Forms submitted with uncorroborated statements, ie. without any evidence will not be considered. Furthermore, the validity of such evidence may also be verified prior to referral to the ARPA Force Majeure Board. Force Majeure Request Forms with evidence which is deemed invalid or irrelevant to the case in question shall not be considered.

R. Requests for information – Force Majeure Request Forms submitted for the purpose of requesting information will not be considered. Requests for information are to be requested separately through ARPA's Front Office or via email sent to arpa.mafa@gov.mt.

R. Recurring Force Majeure requests – Force Majeure Request Forms submitted concerning cases for which a final decision had already been issued shall not be considered. This includes final decisions already issued in Objections proceedings where the same substantive facts or original decision was involved.

R. Incorrect/fraudulent information – ARPA will not consider requests for Force Majeure submitted along with incorrect/fraudulent information/documentation.



R. Lack of evidence – ARPA may not consider requests for Force Majeure if the evidence submitted clearly does not provide information related to the case and/or which may substantiate the reasons for the objection.

R. Requests for Force Majeure submitted after the applicable timeframe – Requests for Force Majeure submitted later than the timeframe of thirty (30) working days which initiates from the date of the exceptional circumstance/event, or from the date when the farmer/beneficiary/economic operator became aware of such exceptional circumstance/event, will not be considered by ARPA. For the latter possibility, additional evidence may be required to prove the date on which farmer/beneficiary/economic operator became aware of the exceptional circumstance/event.

R. Requests for Force Majeure submitted after the relevant payment has been authorised or the relevant on-the-spot check has been carried out, will not be considered.

Q. How should photographic evidence be provided?

R. The best method to submit photographic evidence is through the use of ARPA's Mobile APP 'BiedjaCam', which allows you to capture geo-tagged photos through the use of the in-app camera. These provide an audited assurance of the date and location through which such photos were taken. Photos which are not taken through the app may also be submitted but may not be as conclusive and may require some interpretation for validation purposes, particularly where date and time are uncertain. Photographic evidence needs to be clear, well focused, and where possible not taken facing the sun and should not contain too much sky but contain mostly the land in question. Screenshots taken of the SITI-AGRI system should not be submitted, as the IACS system itself is accessed directly as the official source for such information.

Q. Does the Board consider legal or procedural matters?

R. The Force Majeure Board is set up within the administrative framework of ARPA in order to provide clients with an additional opportunity to make their voice heard and be able to improve the decision-making process with regards to their payments in a highly transparent, rapid and participative manner. It is not a judicial or quasi-judicial body and will not entertain legal or procedural representations such as prescription of actions, or objections to decisions made by the Agency following consultation with the Force Majeure Board. Once such a decision is issued, the Agency is not in a position to consider any further representations by the clients or clients' lawyers. Other remedies at law remain available to clients.

Q. How is the Board composed?

R. The Force Majeure Board comprises members from different units within ARPA that are independent from the Authorising Unit responsible for the implementation of the scheme affected by the Force Majeure.



Q. Where can I download ARPA's Mobile APP 'BiedjaCam'?

R. The direct link to download ARPA's Mobile App 'BiedjaCam' may be accessed through ARPA's website homepage: <https://arpa.gov.mt/en/> by clicking on the relevant buttons at the bottom of page. BiedjaCam is also downloadable directly from the Apple App or Google Play stores.

R. For support with downloading ARPA's Mobile APP 'BiedjaCam' you may contact the Agency via telephone on 22926148, or email at arpa.mafa@gov.mt.

