



Force Majeure Navigator

Force majeure in supply relationships due to COVID-19?

9th of April 2020



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IMPACT THAT
MATTERS
since 1845

A successful invocation of a *force majeure* event ("*force majeure*"), either as supplier or purchaser of goods or services, can only be considered if certain conditions are met.

This clickable PDF will help you to find out whether these requirements are (already) met in your case and what legal consequences may result.

Brief instructions

Click instead of scroll



Our clickable PDF guides you interactively through the topic. Navigate through the PDF by clicking on the green buttons at the bottom of the pages.

Avoid reading the PDF in chronological order page by page.

The three navigation buttons in the top right-hand corner take you to the Deloitte Legal website, to your contacts on the subject of force majeure and COVID-19 and to this home page.

Start the self-assessment by clicking on "Start".

Navigation buttons

Reply buttons

The screenshot shows a PDF document with the following content:

Force Majeure-Navigator
[Ausgangskonstellation](#)

Angesichts des weltweiten Ausbruchs des neuartigen Corona Virus (Covid-19) stellt sich für viele Unternehmen die Frage, wie sich etwaige **Lieferengpässe und -verzögerungen bzw. sonstige Störungen** in der Lieferkette rechtlich auswirken, wie mit Anzeigen höherer Gewalt umgegangen werden sollte oder aber **welche Maßnahmen sowohl auf Einkäufer- als auch auf Lieferantenseite getroffen werden können**, um insbesondere die wirtschaftlichen Folgen abzumildern.

Entscheidend für die rechtliche Einordnung des Problems ist dabei zunächst **tatsächliche Ausgangskonstellation**, also wo in der Lieferkette eine Störung auftritt.

Sind Sie Lieferant oder Einkäufer?

Lieferant **Einkäufer**

Start

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Initial constellation



In view of the worldwide outbreak of the novel corona virus (Covid-19), many companies are faced with the question of how any **delivery bottlenecks and delays or other disruptions** in the supply chain will be legally affected, how force majeure notifications should be dealt with or **what measures can be taken on both the buyer and supplier side**, in particular to mitigate the economic consequences.

Decisive for the legal classification of the problem is first of all the **actual initial constellation**, i.e. where in the supply chain a fault occurs.

Are you a supplier or buyer?

If both apply to you, simply use this tool for both constellations.

Supplier

Buyers

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Force majeure from the point of view of the supplier



First of all, it is important to define what the case law understands by force majeure:

Force majeure is an **external, externally caused event** which is **unforeseeable and unusual** according to human insight and experience, and which **cannot be prevented or rendered harmless** by economically acceptable means, **even with the utmost care which can be reasonably expected in the circumstances**, and which is also not to be accepted by the entrepreneur because of its frequency.

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Force majeure from the point of view of the purchaser



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Force Majeure Navigator

Force majeure from the point of view of the supplier



Do you plan to **invoke force majeure against your customers** (for example because there are delivery bottlenecks or delays on the part of your upstream suppliers) or do you fear that **your customers** will **refuse** or **delay acceptance** of the goods or services with an indication of the current situation towards you?

**Own vocation
for reasons of force majeure**

**Refusal of acceptance by
your customer**

Force Majeure Navigator

Force majeure from the point of view of the purchaser



Do you plan to **invoke force majeure against your suppliers** or do you fear that **your suppliers** will **refuse** or **delay delivery** of the goods or **provision** of the services with an indication of the current situation towards you?

**Own vocation
for reasons of force majeure**

**Supplier invokes force
majeure**

Force Majeure Navigator

Force majeure from the point of view of the supplier



The **main starting point** for the further legal assessment is then the concretely agreed **content of the contract**.

Does the contract concluded with your contractual partner contain a so-called **force majeure clause**?

Yes

No

Force Majeure Navigator

Force majeure from the point of view of the purchaser



The **main starting point** for the further legal assessment is then the concretely agreed **content of the contract**.

Does the contract concluded with your contractual partner contain a so-called **force majeure clause**?

Yes

No

Force Majeure Navigator

Force majeure from the point of view of the supplier



When assessing an obstacle to performance within the supply chain, either the provisions on **impossibility** or the provisions on **disruption of the basis of the transaction are to be applied.**

Decisive for the further legal classification is first of all which law is applicable to the contractual relationship concerned.

German Law

UN Sales Law

Other legal system

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Force majeure from the point of view of the supplier



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Force majeure from the point of view of the purchaser



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Force majeure from the point of view of the purchaser



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Force majeure from the point of view of the supplier



Another decisive factor is whether the force majeure clause explicitly mentions **epidemics, pandemics, infectious diseases**, etc. as force majeure events.

Does the force majeure clause agreed with your contractual partner make reference to such events?

Yes

No

Force Majeure Navigator

Force majeure from the point of view of the purchaser



Another decisive factor is whether the force majeure clause explicitly mentions **epidemics, pandemics, infectious diseases**, etc. as force majeure events.

Does the force majeure clause agreed with your contractual partner make reference to such events?

Yes

No

If the contractual relationship is subject to the **UN Convention on Contracts for the International Sale of Goods**, the **exemption clause of Art. 79 CISG shall** apply in the absence of deviating agreements. This stipulates that a party shall not be liable for the non-performance of one of its obligations if it proves that the non-performance is due to an impediment beyond its control and that it could not reasonably be expected to take the impediment into account when concluding the contract or to avoid or overcome the impediment or its consequences.

This can be **advantageous for you as a supplier**, provided that you can demonstrate and prove that your delivery has been omitted or delayed due to the Corona virus. However, as this provision can also be **modified or deviated from completely** by contractual provisions, it is always advisable to **check each individual case** on the basis of an informed assessment of all circumstances. **You are welcome to contact us!**

Are such events possibly already covered by your insurance policy? Please also note our further information.

[Your contact persons](#)

[Further notes](#)

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This can be **advantageous for you as a buyer**, provided you can demonstrate and prove that you are currently unable to purchase the goods or services, for example because of a governmental measure. However, since this provision can also be **modified or deviated from completely** by contractual regulations, it is always advisable to **examine each individual case** on the basis of a reasonable assessment of all circumstances. **You are welcome to contact us!**

Are such events possibly already covered by your insurance policy? Please also note our further information.

[Your contact persons](#)

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Force Majeure Navigator

Force majeure from the point of view of the supplier - Result



If the contractual relationship is subject to a legal system other than German law or the UN Convention on Contracts for the International Sale of Goods, we can, of course, also advise you in assessing the existence of the conditions of force majeure from a single source on the basis of **our worldwide legal advice practice**.

Often **foreign legal systems**, such as the Anglo-Saxon or Chinese law, are even **more generous** than continental European legal systems. In this case it is always worthwhile to examine the specific individual case. **So please feel free to contact us!**

Are such events possibly already covered by your insurance policy? Please also note our further information.

Your contact persons

Further notes

Force Majeure Navigator

Force majeure from the point of view of the buyer - Result



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Further notes

Force Majeure Navigator



Force majeure from the point of view of the supplier - result

If the contract does not contain a force majeure clause, an assessment of your case must be made in accordance with the statutory provisions of German civil law. Here applies:

If it is objectively or subjectively impossible to provide the service, this will lead to a **lapse of the obligation to provide the service** with the consequence of losing the claim to the consideration. If, on the other hand, the performance of the service is only to be assessed as grossly disproportionate (factual impossibility), this is at least a **temporary right to refuse performance**.

If the contractual relationship is merely disturbed by the obstacle to performance, for example in the event of an increase in procurement prices, this can lead to an **adjustment of the contractual provisions** made. However, this generally only applies if the **disruptive event does not fall within the risk sphere of one of the parties**, which may be the case, for example, in the case of official orders. Whether this also applies to your concrete case constellation must be examined under reasonable assessment of the circumstances of the individual case. **Please feel free to contact us!**

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Since the contractually agreed force majeure clause expressly mentions **epidemics, epidemics, pandemics or infectious diseases** as examples of external, externally induced, unforeseeable and unusual events, a force majeure event is likely to be affirmative if the facts are properly explained. Should the provision of services thereafter be objectively or subjectively impossible, this will in fact lead to a cessation of the obligation to perform. The fact that the parties wanted to qualify just such a case as the current Corona Virus Pandemic as such an event speaks for such an interpretation result.

If, on the other hand, the provision of services is currently only unreasonable, this would lead to a right to adjust the contractual obligations. Further details, such as any further legal consequences that may have been agreed (e.g. mutual information obligations, rights of deferment, payment obligations or exemptions from liability) require careful examination in each individual case. **Please feel free to contact us in this regard!**

Are such events possibly already covered by your insurance policy? Please also note our further information.

Your contact persons

Further notes

Force Majeure Navigator

Force majeure from the point of view of the buyer - Result



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Further notes

Force Majeure Navigator

Force majeure from the point of view of the supplier - Result



Since the contractually agreed force majeure clause **does not list epidemics, epidemics, pandemics or infectious diseases** as examples of external, externally induced, unforeseeable and unusual events, an in-depth examination of each individual case is necessary, taking into account a reasonable assessment of all circumstances of the case.

However, the fact that the parties have not included such a case as the current corona virus pandemic in the canon of force majeure events could, in the context of the interpretation, lead to the conclusion that an appeal to force majeure is not possible. In this constellation, a concrete examination of the individual case is certainly recommended. In addition, further legal consequences (e.g. mutual duties to inform, rights of deferment, payment obligations or release from liability) could also have been agreed between you and your contractual partner. **Please feel free to contact us in this regard!**

Are such events possibly already covered by your insurance policy? Please also note our further information.

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Further notes

Force Majeure Navigator

Force majeure from the point of view of the buyer - Result



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Are such events possibly already covered by your insurance policy? Please also note our further information.

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Further notes

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Additional insurance law information



The existence of insurance cover should definitely be checked. However, this is regularly not the case with normal business interruption insurance policies - further developments, especially in the form of taking over solutions developed in other countries, remain to be seen. It looks better if policies provide for extended coverage modules or all-risk policies have been concluded.

Even where policies are not actually effective, various insurers are currently making concessions in the German insurance market - for example in the catering and hotel sector. In order to secure the liquidity of their customers, insurers want to provide additional funds on a voluntary basis. However, it is currently uncertain whether such "deals" will also be concluded for other sectors.

For further details we refer to our [brochure](#) "**Legal Issues related to the COVID-19 pandemic**".

Your contact persons

Contacts Commercial Law

Please feel free to contact us on the subject of force majeure



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Contacts COVID-19 Task Force

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with respect to other questions on how to deal with the COVID 19 pandemic



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