

Newsletter No. 119 (EN)

Comparison of commonly used
Hardship and Force Majeure Clauses in respect of:

- ICC
- UNIDROIT
- CISG
- FIDIC
- German Law

August 2010

Table of Contents

1. Introduction
2. Force Majeure
2.1. Definition
2.2. Spirit and Purpose
3. Hardship
3.1. Definition
3.2. Spirit and Purpose
4. The Different Bodies of Rules and Regulations
4.1. The CISG
4.2. The ICC
4.3. The UNIDROIT Principles
4.4. The FIDIC
4.5. The BGB
5. Force Majeure in Law
5.1. Force Majeure in the German Law
5.2. Force Majeure in the CISG
5.3. Force Majeure in the ICC
5.4. Force Majeure in the UNIDROIT Principles
5.5. Force Majeure in the FIDIC Rules
6. Hardship in Law
6.1. Hardship in German Law
6.2. Hardship in the CISG
6.3. Hardship in the ICC
6.4. Hardship in the UNIDROIT Principles
6.5. Hardship in the FIDIC Rules
7. Similarities and Differences of the Different Clauses
7.1. Force Majeure
7.1.1. Similarities
7.1.2. Differences
7.2. Hardship
7.2.1. Similarities
7.2.2. Differences
8. Reviewing of the Decision of the Belgian Supreme Court of June 19th 2009
8.1. Facts of the Case
8.2. Facts of the Decision
8.3. Causes for this Ruling
9. Conclusion
10. Synopsis

1. Introduction

When drafting international contracts, a matter of particular concern should be to focus on unforeseen circumstances, which might lead to substantial problems. Who will be responsible, if e.g. a ship with urgent cargo for a construction site was damaged by a heavy storm and the cargo is lost? Who is responsible for the delays in completing the construction work and the substantial penalties that might appear?

In legal terms, this refers to Force Majeure and Hardship. Force Majeure applies to cases where performance has become (temporarily) impossible due to an event beyond one party's control even though all reasonable precaution measures had been taken. Hardship on the other hand deals with cases where the agreed performance is still possible, however, the underlying facts have dramatically changed so that it would be against the principles of good faith to actually demand performance.

It is very important to be aware that Force Majeure and Hardship are two different principles, even if they sometimes seem to be the same. They are different in their preconditions, and in their legal consequences. To apply Force Majeure to a case, the legal obligations of a party must become impossible due to circumstances that are expectable but nobody can avoid them (such as earthquakes or lightning). Such circumstances are principally known to the public, but nobody is able to predict where and when they will happen. For this, the English translation for Force Majeure is "Act of God", which makes it very clear that nobody is able to influence these circumstances.

Hardship in contrary is based on the fact that the underlying circumstances of the contract change in a way that the parties did not foresee at the time, they concluded the contract. The change of the underlying circumstances is not caused by unpredictable effects, because the facts that did change have not been foreseen by the parties, but the change of the facts were basically foreseeable for the public, because they are based on economic influences.

Also the legal consequences of both doctrines are completely different. The consequence of Force Majeure is that one party cannot fulfil its contractual obligations anymore (impossibility) and can not be held liable for this; means the other party cannot claim for performance of the contract and can also not claim for any compensation of damages. The legal consequence of Hardship is that the party, for which the underlying circumstances did change dramatically, can still fulfil its contractual obligations and perform the contract, but the performance became economically worthless and therefore, the party can claim for re-negotiation of the contract. The contract will not be adjusted to the changed circumstances automatically, but the parties have to re-negotiate the contractual details which are affected by the changed circumstances (this will most likely be the purchase price).

Under German law, the basic principle "Pacta Sunt Servanda", which states that once a contract has been formed the contracting parties are obliged to fulfil their contractual obligations no matter what is adjusted in particular by legal constructions called "economic impossibility" or "frustration".

These domestic principles, however, cannot be simply transferred to international treaty law. The United Nations Convention on Contracts for the International Sale of Goods (, CISG (") or, depending on the agreement of the parties, the principles of the International Institute for the Unification of private law ("UNIDROIT") or the rules of the International Chamber of Commerce ("ICC") contain provisions dealing particularly with Force Majeure and Hardship.

Beside the above mentioned regulations are various other regulations issued by renowned international associations, such as the Fédération Internationale Des Ingenieurs-Conseils ("FIDIC"), which include e.g. a particular Force Majeure Clause. It has to be noted that the FIDIC regulations focus mainly on contracts concerning construction and engineering.

The commonly applied CISG contains a Force Majeure Clause, however, it does not contain any rules on hardship. In a landmark decision on 19th June 2009 the Belgian Supreme Court therefore applied the UNIDROIT principles to close this loophole in the CISG, although UNIDROIT was not agreed between the parties.

As the consequences of this judgement could be extensive, this newsletter shall provide an overview on the different Force Majeure and Hardship Clauses that are available under international treaty law.

2. Force Majeure Clauses

2.1. Definition

Force Majeure is French for superior power. Force Majeure means unavoidable events such as natural disasters of all kinds, especially storms, earthquakes, flood, volcanic eruption, but also fire, traffic accidents, kidnappings, wars, riots, revolution, terrorism, sabotage and strike. Force Majeure regularly requires a completely unexpected occurrence of those events. However, a Force Majeure event has to be denied if the parties must consider the possibilities of a certain incident to happen, e.g. floods that occur repeatedly in the same region or fires in dry countries and one party neglected to take the respective precautions. A Force Majeure event therefore could be generally described as an event that affects the contractual relationship unpredictably from the outside and that, despite taking extreme care by the parties, was not avoidable.

2.2. Spirit and Purpose

If such a case of Force Majeure occurs, the question is, who is responsible for the non-performance of the contract. In order to avoid disputes and risks of interpretation, Force Majeure Clauses are integrated in a great number of treaties to essentially free both parties from liability or obligation, when an extraordinary event or circumstance beyond the control of

the parties occurs. Force Majeure clauses give either one or all parties the right to resign from the contract. Thus, the occurrence of such an event of Force Majeure leads to the – at least temporary- suspension of the primary obligations. In regards to the distribution of the risk, this means that either party has to bear the adverse consequences of non performance or delay in performance. As a consequence, when Force Majeure occurs, the liability dispenses and the other party is unable to claim compensation for damages or the like.

3. Hardship

3.1. Definition

In case of Hardship, the performance of the contract is not impossible, but merely hindered. This means any event of legal, technical, political or financial nature occurring after the conclusion of the contract, which was unforeseeable at the time the contract had been formed despite using the utmost care. In general, hardship does not cause the impossibility of performance, but allows for renegotiation of the contract.

3.2. Spirit and Purpose

Hardship clauses typically recognise that parties must perform their contractual obligations even if events will render performance more difficult than one would reasonably have anticipated at the time of the conclusion of the contract. However, where continued performance has become excessively burdensome due to an event beyond a party's reasonable control, a hardship clause can oblige the parties to negotiate alternative contractual terms.

The principle of Hardship is particularly influenced by the Common Law and the Equitable Rights of the Anglo-American legal system, to find a balance under the principle of equity and good faith. The principle “Pacta Sunt Servanda” which dominates the German civil law system and which was adopted from the roman law, is limited by this. The purpose of this

clause is to provide a high level of flexibility and to balance the international trade.

4. The Different Bodies of Rules and Regulations

4.1. The CISG

The CISG is a treaty offering a uniform international sales law that, as of January 2010, has been ratified by 74 countries, including the world's biggest economies. This makes the CISG one of the most successful international uniform laws. Japan is the most recent important member of the CISG. Turkey and the Dominican Republic are the latest contracting states. CISG is applicable to contracts for the sale of goods between parties whose places of business are in different member states. The CISG directly defines its own territorial criteria of application without the need to resort the rules of private international law. For sales contracts concluded prior to the ratification of the CISG Article 100 II CISG applies:

“This Convention applies only to contracts concluded on or after the date when the Convention enters into force in respect of the Contracting States referred to in subparagraph (1)(a) or the Contracting State referred to in subparagraph (1)(b) of article 1.”

Thus, certain cases have to be decided with regard to the rules of the CISG, especially, as Art. 4 of the CISG states that the Convention - besides the formation of the contract of sale - determines the rights and obligations of the seller and buyer.

4.2. The ICC Rules, Publication No. 650

The ICC is the largest, most representative business organisation in the world. Its hundreds of thousands of member companies in over 130 countries have interests covering every sector of private enterprise. Objective of the ICC is to promote international trade and to support international businesses to face challenges and opportunities of globalisation. By issuing their contract rules, an efficient

settlement of international transactions is promoted.

4.3. The UNIDROIT Principles

UNIDROIT is an independent intergovernmental organisation. Its purpose is to study needs and methods for modernising, harmonising, and coordinating private international law and in particular commercial law between states, and to draft international Conventions to address the needs. Membership of UNIDROIT is restricted to States adhering to the UNIDROIT Statute. UNIDROIT's 61 member states represent a variety of different legal, economic, and political systems as well as different cultural backgrounds.

4.4. The FIDIC Rules

FIDIC, the International Federation of Consulting Engineers (the acronym stands for the French version of the name) represents the engineering industry globally. As such, the Federation promotes the business interest of firms supplying technology-based intellectual services for the built and natural environment. Founded in 1913, FIDIC today numbers 75 Member Associations representing approx. 1 Million professionals. FIDIC also publishes international contracts and business practice documents in order to ease the conclusion of contracts concerning engineering.

4.5. The BGB

The German Civil Code (*Bürgerliches Gesetzbuch* “BGB”) became effective on 01 January 1900, and was considered a massive and groundbreaking project after having been developed since 1874. The BGB is based on Roman law. Like other Roman-influenced codes, it regulates the law of persons, property, family and inheritance, but unlike e.g. the French Code civil or the Austrian Civil Code, a chapter containing generally applicable regulations is placed first.

5. Force Majeure in Law

5.1 Force Majeure in German Law

The term “Force Majeure” (“höhere Gewalt”) occurs in the BGB in §§ 651a ff., which regulate the Travel Law. But nevertheless the idea of Force Majeure is also accepted in the law of obligations in § 275 I-III, §326 I,V, §§ 323 ff. BGB.

Example:

A vendor and a purchaser conclude a contract on the delivery of 5 tons of rice. The vendor sorts out those 5 tons and stores them in another warehouse ready for delivery. Due to a storm the warehouse and the rice are destroyed during the night.

Solution:

The rice is destroyed because of the Strom. This is an unavoidable event of superior power which the parties could not have foreseen at the time of the conclusion of the contract. As the vendor already finished the ascertainment of goods by sorting out the rice and storing it in another warehouse, the performance of the delivery of exactly these 5 tons of rice is now impossible for the vendor and everyone else, § 275 I BGB. The right of delivery of the purchaser is barred by this, § 275 I BGB. On the other hand, the vendor cannot claim consideration, § 326 I BGB. The purchaser still has the opportunity to withdraw from the contract, § 326 V BGB, without having to set a time limit. Thus, the performances exchanged have to be returned, e.g. the deposit the purchaser had to pay.

5.2 Force Majeure in the CISG

The CISG contains a written Force Majeure clause in Art. 79 CISG. This regulates that a party is not liable for failure to perform any of its obligations if it proves that the failure was due to an impediment beyond the party’s control and that he could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it or its consequences. If one party is able to prove these requirements, it is relieved from its liability of performance and the disappointed party cannot claim any further rights.

5.3 Force Majeure in the ICC

§ 1 of the ICC Force Majeure clause states that in order to be considered Force Majeure, there must be an impediment due to failure, which is similar to Art. 79 CISG. § 2 of the ICC regulation defines impediment basically as natural disaster. Therefore the definition is rather narrow. Additionally, the ICC does not point out the consequences of a third person’s failure. As a legal consequence, the party, who, due to this in impediment, fails to perform, would be relieved for liability without having to face any claims of the forfeiting party.

5.4 Force Majeure in the UNIDROIT Principles

The UNIDROIT principles contain a written Force Majeure Clause in Art. 7.1.7. This rule excuses non- performance by a party if that party proves that the failure was due to an impediment beyond its control and that it could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it or its consequences. The article does not restrict the rights of the party, who has not received performance, to terminate if the non-performance will be fundamental. Where applicable, it states to exclude the nonperforming party from liability in damages.

5.5 Force Majeure in the FIDIC Rules

As there are numerous drafts of international contracts by the FIDIC, hence only the published contracts of major work shall be taken into account. These are the “Red Book” (concerning construction contracts), the “Yellow Book” (concerning contracts on plants and their design) and the “Silver Book” (concerning EPC contracts). These books all contain written Force Majeure Clauses in their Art. 19. The Clause is a combination of a new provision for defined events of force majeure, and a new wording of a provision covering impossibility (or illegality) of performance. Clause 19.1. FIDIC states Force Majeure as an event beyond the control of the Employer and the Contractor, which makes it impossible or illegal for a party to perform, including but not limited to e.g.: war, hostilities, rebellion, contamination by radio-activity from any nuclear fuel or riot.

6. Hardship in Law

6.1. Hardship in German Law

The BGB contains the idea of a hardship clause in § 313 I BGB. Since the reform of the law of obligations in 2002 the doctrine of frustration has been included into the BGB in § 313. This paragraph states that a contract has to be renegotiated if an event occurs, which fundamentally alters the present contract, which places an excessive burden on one of the party's performance making the adherence to the contract unreasonable. In case renegotiation is impossible, the disadvantaged party can withdraw from the contract.

6.2. Hardship in the CISG

The CISG does not contain a written Hardship clause, and the prevailing opinion is that Article 79 CISG does not cover Hardship. Renegotiation is therefore not an option.

6.3. Hardship in the ICC

The ICC does not set out the provisions of Hardship in a standard clause, so it cannot be incorporated in a contract by reference. The ICC Hardship explanation is intended to give an idea about what Hardship is, when it can occur, and which consequences it has. However, the ICC Hardship provision is not a standard clause, and the parties cannot simply refer to the ICC Hardship clause by reference sentence (as they can with the ICC Force Majeure clause). It is rather necessary to draft and include a Hardship clause directly into the contract. The ICC Hardship clause gives merely a broad understanding of Hardship, but it is too broad to be a part of a contract, and this clause cannot become binding, even if the parties want to do so.

§ 1 of the ICC Hardship clause recognises that parties must perform their contractual obligations even if "events have rendered performance more onerous than would reasonably have been anticipated at the time of the conclusion of the contract." However, where continued performance has "become excessively onerous due to an event beyond a party's reasonable control which it could not reasonably have been expected to have taken into account," the clause obligates the parties to "negotiate alternative contractual terms which reasonably allow for the consequences of the event."

6.4. Hardship in the UNIDROIT Principles

Art. 6.2.2 of the UNIDROIT Principles defines hardship as a situation where the occurrence of events fundamentally alter the contract, provided that those events meet the requirements which are laid down in subparagraphs. This also shows that Art. 6.2.2 is not exhaustive but has to be adjusted by the parties to fit their needs.

6.5. Hardship in the FIDIC Rules

The FIDIC major works do not contain written Hardship Clauses. In large projects, where

the performance of the parties' contractual obligations is spread over several years, the parties might thus consider to add a hardship clause to the contract, to stipulate when and how the parties will rearrange the contractual terms in the event the contract loses its economic balance.

7. Similarities and Differences of the Different Clauses

7.1. Force Majeure

7.1.1. Similarities

All of the above rules and regulations have in common that the binding character of a contract is not an absolute one, hence an exemption is possible. Nevertheless they all point out strictly, that the clauses have to be of exception. The Force Majeure Clauses are contained in Art. 79 CISG, Art. 7.1.7 UNIDROIT Principles, § 1 of the ICC Force Majeure and Hardship clauses and in Art. 19 FIDIC. The ICC, the CISG, UNIDROIT Principles and the FIDIC all require an impediment which is due to the failure. The requirements on the impediment are similar. The party who cannot perform has to prove, that the impediment was beyond its control and that it could not reasonably be expected to have taken this impediment and effects upon its ability to perform into account at the time of the conclusion of the contract. ICC, CISG and UNIDROIT Principles are stating the need of notification as soon as the inability of performance became known to a party. Notice shall also be given when the ground of relief ceases.

7.1.2. Differences

The definition of impediment under the ICC includes basically only natural disasters. Therefore, the definition is rather narrow. Additionally, the ICC does not point out the consequences of a third person's failure. Art. 19.1 FIDIC defines Force Majeure rather broad compared to the other regulations, as it states that the event or circumstances must be "exceptional", beyond the parties' control, not

one which could have reasonably been provided for before the contract was made, and having arisen is not reasonably capable of being avoided or overcome, and is not substantially attributable to the other party. CISG contains arrangement in Art. 79 II regarding the circumstances that a party's inability to perform is due to the failure of a third person whom it has engaged for parts of the performance. Thus, the possibility of exculpation is given. Further, Art. 79 CISG does not contain an enumeration of possible impediments, so this article's field of application is not as narrow as the one of § 1 of the ICC Hardship Clause. Neither the FIDIC Major works, nor the UNIDROIT Principles in Art. 7.1.7 envisage the possibility of exculpation by a third person's failure. This UNIDROIT article does also not contain an enumeration of possible impediments, therefore it has to be understood wider than the definition of impediments in the ICC. Unlike the other regulations, Art. 19 FIDIC contains a more specified variety in its legal consequences, and their application has to be proved carefully.

7.2. Hardship

7.2.1. Similarities

The Hardship clauses differ in all the above regulations.

7.2.2. Differences

The UNIDROIT principles contain a written Hardship clause in Art. 6.2.2, and the ICC in § 1 of its Hardship Clause. The CISG and the FIDIC do not contain similar clauses. The ICC does not set out the provisions of hardship in a standard clause. They have to be completed by the parties as necessary and inserted as express terms in the contract. Instead, the ICC provides four alternatives relating to the effects of hardship the parties can adopt. The UNIDROIT Principles define Hardship as a situation where the occurrence of events fundamentally alter the equilibrium of the contract, provided that those events meet the re-

quirements which are laid down in subparagraphs. This also shows that Hardship under UNIDROIT is not exhaustive but has to be adjusted by the parties to fit their needs.

8. Reviewing of the Decision of the Belgian Supreme Court of June 19th 2009

8.1. Facts of Case

A French vendor and a Dutch purchaser entered into successive contracts for the sale and the delivery of steel tubes to Belgium. In early 2004, after facing a 70% increase in the market price of steel, the vendor asked for the contract to be renegotiated due to the increased sale price. As they could not reach a satisfying agreement, the case went to court.

8.2. Facts of the Decision

The Supreme Court ruled that circumstances which were not reasonably foreseeable at the time of the conclusion of an agreement and which increase the burden of the agreement disproportionately can, under certain circumstances, be considered an 'impediment' within the meaning of Article 79 CISG. The Belgian Supreme Court further held that Art. 79 CISG can govern hardship. As this article contains no indication how to resolve hardship, it relied on Art. 7 I, II CISG to bridge the gap. Since Art. 7 CISG is a good faith clause, interpretation is accessible and the resolving of hardship issues can be adapted on the individual needs. To interpret the definition of hardship, the Supreme Court used the UNIDROIT regulations to apply hardship to that case, despite the parties never agreed to apply UNIDROIT to their contract.

8.3. Causes of this Ruling

Due to the lack of publication, the causes for this ruling can only be guessed. Probably, the Supreme Court wanted to balance the burden between the parties. As the CISG does not give any indication how to solve a hardship, the court had to access the UNIDROIT

Principles to come to a just decision. However, it has to be noted, that the Court applied the UNIDROIT Principles without them being agreed between the parties.

9. Conclusion

The aforementioned rules and regulations are just examples for the variety of regulations available to deal with Force Majeure and Hardship events. As a matter of this, the parties have to have a closer look to what they want to regulate and what they believe is necessary to be regulated in the contract itself. Different contracts need different clauses on diverse grounds. There needs to be an evaluation what exact purpose the clause shall serve in the individual case.

It has to be mentioned that all the existing hardship clauses are quite soft, so that there might be a right of renegotiation even if the change in the circumstances is less than 70%. Hence, concerning hardship, it might be recommendable to apply the UNIDROIT Principles with the provision that a fundamentally change of circumstances is only given if the diversification reaches 100%.

Although Lorenz & Partners always pays greatest attention on updating the information provided in this newsletter we cannot take responsibility for the topicality, completeness or quality of the information provided. None of the information contained in this newsletter is meant to replace a personal consultation. Liability claims regarding damage caused by the use or disuse of any information provided, including any kind of information which is incomplete or incorrect, will therefore be rejected, if not generated deliberately or grossly negligent.

	The BGB	The ICC Rules Publication No. 650, 2003	The CISG Rules	UNIDROITS Princi- ples	The FIDIC Rules of the Major Works
1. Force Majeure:	§§ 326 I, V, 275 I-III BGB	§ 1 ICC Force Majeure Clause of 2003	Art. 79 CISG	Art. 7.1.7	Art. 19 FIDIC
Basic Principle:	Pacta Sunt Servanda as an influence of the Roman Law	Rather be fair as an influence of the Com- mon Law System	Influenced by Com- mon Law, based on precedent rather than statute law	Affected by Common Law aiming to be fair and equitable	Drafted with a Common Law background fol- lowing laws based on previ- ous rulings
Requirements:	<ul style="list-style-type: none"> ○ Impossibility of per- formance § 275 I BGB for liable party or everyone or ○ Refuse of performance because of maladjust- ment to equivalent, § 275 II BGB, or ○ Refuse of performance in case of duty to per- form in person if per- formance is unaccept- able 	<ul style="list-style-type: none"> ○ Impediment, beyond party's control ○ Enumeration of events not being ex- haustive in § 2 ICC ○ Not reasonably fore- seeable at the time of the conclusion ○ Impediment was not reasonably avoidable ○ Duty of notification 	<ul style="list-style-type: none"> ○ Failure due to an impediment beyond his control ○ Not reasonably foreseeable at the time of the conclu- sion ○ Impediment or consequences were unavoidable ○ Party who fails must give notice 	<ul style="list-style-type: none"> ○ Non-performance due to an impedi- ment beyond party's control ○ Not reasonably fore- seeable at the time of the conclusion ○ Impediment or con- sequences were un- avoidable ○ Party must give no- tice 	<ul style="list-style-type: none"> ○ Event beyond control of Em- ployer or Con- tractor ○ Which makes it impossible or illegal for a party to per- form ○ Enumeration in Art. 19.1 not being exhaus- tive

	The BGB	The ICC Rules Publication No. 650, 2003	The CISG Rules	UNIDROITS Principles	The FIDIC Rules of the major works
Legal Consequences:	<ul style="list-style-type: none"> ○ Claim of equivalent is dispensed. Relief from liability ○ § 326 I BGB. Option for disappointed party: Rescission of the contract § 326 V, 323 I BGB, but benefits have to be returned, §346 I BGB 	<ul style="list-style-type: none"> ○ Relief from liability, no further rights for disappointed party 	<ul style="list-style-type: none"> ○ Relief from liability, no further rights for disappointed 	<ul style="list-style-type: none"> ○ Relief from liability, no further rights for disappointed party 	<ul style="list-style-type: none"> ○ Payment to Contractor, if work suffers loss or damage, Art. 19.5 FIDIC ○ Optional Termination, if the effects of force majeure continue for a period of 182 days, Art. 19.6 FIDIC ○ In case of termination payment has to be carried out according to the value of the work done, Art. 19.6 FIDIC ○ Same Payment has to be made, if performance is released due to law of the contract

	The BGB	The ICC Rules, Publications No. 650, 2003	The CISG Rules	UNIDROITS Principles	The FIDIC Rules of the major works
2. Hardship:	§ 313 I, III BGB	§ 1 ff. ICC Hardship Clause of 2003	No written Clause	Art. 6.2.2	No written Clause
Basic Principle:	Pacta Sunt Servanda as an influence of the Roman Law	Rather be fair as an influence of the Common Law System	Influenced by Common Law, based on precedent rather on statute law	Affected by Common Law aiming to be fair and equitable	Drafted with a Common Law background following laws based on previous rulings
Requirements:	<ul style="list-style-type: none"> ○ Circumstances that concern the contractual basis ○ Changed onerously after the conclusion of the contract ○ Parties would not have contracted if they had foreseen these changes 	<ul style="list-style-type: none"> ○ Continued performance of contractual duties has become excessively onerous due to an event beyond parties' control ○ Not reasonably foreseeable at the time of the conclusion 	None	<ul style="list-style-type: none"> ○ Occurrence of events fundamentally alter the equilibrium of the contract ○ Either because the costs of the performance have increased ○ Or because the value of the performance a party receives has diminished 	None

	The BGB	The ICC Rules, Publications No. 650, 2003	The CISG Rules	UNIDROITS Principles	The FIDIC Rules of the major works
		<ul style="list-style-type: none"> ○ Could not reasonably have avoided the event or its consequences 		<ul style="list-style-type: none"> ○ Events occur after conclusion ○ Not foreseeable ○ Events are beyond parties control ○ The risk of event was not assumed by disadvantaged party 	
Legal Consequences:	§ 313 I BGB: Adjustment of the Contract; If adjustment is not possible, disadvantaged party can resign from contract, § 313 III BGB	Disadvantaged party can demand renegotiation	Non existent	Disadvantaged party can demand renegotiation	Non existent