

Frustrated?

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The right approach

- Go for the *force majeure* clause - how difficult can that be?
 - Could be called something completely different e.g. “Impossibility”
 - Check for other related clauses e.g.
 - Change of law
 - Material adverse change
 - Disaster recovery & business continuity
- Question: can you think of any others? In the world of IT service delivery, could there ever in fact a *force majeure*?

What's in the box?

- *Force majeure* clauses are not all born equal
 - Does yours refer to a pandemic? Is a pandemic the same as an epidemic? Does it even refer to a disease (or a synonym)?
 - Is Covid-19 an Act of God?
 - What is causing the problem at the moment - Covid-19, or circumstances consequent on Covid-19 (including change of laws)? Or is just that trading is tougher now?
 - Does your *force majeure* clause marry up with your BC/DR provisions?
- Question: do you like long form *force majeure* clauses (a long litany of individual events) or short form (“anything beyond a party’s reasonable control”)?
- Question: do you prefer “prevent” or “hinder”? Is “prevent” too strict and “hinder” too loose?

Action stations

- What do you have to do to claim the benefit of *force majeure*?
 - Not just getting the notice right - but requirements of providing details of the event, its effects, proposed actions and so on
 - Are these conditions precedent? What if you get it wrong?
 - Have you checked the consequences - including termination?
 - Have you checked what is happening up and down the contract chain?
- Question: what is the consequence of *force majeure* in your contracts - automatic discharge of the contract, or just delay and relief from liability?
- Would you want automatic discharge as (a) the provider or (b) the customer?
 - Would frustration play a role?

Looking to the future

- In future, when drafting *force majeure* clauses, are you going to include pandemics (and epidemics, nasty colds, sickies ...)?
- And take a look at my website www.the-lors.co.uk -
 - [Force majeure - the law](#)
 - [Force majeure - the checklist](#)

Thank you!
Feedback or comments welcome

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