

Contracts – what applies in the case of force majeure or hardship?

Applicable provided Swedish law applies.

Starting point: Contracts must be kept.

- What does the contract involve? What is to be done, and under what circumstances?
- Are there rules for cancellations?

Firstly: What does the force majeure clause specify? (Clauses on hardship are less common.)

- Which conditions are necessary for an event to count as force majeure?
- Are these conditions fulfilled?
- If yes – which, according to the contract, are the *consequences* of the force majeure?

Secondly: If this is not addressed in the contract, or if there are gaps, the following applies.

Force majeure

Force majeure may apply if SLU is contractually obliged to fulfil something other than a payment, e.g. conducting contract research, but the SLU researcher then falls ill. See the Swedish Contracts Act, <http://www.avtalslagen2010.se/Section/10.2> (only available in Swedish). According to this act, the following applies:

If you do not fulfil contractual obligations, this may be excused provided that it was due to events beyond your control and you could not reasonably be expected to have taken this event – this impediment – into account when the contract was concluded, or have avoided or overcome the event or its consequences.

If this is the case, the following applies:

If the impediment is temporary, not fulfilling your obligations is acceptable for a period that is reasonable taking into account the effect the impediment has on your ability to fulfil your obligations.

If the impediment is permanent, the parties no longer have to fulfil their contractual obligations. If the goods/services have already been delivered and cannot be returned, compensation will be paid for the market value of the goods or service.

The party that fails to fulfil its contractual obligations, but is excused as described above, **must inform the other party** about the impediment and how it affects the ability to perform. If this is not done within a reasonable time after the party that fails to perform its obligations knew, or ought to have known, about the impediment, that party is liable for any damages that are the result of the lack of information.

The act does not prevent a party from withholding the goods or service, or cancelling the contract. It only limits the right of a party to demand fulfilment of contractual obligations, reductions and damages.

Hardship

The concept of hardship may apply if SLU is paying someone else, typically a supplier, but does not have any use for the goods or service(s) in question. This concept is more difficult to apply. See the Swedish Contracts Act <http://www.avtalslagen2010.se/Section/5.3> (only in Swedish.)

An agreement may be adjusted or disregarded if an event fundamentally alters the equilibrium of the contract – either because one party's costs have increased, or because the value of the goods or service(s) a party receives has diminished, and

- the event occurs, or becomes known, to the disadvantaged party after the contract was concluded;
- the event is beyond the control of the disadvantaged party and could not reasonably have been taken into account by the disadvantaged party when the contract was concluded;
- the contract does not specify that the disadvantaged party should assume the risk of such an event.

We can demand that the supplier does one of the following:

- Neutralises the **variable costs** where possible (example: a conference organiser that SLU has booked cancels catering).
- **Makes use of goods/services in another way**, if possible (example: a conference organiser SLU has booked can use the bottled water they have bought for another conference).

This should not be a problem, provided it does not incur any costs for the supplier.

It may be possible to request that the supplier forgo their **profit**. It is harder – but not necessarily impossible – to request that the supplier bear some or all of their **fixed costs**.

Here too, the most important thing is to **communicate** with the other party, as early on as possible (but after consulting with the Legal Affairs Unit).