

Protecting Your Company Against Common Contract Failures Caused by External Change

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Your profits of tomorrow come from your contracts of today and are put at risk whenever contract disputes arise. Such disputes can be costly and unpredictable, in particular in contracts with foreign partners. Contract disputes commonly arise when long-term contracts, such as supply, distribution, licensing or collaboration agreements, must meet the challenges of the future.

Today's world is characterized by a constantly changing business environment, and external changes can sometimes lead to contract failures. For example, changes in the commercial and regulatory environment (such as increases in import tariffs) may place a financial burden on one party, who may seek to pass on the burden to its partner, in full or in part. External business disruptions (such as trade sanctions or extreme weather events), may disrupt or limit supplies and result in a dispute over who must bear the consequences of the disruption.

While one cannot make a contract "100 percent future proof," life sciences companies can manage the risk of these external changes by paying special attention to the *force majeure* clause in their contracts. You should make sure this clause is clear and covers all *force majeure* events that are relevant in your circumstances. You should also make clear whether, in case of supply shortages due to weather or other *force majeure* events, the supplier may decide in its reasonable business judgment how to allocate decreased quantities to customers, including whether it must give preference to some customers or allocate the available quantities *pro rata*. Many contracts fail to address this practically relevant question, which is an area of unsettled law in most countries.

Beyond the typical content of a *force majeure* clause, you should consider addressing the question of whether economic hardship shall be at the risk of each party or whether it shall justify nonperformance, termination or a contract adjustment. If you and your partner agree to share the risk of economic hardship, it is advisable to give examples and define measurable thresholds. If economic hardship shall be at the risk of each party, you are well advised to make this clear as well, either in the body of the contract or as part of the nonbinding preambles ("whereas" clauses), which set out the spirit of the deal in simple language. If the contract is completely silent on the question of economic hardship, you run the risk that your contract partner may invoke statutory grounds to adjust the contract based on changed circumstances.

This and other common contract failures are addressed in in a recent article for *In Vivo*, a well-regarded global publication in the life sciences space, which you find here: [Conflict Management Strategies: Protect Your Medtech Company Against Three Common Contract Failures.](#)