

# THE HARDSHIP DOCTRINE IN COMMERCIAL CONTRACTS: A LEGAL TOOL FOR NAVIGATING ECONOMIC UNCERTAINTY IN MEXICO

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**How can companies doing business in Mexico protect themselves against drastic changes in the conditions that gave rise to their contracts?**

In an increasingly volatile economic environment, companies doing business in Mexico face the constant challenge of complying with contracts that were negotiated under circumstances completely different from current ones. Uncontrolled inflation, health crises such as the COVID-19 pandemic, the recent United States tariff policy, and drastic regulatory changes can fundamentally alter the economic balance of commercial contracts. In this context, the Hardship Doctrine emerges as a crucial legal tool that every company must know and understand.

## LEGAL FOUNDATIONS OF THE HARDSHIP DOCTRINE

The hardship doctrine, also known as theory of unforeseeability or *rebus sic stantibus*, constitutes an exception to the fundamental principle of *pacta sunt servanda* (contracts must be fulfilled). This doctrine allows for the revision of agreements between contracting parties to resolve or modify them when **extraordinary circumstances, unforeseeable and beyond the parties' control**, notably alter the conditions of performance, making compliance with obligations excessively onerous.

The foundation of this theory rests on two essential pillars:

**Principle of Contractual Good Faith:** Contracts must be executed in good faith, and when extraordinary and unforeseeable circumstances sever

ely alter the contractual balance, maintaining the original conditions may become contrary to this fundamental principle.

**Doctrine of Rebus Sic Stantibus:** This classical doctrine establishes that contracts are entered into with the understanding that circumstances will remain substantially the same. When they change drastically in an unforeseeable manner, the contract can and should be revised.

## THE MEXICAN LEGAL LANDSCAPE: CHALLENGES AND OPPORTUNITIES

### State Regulatory Framework

Several federal entities have expressly incorporated the Hardship Doctrine into their civil codes, which allows for the argument that changes in circumstances due to unforeseeable events give the

right to renegotiate contractual terms. This regulation is found in:

- **Mexico City** (Article 1796 Bis)
- **Aguascalientes** (Article 1733)
- **Jalisco** (Article 1795)
- **Guanajuato** (Article 1351)
- **Coahuila** (Article 2147)
- **Sinaloa** (Article 1735)
- **Tamaulipas** (Article 1261)
- **Veracruz** (Article 1792)
- **State of Mexico** (Article 7.35)

### The Gap in Federal Legislation

Notwithstanding these local advances, in the realm of the Federal Civil Code and the Commercial Code, the Hardship Doctrine is not expressly regulated. Traditionally, judicial criteria have adopted a conservative position tending to reject the applicability of such theory in commercial matters, privileging the principle of pacta sunt servanda.

However, this situation could change. The position of Mexican Courts could evolve, **especially in the framework of judicial elections resulting from the Judicial Reform**, which could open new opportunities for the application of this theory in the commercial sphere.

## LEGAL ALTERNATIVES FOR COMPANIES

### UNIDROIT Principles as Guidance

The UNIDROIT Principles on International Commercial Contracts offer a valuable alternative for Mexican companies. Although they are not binding per se, they form part of the Lex Mercatoria and can be used as reference in international commercial disputes.

The principle of "hardship" or "excessive onerosity" establishes that when an unforeseen event fundamentally alters the contractual balance, the affected party may request renegotiation. Articles 6.2.1, 6.2.2, and 6.2.3 of these principles specifically contemplate:

- The general binding nature of the contract
- The definition of excessive onerosity
- The effects and procedures for renegotiation

### The Vienna Convention and its Applicability

Mexico has been a party to the United Nations Convention on Contracts for the International Sale of Goods (CISG) since 1989. Article 79 of this Convention establishes criteria for exemption from liability for impediments beyond the parties' control, which can apply to industrial materials, manufactured components, and other commercial goods.

### Force Majeure and Fortuitous Event

In the Mexican legal system, the concepts of fortuitous event and force majeure remain relevant:

- **Fortuitous event:** Natural occurrences that cannot be avoided (earthquakes, hurricanes, floods)
- **Force majeure:** Acts caused by third parties or authorities that make contractual compliance impossible (wars, embargoes, drastic changes in legislation)

Both figures can exempt the affected party from liability, provided that the unpredictability of the event is demonstrated and that it actually prevents compliance with the obligation.

### Practical Application: The COVID-19 Precedent

The COVID-19 pandemic generated a paradigm shift in the application of the Hardship Doctrine in Mexico. The Supreme Court of Justice established important criteria in lease cases that could extend to other commercial contracts: Jurisprudence 1a./J. 57/2025: Establishes that exceptions relating to payment exemption based on fortuitous event or force majeure do not depend solely on specific deadlines, but on the judge's obligation to attend to the Hardship Doctrine and take into account extraordinary unforeseeable circumstances.

## RECOMMENDED STRATEGIES FOR COMPANIES

### Preventive Measures

1. **Hardship Clauses:** Include in future contracts specific clauses that contemplate automatic renegotiation in the face of extraordinary events.
2. **Adjustment Mechanisms:** Establish price readjustment formulas linked to objective economic indices.

- 3. Expanded Force Majeure Clauses: Clearly define what events constitute force majeure, including pandemics, severe economic crises, and drastic regulatory changes.

### Corrective Measures

For contracts already in force, companies should consider:

**Viability Analysis:** Evaluate whether current circumstances qualify as extraordinary, unforeseeable, and beyond the parties' control.

**Timely Notification:** Deadlines for notifying extraordinary circumstances are crucial. In jurisdictions such as Mexico City, this deadline is 30 days.

**Exhaustive Documentation:** Compile evidence demonstrating:

- The unpredictability of the event at the time of contracting
- The direct impact on contractual balance
- Resulting to be excessively onerous

**Negotiation Strategy:** Propose specific modifications that restore the original balance of the contract.

### THE FUTURE OF THE HARDSHIP DOCTRINE IN MEXICO

The Mexican legal landscape could evolve towards a broader recognition of the hardship doctrine. Factors such as the judicial reform, recent jurisprudence related to COVID-19, and the increasing complexity of international commerce suggest that this legal tool could come to play an increasingly relevant role.

Companies that understand and prepare to adequately use these mechanisms will be better positioned to navigate future economic uncertainties, protecting both their commercial interests and their long-term contractual relationships.

The Hardship Doctrine is not simply an escape tool in the face of contractual difficulties, but rather a balancing mechanism that seeks to preserve contractual justice when extraordinary events fundamentally alter the bases upon which commercial agreements were built.

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