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LAYTONS<sup>LLP</sup>

March 23, 2020

## What is the impact of COVID-19 on commercial contracts?

Disputes, IP & Technology

The unprecedented outbreak of the COVID-19 pandemic has halted the world as we know it. From restrictions on movement to job losses, school closures and complete lockdowns, it is safe to say that severe disruption is likely to be far reaching and widespread for the uncertain foreseeable future. What effect does this changing society therefore have on your business?



Businesses need to be prepared to minimise the adverse impact the virus will have. This article explains the key legal and contractual issues which could arise as a result of the pandemic such as the disruption's impact on insurance cover and whether the virus could be covered as a force majeure event in your contract.

### Contractual Position: Force Majeure

Under English law, parties are bound by a contract they are a party to and are required to perform its obligations under that contract. If one party fails to fulfil its obligations, then it could face potential liability to its counterparty for breach.

If a force majeure clause however is in operation, then this could protect your business from being subject to such liability. Such a clause specifically deals with how an event affects a party's ability to fulfil its contractual obligations. Usually, contracts include a range of these types of events, such as various natural disasters and acts that are generally beyond the reasonable control of the parties.

The question in this case, therefore, is whether Coronavirus could be covered under the force majeure clause in your contract. It is important to review such a clause in light of the following considerations:

- Is the pandemic specifically covered as a force majeure event in the contract?
- If not specifically, is it the type of event that could fall within the more generic wording of the clause?
- Can causation be established between Coronavirus and your business' inability to fulfil its obligations?
- Have you taken reasonable steps to mitigate the effects of the event? i.e. considered obtaining goods/materials from alternative suppliers.
- What notice requirements apply? You must comply with the strict time limits within which force majeure claims must be made; otherwise your claim will be invalid.

If you can establish force majeure then it may lead to relief from performance, i.e. avoid outright termination of the contract by the counterparty or agreeing an extension of time to enable your business to still fulfil its obligations, albeit some time later.

## Impact on Insurance Cover

In these unfortunate times, it is likely that most businesses will have suffered some disruption to its day to day running. It is therefore important to know whether the loss your business has suffered as a result can be claimed on your insurance policy.

The Association of British Insurers released a statement on 17 March explaining that although standard business interruption cover does not include forced closure by authorities, your firm might have purchased an extension to their cover for closure due to any infectious disease.

A review of the specific wording of your insurance policy is therefore crucial, as is checking with your insurer or broker to see if you are covered.

If you are not covered, then it is worth considering whether you can invoke a force majeure clause to excuse performance of your contractual obligations. In addition, it is also worth considering whether you can rely on the doctrine of frustration, as set out in an article recently published by one of our litigation partners, Richard Harrison [here](#).

## Practical Steps to Consider

- review the force majeure clauses in your contracts in light of the considerations above, including seeking appropriate legal advice if the wording is unclear or to consider alternative solutions
- review the individual wording of your insurance policy and check with your insurer/broker to see if you are covered



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