

JPC

Coronavirus and the effect on business contracts

In current crisis stemming from the Coronavirus pandemic many businesses will be asking themselves 2 important questions:

- **WHAT CAN I DO TO PROTECT MY BUSINESS IF I CANNOT FULFILL MY CONTRACTUAL OBLIGATIONS?**
- **HOW DO I PROTECT MY BUSINESS IN THE FUTURE AGAINST THE RISK OF BEING UNABLE TO COMPLY WITH ITS BUSINESS COMMITMENTS?**

What can I do to protect my business if I cannot fulfill my contractual obligations?

The first thing to do is to check the contract/terms of business that govern your relationship with the other party. This may contain terms which enable you to modify or even terminate the contract in certain circumstances which are beyond either party's control. ("Force Majeure") Force Majeure does not in itself have a legally recognized definition and therefore if it is to apply it must expressly state the parameters by which either or both parties to the contract may be excused from performing its obligations.

Typically such a provision may state that an act of war or a natural disaster will enable the parties to modify or cancel the terms of a contract without redress. It may also make reference to the outbreak of a pandemic or epidemic as a reason for withdrawal from the agreed terms but in our experience this is rare.

If the contract does contain a Force Majeure clause and you believe that the exercise of it might be contentious it would be in your interest to have the agreement reviewed so that you can be advised and forewarned of the repercussions of giving notice to the other party that you are going to give the requisite notice in relation to it.

If the terms of business you have with the other party does not contain a Force Majeure clause it is possible that in certain circumstances the contract can be terminated if the performance of it is frustrated.

In very broad terms this may apply where the event relied on:

1. Is something that has occurred after the contract has been formed
2. Is fundamental to the contract and was not in the contemplation of the parties
3. Is not due to the fault of either party
4. Makes the performance impossible, illegal or radically different from that foreseen by the parties

Whether or not an argument can be successfully put forward that an agreement to supply goods or perform services has been frustrated because of the coronavirus pandemic will inevitably depend of the particular circumstances.

However although there appear to be no specific cases where a pandemic has been accepted by a court as a justification for a contract to be frustrated it may well be that in these extraordinary times this will change.

How do I protect my business in the future against the risk of being unable to comply with its business commitments?

The best way to protect trading position is to have your terms and conditions or contractual arrangements you have with other parties checked to see what protection (if any) they give to your business.

It may be that your own terms of business do give you adequate protection against the possibility of a pandemic arising.

However if you do think your business arrangements with other parties are likely to be affected by the coronavirus outbreak it would be in your interest we believe it would be a good time to have this checked now so that you are forewarned of the consequences in respect of your existing agreements and that you ensure you are protected going forward.

If you would like to discuss the above issues with us please contact Andrew Morgan on email amorgan@jpclaw.co.uk telephone 020 7644 6303 or connect with him on [LinkedIn](#) or Steven Porter on email sporter@jpclaw.co.uk telephone 020 7644 6091 or connect with him on [LinkedIn](#).