

Precautionary steps to minimise risk of Covid-19 on business

As the business world feels the effects the coronavirus (Covid-19) pandemic and takes steps to adapt, travel companies are notifying partners that their *force majeure* policies have been extended to all travellers from Mainland China and all properties within Mainland China. The result is that deposits received by hotels and guesthouses will be repaid to relevant guests regardless of the cancellation policies of these establishments. For smaller business this can have a severe impact on cashflows.



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“Businesses in South Africa should be aware of this and consider whether the outbreak may affect their commercial contracts and if so, which steps they can take to minimise their risk and exposure, both in the short-term and the long-term,” says Nadia Smith, commercial and finance law specialist at Caveat Legal.



Contractors beware of new clauses in road tender deals

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Precautionary steps business leaders could take include:

- assessing the risk of the outbreak causing the business or its counterparties to be unable to meet its contractual obligations;
- considering whether the affected contracts include a *force majeure* clause that will offer protection to the business or its counterparties in connection with the outbreak. *Force majeure* clauses provide relief for a party in the event of certain unforeseeable circumstances (such as war, strikes or natural disasters) occurring that prevent such party from fulfilling its obligations;
- if the performance of the business is contingent upon the supply by counterparties affected by the outbreak, considering alternative strategies to limit any impact such constraints may have on the supply chain;
- reviewing funding agreements to determine whether the outbreak or the reaction of the markets may trigger any material adverse change provisions;
- determining if any additional information needs to be shared with funders or creditors based on the information

undertakings included in its contracts (in particular funding agreements);

- considering whether any contractual time limits need to be adjusted to allow sufficient time for fulfilment of obligations;
- when negotiating the terms and conditions of current contracts, inserting provisions addressing potential issues for compliance that may be caused in the long-term;
- checking the insurance arrangements in place for the business and whether they provide for issues such as a break in the supply chain, goods being diverted to different ports or employees being quarantined whilst on business trips; and
- if a contract breach is inevitable, considering whether to enter into good faith negotiation with counterparties to preserve long-term relationships and avoid legal action being taken.

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