

Coronavirus, contracts and *force majeure*

By [Liz Pinnock](#)

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The coronavirus is having a significant impact on the global economy as it increasingly disrupts production, supply chains and travel. With that in mind, organisations should consider any potential legal risks and how to protect themselves against them.



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In January, the World Health Organisation (Who) announced that the outbreak of the coronavirus was a public health emergency. Disruption has been caused as a consequence with many businesses closing, supply chains being disrupted, ports and borders closing and travel restrictions being applied. In these circumstances, *force majeure* claims may arise. Under international contract law, *force majeure* refers to a superior force, or unforeseen event, beyond the control of a state, making it materially impossible to fulfil an international obligation and is related to the concept of a state of emergency.

Force majeure clauses are often included in commercial contracts in case certain circumstances prevent the fulfilment of contractual obligations. These clauses operate to delay or absolve one or both parties to a contract of all or part performance of their obligations on the occurrence of certain events which are outside their control.

These may include:

- Acts of God
- Natural disasters
- Epidemics or pandemics
- War
- Strikes
- Acts taken by governments

Whether or not the coronavirus will constitute a *force majeure* event will depend on the relevant contractual wording and interpretation. The China Council for the Promotion of International Trade announced on 30 January 2020 that it would issue *force majeure* certificates. This will assist in legitimising any claims for *force majeure*, but ultimately the burden is on

the party seeking to claim *force majeure* to prove that the coronavirus falls within the contract wording and that non-performance was a result of the outbreak. It must also show there were no alternative means for performing its obligations and that it has taken all reasonable steps.



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The impact of invoking force majeure

- Suspension of contractual obligations
- Non-liability
- Extensions in regard to fulfilling contractual obligations
- Renegotiation of terms and conditions
- Obligation to mitigate losses
- Contract termination

How businesses can prepare

- The review of all contractual agreements
- If a force majeure clause is viable, consider the implications of invoking it
- Consider alternative methods or processes for fulfilling contractual obligations
- Record and maintain proof of disruption
- Consider the potential impact of the coronavirus when entering into new contracts
- Consider whether insurance cover is in place
- Be mindful of acting in good faith and your adherence to reasonable commercial standards of fair dealing – particularly in times of exceptional circumstances such as those in which the world currently finds itself.

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