

CORONAVIRUS DISRUPTION

HOW THIS COULD AFFECT YOUR CONTRACTUAL RIGHTS



Clearly we are in unprecedented times and a lot of events, activities and parts of normal day to day life will be cancelled due to the Coronavirus.

We explore below some of the legal issues which arise from contracts which can't now be fulfilled.

If you have a contract (for example to supply or receive goods or services), and the contract is affected by Coronavirus, you could still have rights or obligations. This could be the case even where the problem is caused by government restrictions or suppliers letting you down. This note briefly looks at some issues that could be relevant.

Many contracts have a force majeure clause about what happens if something stops or delays you or someone else performing the contract due to factors outside your or their control. It's important to carefully check the contract wording as this would have a big impact on whether Coronavirus disruption excuses you or another party from obligations.

If there is no force majeure (or similar) clause in the contract, English law does not currently imply such a clause. Force majeure clauses differ, but you may need to show:-

- the specific Coronavirus disruption is covered by the actual wording;
- the outbreak caused performance of the contract to be prevented or delayed due to factors mentioned in the clause; and
- all reasonable steps have been taken to mitigate or minimise those factors.

You might need to think about whether there are other ways of performing contractual obligations, such as sourcing staff, equipment or materials elsewhere. There might also be important rules about the information that needs to be given to other parties.

If the actual disruption is covered by the force majeure clause, the contract might also deal with:-

- extension of timescales;
- rights to terminate;
- who bears extra costs of the disruption;
- whether someone is liable for non-performance or delay.

You might also benefit from a legal concept called frustration. If this applies, a contract could be terminated where a big change in circumstances makes it impossible to perform the contract or performance would be radically different. But frustration only applies in narrow circumstances and only offers limited remedies, so it needs to be assessed on a case by case basis.

You might also be protected under insurance and the policy wording should be carefully checked.

Please let your usual MKS contact know if you have any questions and they can put you in touch with someone who can help.