

Article Information

Authors: Nick Burkett, Angelina Kozary, Denise Burloff, Ted Williams

Service: Commercial Contracts, Corporate & Commercial, Insurance, Personal Property Securities, Projects, Infrastructure & Construction

COVID-19 FAQs: Contracts, Insurance & Supply Chain Issues

Piper Alderman provides practical guidance for companies during the COVID-19 pandemic

1. Is COVID-19 a situation covered by “force majeure”?

Answer: Whether or not COVID-19 is a force majeure event will depend on the terms of the particular contract, and specifically the breadth of the force majeure clause. Whilst such clauses may expressly contemplate pandemics (such as COVID-19), it is important to consider the drafting of each clause individually and in the context of the particular issue at hand. For example, some force majeure clauses may limit their application to the effects of COVID-19 on the site where works are being performed (as opposed to the broader supply chain). In such cases, it is unlikely the clause will cover COVID-19.

2. Does my contract provide me with relief for this type of event and does it limit that relief to events at site only or through the supply chain?

Answer: Again, it depends on the terms of contract. If the effects of COVID-19 on a contract qualify as a force majeure event, generally a force majeure clause will provide for some form of relief. Typically this would include the right to extend time or suspend performance for a period, and even to terminate. None of these rights can be assumed, they all depend on the terms agreed.

Government responses to the pandemic may also fall within the ambit of a “change of law” provision. These may provide for relief arising from unforeseen law changes which affect or delay the ability to meet contract objectives.

Consideration should also be had to the extension of time clause as a force majeure event or change in law may qualify as an event giving rise to a right to extend time.

In limited cases, where it can be established that the whole purpose of a contract is prevented from happening because of the pandemic, relief under the common law principle of “frustration” may arise. This is difficult to establish.

3. Is there a gap between the relief to which I am entitled and the relief to which my suppliers are entitled?

Answer: This is dependent on whether the terms of your suppliers contract is ‘back-to-back’ with your obligations to your client. ‘Back to back’ is not a legal concept but a shorthand way of saying that the obligations of your supplier to you are expressed in the same way as your obligations ‘upstream’. This requires consideration of the terms of both contracts. Unless effort was made at the time of entering the contract to ensure that this was the case, it is best assumed that this will not be the case. There is good reason to consider updating your contract suite to ensure that your future supply contracts are back to back agreements.

4. What is our position with PPSA Registrations by suppliers and other third parties over our stock?

Answer: Where stock is supplied to you under a retention of title arrangement (that is, where the supplier effectively owns the stock until it is paid for), and has registered a purchase money security interest (PMSI) or an interest in specific collateral on the Personal Property Securities Register, the stock may be seized by the security holder and sold in accordance with the PPSA, having regard to any prior registered security interests. Before any seized collateral is sold, notice must be given to you and other security holders. Importantly, the secured stock can be redeemed (you can pay the debt owed and take it back) or the security interest reinstated by agreement at any time prior to disposal of the stock. The terms of the underlying agreement and the validity of any security interest should be considered in any attempt by a secured creditor to enforce its security interest.

5. **Does our insurance cover us for any of the losses we are experiencing because of COVID-19?**

Answer: Trading losses caused by a general economic downturn will not generally be covered but business interruption losses may be covered under some policies in the event of a disruption to production/business. If you have trade credit insurance this may cover insolvency of customers. Issues associated with employees who become ill or stranded while travelling may have cover under a travel policy. Employee liability claims may fall under a WorkCover policy.

6. **Which insurance policies should I be reviewing in relation to COVID-19?**

Answer: Industrial Special Risk (Business Interruption), Travel Policies, WorkCover policies and debtor/trade credit insurance.

7. **Does our business interruption policy cover us for COVID-19?**

Answer: Coverage may be available under an ISR policy - generally only by way of extension agreed at the time of placement although in some cases standard wording may cover a given loss. Cover may relate to infectious diseases or forced closure of production facilities. Coverage questions may require consideration of a number of different clauses of the policy - we are happy to review for you.

8. **Does my policy cover my supplier?**

Answer: If you are covered, there may be an extension to suppliers who suffer from an event that would fall for coverage under your policy. This will vary from policy to policy and we are happy to review. Contact [Nick Burkett](#) or your usual Piper Alderman contact for specific advice in relation to your organisation's particular situation.

These FAQs are provided as a guide to some of the issues you may need to consider. The answers are general in nature and are not intended as legal advice. Before acting on any information provided, please contact us for advice that takes into your organisation's situation.