

# The Impact of the COVID-19 Pandemic on Contracts Regarding the Manufacture, Distribution and Sale of Goods

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# Introduction

The COVID-19 global pandemic has resulted in an unprecedented shock to the world's economy. A great many businesses have seen dramatic and sudden changes in demand and revenue and many businesses involved in the manufacture, distribution and sale of so-called "non-essential" goods have been forced to temporarily close because of government-enforced lockdowns, social distancing regulations, supply chain disruption and/or a collapse in demand.

While the immediate focus of many businesses has been on managing the impact on staff and arranging available government financial support, it is clear that the contractual consequences of the ongoing disruption and resulting changes to the business landscape will be significant. These issues will come into sharper focus the longer the crisis continues, as businesses re-start their operations as the current lockdown is relaxed and as businesses adapt their operations in the future so as to be better prepared.

Now, in many countries (including the UK), the focus is shifting to encouraging a return to economic activity in sectors such as manufacturing and construction as fast as possible (but subject to (i) being able to implement safe working practices which take full account of the government's guidance on social distancing and (ii) workers being able to travel to work). If all of this goes well over the next few weeks, some retail and hospitality businesses may be allowed to re-open from July 2020.

In all of this, those business that are able to re-start their operations more quickly are likely to benefit the most from the expected relaxations in the current lockdown as they will be better placed to be able to take market share from competitors who are slower to recover.







However, for any business that re-starts their operations, new difficulties will need to be considered including:

- What is the demand likely to be?
- Can a business obtain its essential supplies?
- Can a business restart its operations profitably?
- What happens if there is an upsurge in the COVID-19 infection rate?

Given the critical shock of COVID-19 to the global economy, the contractual implications (both for existing and new contracts) will be many and varied. Great care will be needed to ensure that contracts provide all businesses with practical solutions, while properly protecting legitimate business interests. In all of this, we can guide you through the myriad of complex contractual, commercial and legal issues that will arise around the world to best protect you from the adverse effects of the COVID-19 pandemic and to best help you to recover as the lockdown measure start being lifted around the world.

This document considers some of the key contractual issues that businesses (particularly those involved in the manufacture, distribution and sale of products) need to consider as they assess their critical needs, vulnerabilities, protections and their ability to mitigate risks both under existing contracts and as they develop new contractual arrangements. The issues for those businesses involved in the delivery of services will, in some respects, be different.

**Click below to go directly to our guidance on the issues to consider at different stages of the crisis and the anticipated return to work.**

	<b>1.</b> What Are the Immediate Contractual Issues During Lockdown?
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# 1. What Are the Immediate Contractual Issues During Lockdown?

Many businesses will be dealing with immediate issues, in particular:

- Analysing affected contractual obligations and the potential consequences of any defaults (whether as buyer or seller)
- Considering what rights, remedies and reliefs (such as *force majeure*, frustration, relief events, material adverse changes and changes in law) may exist in relation to any contractual failures to perform as a result of COVID-19
- Considering how the business should respond to notices that it receives from suppliers and customers who may attempt to exercise any remedies and reliefs for *force majeure*, frustration, relief events, material adverse changes and the like, particularly where the underlying contracts are of significant importance to the business
- Considering which contracts need to be re-negotiated or terminated
- Considering scope for reducing volumes or suspending/cancelling purchases under contracts with suppliers and any rights to suspend payments
- Identifying notice requirements that have been or may be triggered
- Considering whether there are alternative means to perform contractual obligations or proactive steps that can be taken in relation to anticipating and/or reacting to the potential future effects of the outbreak
- Considering whether there is any insurance cover available, e.g. for business interruption
- Considering how to monitor government announcements and relief packages in real time to determine whether they may affect business operations and contractual commitments
- Applying for and obtaining benefit of any applicable government benefits, including any (such as commitments to pay suppliers early) that are relevant to contractual commitments
- Considering the impact of material contract defaults on financial covenants and maintaining regular contact with financial backers
- Considering how can contracts be varied in times of social distancing, particularly where digital signatures are prohibited
- How can companies best work together to support each other through the crisis on the basis that there is more to be gained long term by pulling together than by seeking contractual remedies, while being mindful of competition law and other regulatory restrictions (which may be relaxed in some jurisdictions but will not have been withdrawn completely)?
- Considering opportunities that may exist to develop/manufacture products (such as ventilators, sanitiser, PPE) that are urgently required





## 2. What Contractual Issues Need to Be Considered When a Business Restarts its Operations?

As businesses look towards an end to strict lockdown requirements, all of the above factors will come into sharper focus as businesses start trying to operate again. In particular, from a contractual perspective businesses may need to consider:

- How quickly can manufacturing, retail and other operations restart and, contractually, what arrangements need to be agreed with customers/suppliers to enable this to happen?
- Will demand levels bounce back to previous levels or will volumes be lower which, in turn, may lead suppliers to seek adjustments to volume based pricing or result in breach of minimum purchase obligations?
- Will some products not be manufactured again, particularly if they were getting towards the end of line and/or are low selling and, if so, what are the consequences of early termination on associated supply chain contracts?
- UK government guidance issued on 7 May on responsible contractual behaviour re the performance and enforcement of contracts impacted by Covid-19 encourages parties to act in a responsible and fair manner (to preserve jobs and the economy) by taking a long term view without overriding specific contractual provisions as regards the allocation of risk.
- Assessing (and, where applicable, implementing additional) supply chain risk management measures, including:
  - Maintaining good lines of communication with key suppliers, logistics providers and end customers and informing them as to what you are doing, steps you are taking on a regular basis, particularly where operations are re-starting on a gradual or staged basis – e.g. a business may opt to re-start by producing lower volumes and/or by producing a limited range of product lines at the outset
  - Assessing the ongoing risk posed to the supply chain, particularly in relation those supplies and suppliers (both direct and indirect) who are most at risk
  - Obtaining information from suppliers on measures they are taking in relation to their supplies and, if appropriate, considering whether procuring supplier agreement to minimum standards of conduct is necessary
  - Considering whether auditing of suppliers and reviewing the steps that they have taken in relation to disease and virus control/minimum standards of conduct is necessary/appropriate
  - Being alert to attempts by customers and suppliers to obtain declarations of compliance with applicable health guidelines, monitoring of staff, limiting contagion, etc., which could deliberately (on the part of one party) or inadvertently shift liabilities and/or expose the company to increased legal and financial risk
  - Considering whether to prefer certain suppliers and customers, but being mindful of not doing so unlawfully
  - Fully reviewing the terms of all standard terms of business and all key/critical contracts for risk and potential contractual protections, including:
    - Amending their own terms and conditions of purchase and sale to include wording for material adverse change, *force majeure* clauses, liability limitations and/or other fall-back clauses that work for the business
    - Dealing with the ongoing risk of COVID-19 in ITTs, responses to ITTs, quotes and the like
    - Considering how contracts might be interpreted in different jurisdictions
    - Considering how to deal with employees and others who turn up to a workplace while infected and without risking a further shutdown
- Considering how the business should react/stay open in light of a second wave of COVID-19 and/or future epidemics and pandemics, including:
  - Planning for such events
  - Dealing with the possibility in new contracts and by varying existing contract terms (see section 3);
- Keeping up-to-date with details of the affected areas through the World Health Organisation’s (WHO’s) Disease Outbreak News, trade associations and local, national and international best health practices
- Meeting with corporate peer groups to share good/best practice (being mindful of competition law issues that could arise from information sharing between competitors outside of specific areas approved by regulatory authorities)
- Checking insurance arrangements in detail – review policies, liaise with brokers and potentially notify circumstances/claims – e.g. does insurance cover economic loss during any virus period or losses caused as a result of a *force majeure* event (see the section below)
- Maintaining records and evidence to assist any future supply chain claims/defences – have a good audit trail
- Considering scope to switch suppliers and/or dual source products. Are there any easy access alternatives? Can products be modified to substitute different components/suppliers and how may this affect contractual commitments to customers, certifications/approvals etc?
- Being mindful that if there is a shortage of raw materials/ components, suppliers may be compelled to use alternative materials to meet customer demand. Such materials may not be quality-tested or even be out-of-spec and may also affect commitments in customer contracts, downstream product certifications/approvals, etc. Depending on the type of raw materials/components, consider whether there is a risk that they may be contaminated by the virus
- Logistics companies may not be able to deliver on time thereby affecting road, rail and sea deliveries. Air (and other) freight rates may also increase considerably over pre-virus levels and some delivery methods may not be available
- Considering liquidity issues as businesses will need to fund the cost of re-starting operations some weeks and months before revenues start to be received. Be particularly mindful of the liquidity of suppliers and customers and consider whether more use should be made of financial monitoring and reporting requirements, waivers to exclusivity arrangements if a supplier’s financial health deteriorates, bonds, guarantees and the like

### 3. What Issues Need to Be Considered When Negotiating New Contracts and/or Varying Existing Contracts?

All businesses need to carefully consider how to deal with the ongoing impact of COVID-19, the possibility of a second wave and future epidemics and pandemics on both new contracts and in relation to variations to existing contracts. While this can be expected to an extent, what relief (if any) should be negotiated into contracts?

Issues that may now receive greater focus when drafting/negotiating variations to contracts include:

- Varying supply chain/contractual arrangements to deal with a gradual and/or phased re-starting of operations (and the possibility that operations may need to be reduced in scope again if lockdown measures are re-introduced)
- Providing for increased flexibility within the contract and, in so doing, assessing:
  - Appropriateness of unqualified exclusivity (particularly in the event of supply chain disruption or where dual sourcing may give greater supply chain security)
  - Appropriateness of agreeing to minimum volume commitments and ability to amend them in particular circumstances
  - Flexibility to amend specifications to allow use of alternative components/materials where necessary
  - Ability to partially terminate supplies where, e.g. only certain types of services continue to be required
- Considering rights to prefer particular customers where supplies are restricted
- Price and supply variation clauses which are triggered if there are significant supply chain shocks
- Provisions requiring full supply chain transparency (and potentially greater control over sub-contracting and more extensive audit rights) including early notification of potential supply chain issues
- Terms addressing the increased risk of insolvency/ financial deterioration on the part of customers and suppliers, including termination rights, rights to amend payment terms, retention of title to goods and other security for payment
- *Force majeure* provisions will no longer be seen as just boilerplate. One size will no longer fit all businesses and/or circumstances. Rather, careful thought needs to be given to the scope and impact (suspension, alteration, termination, etc.) of *force majeure* events
- Notice and variation provisions which require a written notice or variation to be sent in hard copy
- Terms addressing health, safety and compliance with policies/procedures that may be implemented to address risks of transmission of disease
- Practical workability of dispute resolution/jurisdiction and choice of law provisions now that they are much more likely to be invoked.





## 4. What Are the Longer Term Contractual Issues to Consider?

Looking further ahead to the future and to more strategic decisions:

- How should companies proactively consider the appropriate allocation of risk and consequences of further business deterioration resulting from the ongoing COVID-19 outbreak post lock down and if there are any future pandemics or other global shocks?
- What is the longer term impact on global supply chains? In particular, how will the impact of COVID-19 affect the underlying cost of doing business, delivery arrangements, pricing, material adverse changes and, ultimately, liability and termination provisions? In all of this, new partnerships are forming, and building in supplier and supply chain flexibility will be key to coping with uncertainty. In so doing, flexibility may be more important than finding the cheapest source of supply.
- Consider whether components should now be sourced from suppliers who can produce components into different parts of the world or should component supply be split between multiple suppliers in different parts of the world so as to reduce the dependency of a business on a critical supplier in one country? This will mitigate against risks associated with epidemics and natural disasters in particular countries or regions.
- Should more components be manufactured locally or at least in the same geographic region, so as to reduce the risk of delays related to transport difficulties?
- Will the COVID-19 pandemic drive businesses to invest more in smart factories that are not dependent on staff working in close proximity to each other on the production line?
- Will businesses look to reduce their dependency of supplies from one part of the world, particularly China?
- Should greater use be made of additive manufacturing techniques (3D printing) so as to localise supply chains as far as possible?
- Is it possible to make greater use of digital routes to market, particularly for retail, and what are the consequences regarding the need for retail space, warehousing and logistics capability?
- Should more use of home-working become the norm and what are the IT and security implications?
- What steps should be considered to mitigate against the risks of future epidemics and pandemics, both nationally and internationally?



## 5. How May Contracts be Interpreted From a Legal Perspective?

We have already touched on the need to consider provisions relating to *force majeure*, frustration, relief events and material adverse change in the above sections. However, these are all complex issues and merit some further explanation as to how they may affect different contracts in different ways.

Generally speaking, an English court will look to:

- Follow the natural language of the contract even if the results of doing so may be disastrous for a party
- Take a restrictive view on the interpretation of implied terms; essentially, it will have to be so obvious as to go without saying or be necessary for business efficacy rather than as being a rescue from uncommercial terms

Will *force majeure* apply? Typically, the purpose of *force majeure* provisions is to provide relief by suspending performance because an event arises which is beyond the reasonable control of the obligated party which delays/prevents performance (or in some cases makes performance substantially more difficult/costly). Then, typically, if the event continues for a period of time, one or both parties may be able to exercise termination rights. Often (and mistakenly) overlooked as “standard boilerplate”, the extensive impact of the COVID-19 outbreak on global supply chains is likely to bring such provisions into sharp focus over the coming weeks and months. However, all is not clear cut and the following questions will arise:

- Does a contract actually contain a *force majeure* provision?
- If so, does the *force majeure* clause look to give relief for all events beyond the reasonable control of the affected party (sometimes examples are given) or is relief only given in respect of specific named events such as a natural disaster, a fire or flood?
- Absent specific contractual provision, English law will not, by default, protect a party from liability due to events, beyond their control, such as the COVID-19. If a party wants such protection, they are expected to reserve it for themselves in the relevant contract. However, if the contract is not governed by English law, the actual governing law will be important to consider as other laws do provide for some statutory protections.
- There is no recognised definition of “*force majeure*” under English law. Rather, the parties to a contract are expected to define exactly what they consider to be “*force majeure*”. In particular, does the *force majeure* wording only apply where an event “prevents or delays” performance or does it purport to give relief where performance is “hindered” or made more expensive/uneconomic, etc.?

- Is the actual event excluded from the scope of *force majeure* by other provisions in the contract (e.g. by any obligation to have taken prudent steps to avoid, exclusion where insurable, the impact of business continuity and disaster recovery provisions, etc.)?
- Difficult issues may arise in relation to the interpretation of epidemic and pandemic. Here, “epidemic” is generally regarded as being “a widespread occurrence of an infectious disease in a community at a particular time” whereas a “pandemic” is defined as a disease “prevalent over a whole country or the world” or as “a global outbreak of a disease”, as was characterised by the World Health Organisation. The distinction may seem fine, but it may have legal significance to one seeking to rely on COVID-19 as a qualifying *force majeure* event. Take, for example, a major project where the relevant contract specifies “epidemic”, but not “pandemic” as a qualifying *force majeure* event. If there are no confirmed COVID-19 cases in the immediate and surrounding regions, COVID-19 might not be characterised as an “epidemic” in the project’s community and, hence, not contractually qualify as a *force majeure* event, even if it is characterised as a “pandemic” prevalent over the whole of the country and/or the world.
- If the contract does not specify either an epidemic or a pandemic as a qualifying *force majeure* event, a party seeking to use COVID-19 as the basis of *force majeure* may need to persuade its counterparty, an arbitral tribunal and/or a court that COVID-19 falls under the usual generic events described, such as “natural disaster”.
  - More importantly, one must also consider the actual “event” that is preventing performance. For example, is it because of:
    - COVID-19 itself (e.g. the workforce has fallen ill and is unable to work)?
    - A restrictive government order enacted due to COVID-19? In particular, governments across the globe have been vigilant in enacting protective and/or containment measures in response to COVID-19 that prevent the performance of contractual obligations, such as closing shops, venues and the like, preventing travel save for “essential” reasons, preventing ships from docking at ports to offload cargo?
    - A company’s own internal precautionary measure, such as where decisions have been taken to close factories due to supply chain difficulties or a the drop in demand from COVID-19-related fears?
    - Something else (directly or remotely) related to COVID-19?

The answers to these questions may require a close look at the relevant contracts. Some contracts may specify that government actions preventing performance qualify as *force majeure*. Some contracts may, instead, specify that some such events are at the risk of one of the parties. Some contracts may even be silent on such events, as contracts usually are in respect of a company's own internal policy or business decisions in connection to a *force majeure* event.

- What steps is the party who is claiming to be affected by *force majeure* required to take to mitigate the effects of *force majeure*?
- Is *force majeure* relief mandated or is it discretionary. If it is discretionary, commercially, does a business want to invoke *force majeure* (where invocation is not automatic)?
- If notice has to be given by one party to the other, how quickly must notice be given following the occurrence of the event? Here, many *force majeure* provisions require the party seeking protection to follow a prescribed process, often requiring formal notice to be served as soon as that party becomes aware of the existence of a potential *force majeure* event. For a party wanting protection, following such a process is critical – if any specified process is not followed, then there is a risk of jeopardising any subsequent claim for protection. Here, for many contracts, time may have passed and further issues will arise as regards any second waves as these may well be regarded as “to be expected”.
- Consider whether the consequences of invoking *force majeure* are appropriate. In addition to excluding liability for non-performance, many *force majeure* provisions will trigger rights and remedies for the other party – typically the option to suspend its obligations and/or to terminate the contract. These risks should always be factored into the decision as to whether to claim *force majeure* protection. As the different types of remedies may result in drastically different consequences, parties should be careful to invoke or react to *force majeure* events before fully exploring and understanding the relevant remedies and implications associated with the relevant contract and applicable law. In so doing, it is important to realise that the short-term benefit of claiming protection can be outweighed by longer-term consequences.
- Other options may exist. Even if a contract is silent (or unhelpful) on *force majeure*, it may contain other helpful general provisions. For example, the contract may provide a right to terminate for convenience, which then avoids a dispute over whether COVID-19 is or is not a *force majeure* event. Considering a contract in its entirety, not just any provisions directly relevant to COVID-19, is key.

- Typically, cases of *force majeure* arise from specific events that affected only one party (e.g. a building burns down, a ship sinks, etc.), whereas COVID-19 is affecting businesses globally at all stages of the supply chain. As such, an affected business may find customers and suppliers more willing than normal to adopt a “we are in this together” mind-set when formulating solutions. However, care needs to be taken in any such discussions to avoid goodwill gestures being used against you in the future or leading to the loss of valuable contractual rights and protections.
- Therefore, the potential options and consequences in pursuing and/or defending *force majeure* claims based on COVID-19 can differ drastically based on the relevant contract, as well as the law applicable to the contract, transaction, and/ or project. For example, English courts are likely to the view that the event must make the obligation impossible rather than more costly/difficult to perform if the *force majeure* wording is based on “prevent/delay” wording, but are likely to take a more generous approach if the wording is expressed to give relief where performance is “hindered” or has become “uneconomic”.
- Regardless of the occurrence of an event of *force majeure*, many difficult issues can arise in working out the obligations of the parties leading up to the event of *force majeure*, including how partially completed work is valued.

Will a party's obligations under a contract be “frustrated” by COVID-19? As with *force majeure*, frustration will not give relief for inconvenience or hardship. Rather, the English courts are expected to take the view that the obligation will need to be impossible or illegal to perform. Also, frustration won't apply where parties have allocated risk of event occurring to one or other party (for example, by including a suitably drafted *force majeure* clause). As a result, companies that are adversely affected by COVID-19 may not be able to benefit from frustration as a means of avoiding their contractual obligations unless the contract becomes illegal to perform. Interesting questions will doubtless arise following the forced shutdown of retail and hospitality businesses alongside those in manufacturing whose complex supply chains could not be sustained. As such:

- The frustration of a contract will only occur when a contractual obligation has become incapable of being performed “because the circumstances in which performance is called for would render it a thing radically different from that which was undertaken by the contract.”
  - If a party is able to perform part of the contract, then the performance of the contract will not be frustrated. Thus, if it can be shown that action could be taken to enable performance, for example by obtaining a new or different licence or complying with a different regulatory regime, the contract will not be frustrated.



Other jurisdictions may have a similar legal concept to frustration and/or a concept of hardship which may apply to a particular contract. These concepts may mean that courts in that jurisdiction have the ability to reopen the contract and to adjust it in some way to mitigate the frustrated element or hardship. Applying English governing law clauses may go some way to alleviate concerns that the contract can be adjusted in this way, but this will be subject to the enforcement of any such judgement from the English courts in any such country and any foreign jurisdiction principle that their concepts of frustration or hardship are mandatory and therefore override express choice of law.

Some contracts contain express “material adverse change” wording that provide express financial relief in relation to, for example, cost increases over a threshold. Here, it will be critical to assess whether or not the COVID-19 pandemic is the real cause of business difficulties or if it just tipped things over the edge for a business that was already facing difficulty. As such, for a business to get relief under a material adverse change clause, COVID-19 must be the real cause of the issue.

Much will also depend of the wording of any clauses and, in particular, whether the relief is mandatory or discretionary. In addition, typically, the change in question cannot be fleeting or transient. In other words, it must have an enduring impact on the capacity of the business to meet its obligations under the contract. At present, the likely duration of the COVID-19 pandemic remains uncertain – some experts argue it will be months, while others suggest the negative consequences will affect businesses for years. As such, material adverse change clauses are likely to be of most benefit to businesses in the worst hit sectors in which many businesses will not recover quickly (or at all) from the crisis.

In most cases, it will be necessary to consider whether the contract itself provides any other provisions which may give some relief from the adverse consequences of COVID-19. For example, what provisions exist in relation to:

- Price adjustments
- Change in law clauses. However, if the contract is silent regarding changes of law, the risk is that any changes to contract performance required to ensure a party does not infringe COVID-19 related changes in law will have to be implemented by the party affected and the costs will lie where they fall. In addition, some contracts distinguish between costs arising from general as opposed to specific changes in law
- Change control clauses
- Breach of contract relating to, for example, late deliveries
- Any ability on the part of suppliers to pass on additional costs and/or additional delivery charges

In addition, the following clauses are likely to be of use in resolving any disputes without recourse to the courts:

- What does the contract say regarding matters such as delay and any resulting liquidated damages and/or liability for line stops?
- Are there any rights of audit and validation re matters such as costs?
- What are the governance, escalation and dispute resolution provisions?
- What are the remediation provisions?
- Are there any transitional provisions on termination to ensure continuity of supply for a period?

Finally, English courts may be prepared to grant injunctions to prevent suppliers from simply ceasing to supply.



## 6. What Are the Options?

### Existing Contracts

- With regards to existing contracts, consider what the party seeking to enforce a contract wishes to achieve. For example, does either party want to:
  - Enforce an existing contract on a supplier regardless of COVID-19?
  - Renegotiate a contract?
  - Get out of a contract?
- Doing nothing may be an option, but remember that:
  - Each party remains liable to perform in full regardless of adverse changes
  - It is possible that the performing party may quickly be in breach of contract
- Doing nothing may be a valid option in the following circumstances:
  - Benefiting party wants to demand compliance with current favourable terms post COVID-19
  - Performing party is confident of ability to perform on the basis of current terms
  - Risk of opening up a COVID-19 debate may be a greater risk to one party than the other
  - Contracts are short term, close to expiry or terminable on short notice

### New Contracts

- Who takes the risk?
  - Should one party assume some or all COVID-19 related risk, e.g. the supplier has to continue supplying at the same cost and to the same timescales or should the buyer be expected to take all COVID-19 related risk of cost increases and delays
  - Should costs stay where they lie?
  - Can prices be varied? Here any buyer will want to make sure that any costs are shared between all of the supplier's customers
- Need to consider the ongoing impact of COVID-19 on the global economy and all new contracts that are entered into:
  - Spiralling costs
  - Delivery issues
  - Exchange rate volatility
  - Other negative supply chain factors

- The following options regarding hardship implications should be considered:
  - Negotiate rights to vary the contract and/or prices in light of any actual material adverse changes due to ongoing COVID-19 issues. However, this only kicks the can down the road. On the other hand, if a negotiation process is used, consider what will happen if the parties cannot agree. For example, does that then give rise to one of both party's having a right to terminate, does the agreement continue on its existing terms- or will the issue go to a form of escalation procedure followed by alternative dispute resolution, such as expert determination or mediation? If alternative dispute resolution is selected, it may be that some methods lend themselves better to disputes arising from COVID-19 than others and the choice of "expert" may be crucial to an acceptable result being achieved
  - Agree specific consequences arising out of the effects on the ability to perform such as varying prices and delivery timescales
  - To what extent should relief clauses apply
  - Should any COVID-19 related market disruption be sufficient to trigger termination?
  - How should the adverse cost implications arising from COVID-19 be dealt with and validated?
- Are any structural changes to the supply chain required?
- Should future pandemics be covered by contractual *force majeure*, hardship relief, other reliefs and/or termination rights? If so, consider the triggers and make sure that the different remedies do not contradict each other. In particular, if "material adverse change" wording is included, how is the change baselined?
- Consider the use of dispute resolution mechanisms.
- Include non-contractual obligations within the scope of governing law clauses to avoid the risk of the law of the country in which the tort occurred being applied.
- Consider use of arbitration provisions rather than use of courts in contracts with EU companies.

# Contacts

For further information, please contact:



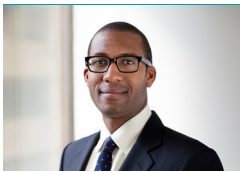
**Simon Jones**

Partner  
T +44 121 222 3412  
M +44 785 006 2155  
E [simon.jones@squirepb.com](mailto:simon.jones@squirepb.com)



**Stuart James**

Partner  
T +44 121 222 3645  
M +44 782 517 1894  
E [stuart.james@squirepb.com](mailto:stuart.james@squirepb.com)



**Carlton Daniel**

Partner  
T +44 20 7655 1026  
M +44 754 593 5589  
E [carlton.daniel@squirepb.com](mailto:carlton.daniel@squirepb.com)



**Andrew Wilkinson**

Partner  
T +44 207 655 1783  
M +44 774 049 0783  
E [andrew.wilkinson@squirepb.com](mailto:andrew.wilkinson@squirepb.com)



**Paul Jinks**

Director  
T +44 113 284 7234  
M +44 782 520 4582  
E [paul.jinks@squirepb.com](mailto:paul.jinks@squirepb.com)



**Emma Ball**

Director  
T +44 161 830 5222  
M +44 754 511 0742  
E [emma.ball@squirepb.com](mailto:emma.ball@squirepb.com)



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