



## **CONTRACTUAL REPURCUSSIONS: COVID-19 AND FORCE MAJEURE CLAUSES**

Since its inception in December of last year, Covid-19 remains at the forefront of everyone's minds. With cities shutting down, citizens being quarantined, and schools being closed, one may or may not have given much thought to the contractual repercussions of Covid-19.

### **Express Force Majeure**

The conversation around "force majeure" clauses and their effect was recently spiked by the catastrophic terror attacks and Brexit. The Covid-19 phenomenon has no doubt brought further attention to these clauses with regards to whether it qualifies as a *force majeure event*.

A "force majeure" clause, which is French for "superior force", is a contractual clause which, if included in a contract, typically seeks to excuse one or both parties from fulfilling their contractual obligations on the happening of certain trigger events or circumstances beyond their control.

### **Is non-performance justified by Covid-19?**

At this stage, many are struggling to decipher whether Covid-19 will be deemed to be a *force majeure event* and if so, how it could affect their future contractual relations. Advice is being sought by many contracting parties around the consequences for failing to perform obligations under a contract.

Whether or not Covid-19 triggers a force majeure clause, and therefore potentially relieves one or both parties from their contractual obligations, is case specific and will depend on

how the clause was drafted and its scope. The clause *may* be drafted so as to include a specified list of qualifying force majeure events. The events may explicitly refer to terms such as “notifiable diseases”, “pandemic” or “illness”.

For Covid-19 to constitute a force majeure trigger, however, it must go further than simply to theoretically fall within the list of events provided for by the clause. Covid-19 must be deemed to prevent contractual performance and be the sole reason for the prevention.

If this regime is not applicable, the common law doctrine of frustration may apply.

### **Advice**

If you would like advice on your contractual agreement and how Covid-19 may affect it, please do not hesitate to contact Wollens : [info@wollens.co.uk](mailto:info@wollens.co.uk)