

MANAGING YOUR CONTRACTUAL OBLIGATIONS DURING COVID-19

The economic downturn and restrictions brought on by the COVID-19 pandemic have hit many businesses hard. Even with government subsidies, many businesses are struggling to meet their contractual obligations. If you are concerned that your business will breach a contract as a result of the pandemic, these six steps will help you to mitigate the risk.

1. ASSESS YOUR RISK EXPOSURE



Review all your business contracts. Identify any consequences or penalties your business may incur if you are unable to meet the contract's terms.

For example, the security that you provided under the contract (such as a bank guarantee) might be called on by the other party, or you may need to compensate the other party if you fail to perform.

2. PLAN AHEAD AND TAKE STEPS TO MITIGATE



Take steps to mitigate your losses (and those of your customers), arising from COVID-19. Keep detailed records on how you are being impacted and the steps you are taking. These may be useful if a dispute arises.

3. IDENTIFY POTENTIAL SOURCES OF RELIEF



In the event that you are affected by circumstances outside of your control, your contracts may offer one or more of the following:

- a right to an extension on your time-sensitive commitments (and sometimes, a right to the costs related to that delay);
- relief from performing your contractual obligations; and
- a partial or full exemption or break from certain performance metrics (and the consequences of not meeting those metrics).

4. UNDERSTAND YOUR DISPUTE RESOLUTION OPTIONS



Check your contract's dispute resolution clauses to understand what is required and how to start the process. Generally, they:

- set out how the process is to be initiated (for example, by written notice) and how they are to be resolved; and
- mandate alternative resolution steps (such as mediation).

5. NEGOTIATE A COMMERCIAL OUTCOME



Be open and upfront with your customer and find solutions that suit both parties. When negotiating, have an idea of what you want to achieve. For example, you might want to extend the payment terms (even just for a period of time).

Avoid indicating that you may not be able to fulfil your contractual obligations. This could result in the contract being immediately terminated.

6. CONSIDER OPTIONS FOR ENDING THE CONTRACT



Your contract may offer ways for you to legally exit the agreement. You may be able to terminate:

- for convenience (ending the contract without a reason);
- if you are affected by circumstances outside of your control (i.e. 'force majeure' clauses and 'contract frustration'); or
- by agreement with the other party.

There can be serious consequences if you attempt to end a contract without the right to do so, or stop complying with the contract without ending it lawfully. Seek legal advice first.