



# COVID-19: Guide to reviewing existing agreements

1

**Identify the agreement where your performance or the other party's performance is affected**

2



**Identify affected obligations**

Prepare a list of each party's obligations that:

1. cannot be performed; and
2. can be performed but are now more onerous.

3

**Consider whether you still need to perform due to your counter-party not performing**



If the other party is not performing, consider whether any of your obligations are conditional on the other party's performance. If so, you may not be required to perform until the other party performs.

4

**Identify other relevant clauses in the contract**

Review the contract and identify clauses relevant to performance of the affected obligation. For example:

- Force majeure.
- Delay.
- Material adverse change or change of law.
- Service levels, liquidated damages or similar regimes.
- Termination, including termination for convenience rights.

5

**Review the force majeure clause**



Review the force majeure clause and consider:

1. Whether COVID-19 events fall within the definition of a "Force Majeure Event". So, for example, does the clause cover an epidemic or pandemic, a change of law, or an act of government? Or is there sweep-up wording to cover other events beyond the reasonable control of the parties?
2. Whether it applies only if performance is prevented, or if it also covers situations where performance is hindered or delayed.
3. What relief is provided, eg whether it suspends some or all of the obligations without liability, and whether it also allows for termination in any circumstances.
4. Whether any requirements or conditions must be satisfied. eg notification, duty to mitigate, etc.

6

**Consider whether performance is illegal**



Consider whether performance is now temporarily or permanently illegal due to new laws or Government directions. eg bans on people gathering. This may be a "frustrating event" (see step 6) or may temporarily excuse performance.

7

**Consider whether the agreement is frustrated**

Consider whether performance of the contract is now impossible or radically different from that which was intended. If so, this may immediately terminate the contract and discharge the parties from performing.