



PRACTICAL CONSIDERATIONS FOR THE CONSTRUCTION SECTOR

The construction industry is currently facing unparalleled disruption, with the legal implications relating to the pandemic wide-ranging and complex. Partner Natalia Sokolov provides a practical overview of the key considerations for those involved with construction projects.

Keep up to date

The UK Government is reacting daily and issuing guidance and news. It is important to monitor this closely for changes that may impact your construction site.

For example, at the date of publication of this article, the Government has not officially intervened to shut down construction operations across the UK. Apart from causing an element of confusion, one impact of this is that extension of time claims for Government intervention (for example under a JCT Design & Build Contract) is not available to a contractor at this time. The Construction Industry Council has written to the Government asking for clarification, and for sites to remain open, as long as they are safe to do so, with the intention of helping self-employed and small businesses to continue trading. . The Government has introduced some new measures already and you should be closely monitoring the position for future changes. Useful information can also be found [here](https://builduk.org/coronavirus/).

(<https://builduk.org/coronavirus/>)

Review your construction contracts

Parties should carry out an urgent audit of their current contracts particularly in terms of:

- Delays,
- Suspension,
- Termination,
- Exposure to liquidated damages,
- Extensions of time,
- Loss and expense claims,
- Variations to the contract.



Be alert to contractual interfaces linking these events to upstream contracts (such as leases, or sale contracts).

Note that prolonged periods of suspension may result in one or both parties being able to terminate the contract. Force majeure claims may be available, depending upon the timing of completion of the contract and whether a coronavirus outbreak was foreseeable at the time of contract execution.

It is also important to consider whether the contract has been frustrated (i.e. the circumstances have changed to such an extent that neither party can carry out its obligations).

Review the dispute resolution clauses and protect your business by serving the appropriate notices at the correct times.

Do not enter into future contracts without seeking legal advice. The ongoing risks are not known; there is therefore an argument for delaying entering into future contracts to balance risk and cash flow.

Insurance

It is important to make sure warranties and conditions within the policy are adhered to during this difficult time; a review with your insurers to check this would be highly beneficial. Check whether your policies cover a pandemic situation and where claims may be made to support your business. FCA guidance is found [here](https://www.fca.org.uk/consumers/insurance-and-coronavirus).

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Project Impact Assessment

Project managers should assess the cost and programme impact as well as the site-specific risks, the resilience of supply chains, possible supplier/materials alternatives and mobilisation timeframes. Collaboration is key, with the contractor, developer, sub-contractors and suppliers as well as landlords and landowners to balance risk reasonably. Working together is crucial for the construction industry to survive, as opposed to a claims mentality.



Health and Safety

Whilst, at the time of writing, the Government has not officially shut down construction sites, its advice is that workers must maintain a two-metre distance from others (HSE Guidance is found [here](#)). This means that many contractors and developers have chosen to shut down sites in the interests of health and safety. In this situation, the contract would not necessarily cover this expressly as a right to suspend; therefore, the parties should come to a commercial agreement and document it properly.

(https://www.hse.gov.uk/news/coronavirus.htm?utm_source=hse.gov.uk&utm_medium=refferal&utm_campaign=coronavirus&utm_content=home-page-banner)

Project Finance

Funders and stakeholders will want to review the position that any delay to the construction works will have in the developer's ability to service the debt. The Government has launched a support package for businesses including grants for employers, rate reliefs, a **Coronavirus Business Interruption Loan scheme**, VAT deferrals and assistance for the self employed. Please note that IR35 tax changes have been deferred until April 2021. Our Restructuring and Insolvency team at Things may also be able to assist your business.

(<https://www.gov.uk/government/publications/guidance-to-employers-and-businesses-about-covid-19/covid-19-support-for-businesses>)

Please note: Nothing in this article constitutes legal advice and we are not liable for any reliance on the information provided. This is a rapidly changing subject, and whilst correct at the time of writing, circumstances may have changed since publication. Please refer to Gov.uk for up-to-date advice on the Government's response to this issue.



To find out more about anything covered in the article, or to discuss the potential impact of the coronavirus pandemic on the construction industry, please contact Natalia Sokolov or another member of Thrings' Construction team.



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