

Coronavirus: Headline thoughts for New Zealand businesses

The novel coronavirus is giving the world a major scare. There is no doubt that it is also going to present New Zealand with an economic speedbump this year. Many businesses are already experiencing the direct impact of coronavirus. We have seen some exports to China stop overnight and tourism within New Zealand greatly affected due to international travel bans.

The group of New Zealand businesses affected by the virus is much wider than many think. Exporters to China, importers from China, and the tourism industry are all significantly affected.

Businesses are being forced to think about how their existing contractual arrangements deal with the virus. No doubt, once the dust has settled, they will also think about how they might do things differently from now on.

Here are some headline thoughts for affected businesses.

How good are your contracts?

Businesses are pulling supply and purchase contracts out of the bottom drawer right now. Unfortunately, a lot of New Zealand SMEs are discovering they may face unintended consequences under contracts that were signed without proper review. It will be no surprise that when large organisations (especially overseas ones) present a contract, the terms are often lopsided in favour of the large organization e.g. with unexpected withdrawal or cancellation rights. Very often the contract will be governed by foreign law – especially US law. That should almost never be the case where it is a

contract which is performed in New Zealand. It will almost never make sense for a New Zealand business to fight, say, a decision to cancel or withdraw a contract that is governed by the laws of another country, given the cost and hassle of litigating overseas.

The lesson for the future is simple. Do not sign contracts without properly reviewing and understanding how they affect your business.

Force majeure

Often contracts contain a force majeure clause which excuses a delay or breach, or may give a right to terminate, when a force majeure event occurs. Whether coronavirus triggers a force majeure clause depends upon the clause's specific wording. Although the virus may constitute a force majeure under one contract, it might not be a force majeure under another connected contract – such as a finance or shipping agreement. There is the potential for uneven losses across a chain of contracts.

If there is no force majeure clause, a breach of contract caused by the virus may be excused by the doctrine of frustration. Frustration is where an event beyond the parties' control makes it impossible or substantially impossible to perform the contract.

Our specialist [Commercial contracts](#) experts can provide advice on your existing contracts and assist with appropriate wording for new contracts that are entered into.

Are you insured?

Mainstream business insurance policies like business interruption are very unlikely to cover New Zealand businesses for losses they suffer as a result of the coronavirus. Talk to your broker about whether you have existing cover under policies like this. But typically business interruption policies only provide cover for physical events directly affecting your business. If you had product in transit to China, your "freight" insurance policies may give you some one-off cover. But those

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policies are highly unlikely to cover you beyond product that is in the air or on the water at the time China closed borders. So chances are that you will not have insurance cover for your major losses caused by coronavirus.

Our [Insurance law](#) experts can assist with interpreting your insurance policies.

Can you insure against risks like coronavirus? In theory, yes. But the difficulty is agreeing with your insurer the exact event you are insuring against. This is highly specialised insurance advice. If you want to investigate future insurance, make sure you are talking to an insurance broker who specialises in this space.

Banking covenants

The advice here is very simple. If you have borrowings, keep a careful eye on how the financial impact of the virus on your business is affecting your banking covenants. You never want to be in breach of those covenants. And keep your bank informed about how things are going.

Employment considerations

Businesses have a duty to eliminate or minimise risks and hazards to their workers and others who may come to the workplace. Exactly what this means will depend on the business itself and whether coronavirus gets through our border controls. It could mean simply advising workers to maintain basic hygiene standards. However, in an extreme situation a large percentage of the workforce may be affected by, or recovering from coronavirus.

Workers are currently being stood down for 14 day periods if they have recently returned from China or potentially been in contact with anyone who may have coronavirus. That raises a number of questions: Is this sick, annual or special leave? Does an employer have the ability to stand someone down in an epidemic? Do health and safety obligations mean that an employee

must work from home or remotely if there is a risk to others?

Employees are entitled to down tools if they believe that it is unsafe to remain at work. Conversely, if business slows, employers may need to consider reduced hours, leave without pay, or even possible reductions in staff. However, employers ought to look at their employment agreements and internal policies in case coronavirus does become a much larger issue in New Zealand. Hope for the best, plan for the worst.

Our [Employment law](#) Team are ready to answer any employment-related questions you may have.