LUPC and SUPC webinar
Force Majeure, Frustration & Contract Management

Edward Rimmell – Partner
Ben Holt – Partner
Introduction

• Examples of how is Covid-19 impacting contracts

• Two key themes

• We will cover:
  o Force majeure provisions in your contracts
  o Can the doctrine of frustration help?
  o Contract management, and avoiding (but preparing for) disputes

• Interface with the PPNs
Force Majeure and Frustration

• A scenario to keep in mind

• What are they?
  o Force Majeure - a contractual mechanism
  o Frustration – a legal doctrine
Force Majeure Clauses

What to look for in a force majeure clause

• Closed category of events?
• Anything outside of a party’s reasonable control?
• Does the event affect performance?
• Which obligations are suspended?
Force Majeure Clauses

Typical features of a force majeure clause

• A requirement for notice
• Suspension of obligations
• A right to terminate
• Obligation to mitigate
Frustration

• What is frustration?
• Three types of frustration
• Some key points to consider
Consequences of Frustration

• Automatic discharge

• All further performance is excused

• Sums paid before the frustrating may become repayable

• Credit may be given for expenses already incurred or benefits provided
Contract Management and Practicalities for Minimising Risk

- Don’t ignore the problem
- Do look at the contract
- Requirements for efforts to avoid non performance?
- Mitigate and minimise loss
- Termination - beware of:
  - unlawful termination;
  - Delay; and
  - Notice requirements
Contract Management and Practicalities for Minimising Risk

- Check trigger event
- Injunction needed?
- What is it worth: financially and reputationally
- Involve your comms team?
- Co-ordinate the team and avoid mixed messages
Contract Management and Practicalities for Minimising Risk

• Insurance
  o Check policies for any cover
  o Notify when “become aware of circumstances which could reasonably give rise to a claim”
  o In meantime, act as “reasonably prudent uninsured”

• Regulator notification?

• Contractual dispute resolution process
Contract Management and Practicalities for Minimising Risk

• Evidence
  o Preserve documents
  o Be careful creating new documents
  o Consider key witnesses

• Pragmatic negotiations
  o Without prejudice
  o Save costs & management time; minimise risk & gain certainty
  o Maintain relationships
  o Find a solution
  o Adhere to contractual variations requirements
Ed Rimmell
Commercial Partner
erimmell@vwv.co.uk
07788 313299

Ben Holt
Commercial Litigation Partner
bholt@vwv.co.uk
0771 504 8666

vwv.co.uk | Offices in London, Watford, Bristol & Birmingham
Lawyers & Parliamentary Agents