

# COVID-19 Business actions and legal considerations - Supply chain negotiations

- UK businesses will be taking important actions to improve their **Enterprise Resilience** in the current COVID-19 pandemic
- As part of businesses' **Operational Resilience** actions, businesses will have to manage issues in their supply chains. Suppliers of both goods and services, across national and international supply chains are being affected by COVID-19 due to labour shortages, government-enforced lockdowns and reduced logistic routes. We have identified 5 key legal issues for businesses when considering requests from their suppliers to renegotiate their terms
- We are seeing this already in sectors dealing with 'essential' goods/services. These businesses are being approached by their suppliers with requests to change their delivery schedules etc. These businesses have to balance the realities of their supply chain with their objective of meeting their own customers' demands and seeking to maintain their margins

	Price increases	Changes to delivery times	Request for upfront payments	Reduction in quantities/ service levels	Temporary suspension
Summary of Issue	<ul style="list-style-type: none"> <li>— Suppliers may seek to increase prices as they are forced to source goods/raw materials from more expensive sources and the cost of logistics may increase</li> </ul>	<ul style="list-style-type: none"> <li>— Supplier may wish to change KPIs, delivery schedules or delay milestones/acceptance due to labour shortages and transport/freight restrictions</li> </ul>	<ul style="list-style-type: none"> <li>— Supplier may request upfront invoicing and payment for goods/services before delivery to manage their own liquidity position as well as minimise any risks of their customers going insolvent</li> </ul>	<ul style="list-style-type: none"> <li>— Supplier may ask to reduce service levels or the quantities of goods that they will deliver due to labour shortages and government lockdowns</li> </ul>	<ul style="list-style-type: none"> <li>— Suppliers may wish to invoke their rights to suspend the contracts for the duration of the COVID-19 pandemic, using force majeure or claiming frustration</li> </ul>
What Should businesses do?	<ul style="list-style-type: none"> <li>— Consider whether to adjust other contractual provisions linked to price to achieve a favourable outcome e.g. minimum volume requirements, volume discounts</li> <li>— Consider putting in place short term alternative supply contracts with substitute suppliers if price increases unreasonable</li> </ul>	<ul style="list-style-type: none"> <li>— Consider the impact of such changes on your commitments and liabilities to your customers</li> <li>— Consider metrics for assessing which customers should be prioritised</li> <li>— Work through impact on other aspects of your contract with supplier e.g. co-investment, gainshare etc.</li> </ul>	<ul style="list-style-type: none"> <li>— Consider whether the point at which risk and title to the goods passing needs to be changed</li> <li>— Work through the effect on any relevant Incoterms in respect of international trade of goods</li> <li>— Consider whether this has any effect on insurance cover for when the goods are being transported</li> </ul>	<ul style="list-style-type: none"> <li>— Consider the impact on the operation of the order forecast mechanism</li> <li>— Where there is a reduction in service levels, consider the impact on regulatory obligations to consumers as well as the reputational impact</li> </ul>	<ul style="list-style-type: none"> <li>— Consider whether COVID-19 has actually made it impossible or unlawful for your supplier to fulfil its contractual obligations.</li> <li>— Analyse whether payment still has to be made in such circumstances</li> <li>— Ensure notification requirements followed</li> <li>— Assess supplier's mitigation obligations</li> </ul>

## Key Contact:

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