

# COVID-19: Covered

by Simon Tolson

1. Business planning – what are the key areas of your business operations where they need a Plan B (e.g. if materials are being sourced from a country most severely affected by the virus, what alternate materials can be used)?
2. Health and safety – what are your company’s health and safety responsibilities to the employees or workforce, particularly if they are working on site (e.g. are appropriate hand washing facilities available, do you need to provide equipment or training)?
3. Site lockdown – what will be done if employees or workforce contract C-19, and if works on site are shut down? How will this be done quickly and safely?
4. What about life-critical systems?
5. Understanding the supply chains – where are labour and materials coming from (e.g. are key materials being sourced from a country known to be particularly badly hit by the disease)?
6. Contract review – what do your contracts state about:
  - use of alternate suppliers or materials;
  - force majeure – including for epidemics (WHO has now declared coronavirus a pandemic);
  - relevant events enabling claims for extensions of time and additional money;
  - delay and liquidated damages;
  - rights to suspend or terminate the contract;
  - frustration – whether you could argue that your contract is “frustrated” (where a serious, unexpected event occurs that is beyond the parties’ control, making it impossible to perform the contract)? Note that this is a difficult argument to run in court.
7. Open discussion – one tactic may be to have an open dialogue with the counterparty, to negotiate and agree a way forward that will work for everyone without backsliding to confrontation or dispute.
8. Funding arrangements – if funding is in place, what does the funding agreement say, for example, concerning delay, additional costs, material changes (to the programme, the works or the construction contract), notifying the funder?
9. Other agreements – does delay under the building contract have a bearing on other collateral agreements that may be in place, such as development agreements or agreements for lease, marketing, conferences, etc?
10. Insurance – do you have any insurance policies that could help you recoup any losses? Are these in place and on foot already and do you need to get in touch with insurers under the terms of your insurance policy anyway?