

COVID-19 and the impact on Public-Private Partnerships in the UK

March 2020

Will project companies suffer deductions for service performance failures or unavailability?

Where there has been no specific action taken or instruction given by the authority but the services cannot be provided as required because, for example, staff are taken ill or are told to self-isolate then relief is unlikely to be granted for any unavailability or service performance failures which arise as a result.

Isn't this all just covered by force majeure?

The standard definition of force majeure events in SOPC or PF2-based project agreements does not extend to this type of event.

Could this be an emergency under the project agreement?

A COVID-19-related shut-down or service failure is unlikely to constitute an emergency under the project agreement, given that this definition is intended to apply to a short-term emergency, requiring mobilisation of emergency services.

Is there any possibility of relief under the project agreement?

Depending on the sector and any action taken by the authority, protection may be available under the provisions relating to compensation events, authority step-in, relief events or excusing provisions in the payment mechanism. Change in law may also be relevant depending on project agreement terms and steps taken by the UK Government.

What impact will this have on my financing arrangements?

If deductions are made as a result of service performance failure or unavailability and no protection is available, this will have an impact on a project company's ability to meet scheduled debt repayments under their financing arrangements. The market is alert to this issue and we expect borrowers and lenders to work together to agree a sensible approach.

For demand-based projects we might expect significant impact on footfall on roads and transport systems as people are encouraged to work from home or if European models of entire city lockdown is followed. All project stakeholders will be concerned to manage the cashflow implications of a sudden and prolonged drop in project revenues.

Impact on supply chains

The immediate subcontracts usually contain similar back-to-back provisions to the SOPC contract however, supply chain contractors lower down the chain may have the more usual commercial force majeure protections in their contracts. Project companies and their immediate subcontractors may need to prepare to deal with the non-performance of their suppliers in the near- or medium-term as the financial effects of the current circumstances are felt by the economy.

Will insurance cover the losses?

The usual "required insurances" on SOPC projects are unlikely to respond to claims related to personnel not being available to perform the services. However, policies should be reviewed and insurance advisers consulted.

Next steps?

- In the first instance, assume that the provision of services should continue as normal.
- Engage with the authority to identify the issue and agree how to deal with it under the project agreement.
- Keep funders informed of communications with the authority and any likely deductions or protection that may be available.
- Please get in touch if you require any specific advice on your project.

Contacts

Mark Berry

Partner

Tel +44 20 7444 3531

mark.berry@nortonrosefulbright.com

Claire Edwards

Knowledge Of Counsel

Tel +44 20 7444 2072

claire.edwards@nortonrosefulbright.com

Jenny Waites

Counsel

Tel +44 20 7444 5786

jennywaites@nortonrosefulbright.com

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EMEA22674 – 03/20