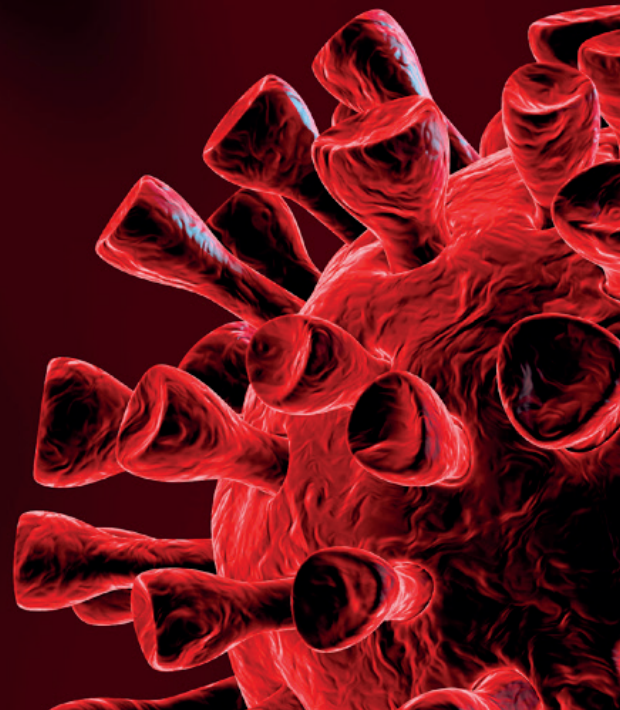
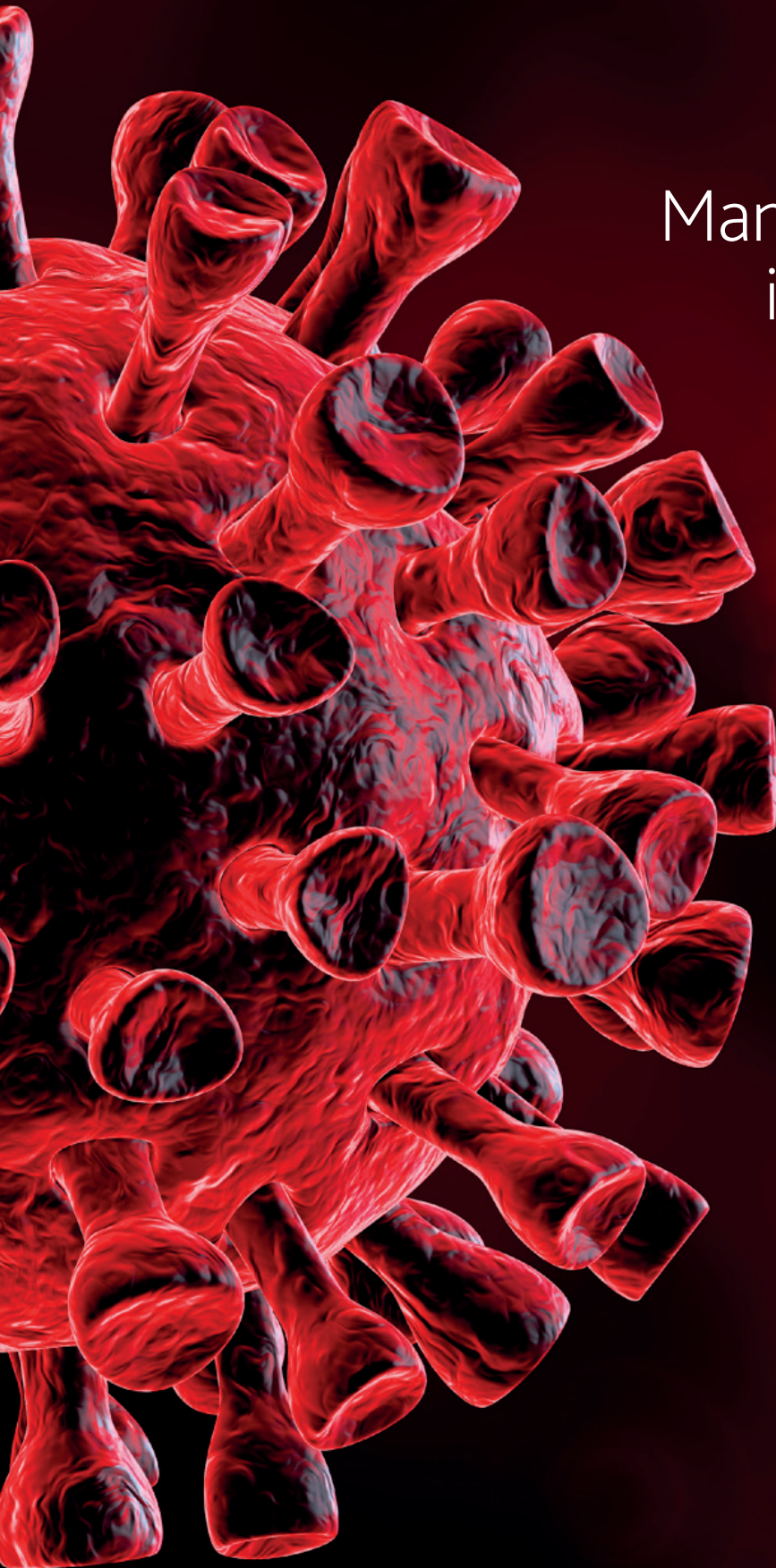




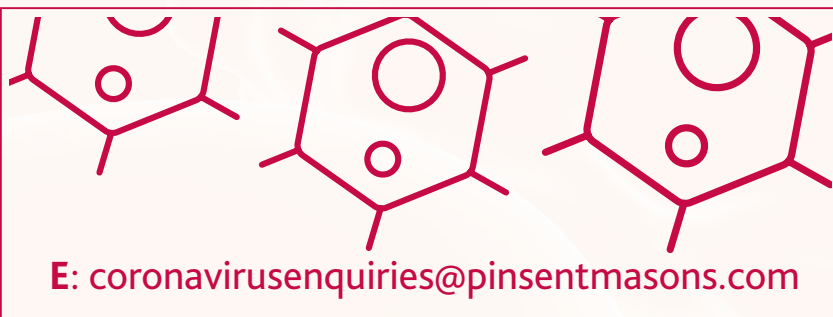
Pinsent Masons

Managing the business impact of Covid-19



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Managing the business impact of Covid-19

The Coronavirus (Covid-19) is having a profound impact on business globally. Supply chains, employees, event staging and travel are all already affected and have a significant impact on the operation of businesses. The situation remains unpredictable and businesses need to act promptly to rapidly changing circumstances.

As the situation develops a close eye should be kept on Government guidance and measures that may be introduced within relevant countries in order to contain or reduce the spread of the virus. These may range from self-isolation through to mandated quarantine or forced cancellation of events. Businesses will need to monitor these carefully in jurisdictions that they operate in so that the overall global impact can be factored into the business planning and response.

The situation remains fluid. In the UK the Government continues to keep the situation under review taking advice from international organisations and health officials on the best course of action. In some jurisdictions we have already seen Government mandated shutdowns, quarantine or travel restrictions. Businesses need to keep a close watch on these developments and adjust their plans accordingly as these changes may impact on their legal rights and obligations.

Overall we recommend that businesses establish a working group to review and assess the impact of Coronavirus and develop how the business will respond. This is particularly critical to ensure a consistent communications message with customers, stakeholders and suppliers.

In this guide we look at the key areas a business' working group should consider and the actions that they should take in order to respond to the situation. It is not intended to be an exhaustive guide but give an indication of the key issues applicable to most businesses. We cover:

1. Contracts and Supply Chain
2. Employment and Immigration
3. Facilities - Health and safety obligations
4. Public disclosure requirements
5. Event staging
6. Insurance obligations

If you would like further advice or guidance please contact one of our Coronavirus team listed on page 15 or Clare Francis who will be able to direct you to the relevant member of our team focusing on supporting businesses in responding to the Coronavirus.

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1. Contracts and supply chain

Many products and services in the UK depend fundamentally on fast, efficient supply chains. Any supply chain is only as good as its weakest link. The Coronavirus has the potential to disrupt supply chains in terms of parts, labour and Government restrictions.

Companies should act promptly to assess the risk to their supply chains and their ability to meet obligations under customer contracts. Modern supply chains are highly integrated, often cross-border and companies have increasingly come to rely on fast, lean, efficient supply chains. Supply chain failure can be catastrophic.

Commercial Contracts and Force Majeure

The exact position will vary from contract to contract and the relevant governing law of such. There is no overriding concept of force majeure in English law. Therefore, the ability to claim 'force majeure' in an English law contract rests solely on the drafting in the relevant contract. If the contract is silent then force majeure is not implied. In other words the contract would need to specifically refer to force majeure in its terms and/or give a termination right for this to be exercisable. Equally if you are looking to rely on force majeure as a concept of relief for non-performance or under-performance, an English law contract would need to specifically refer to a force majeure event as providing such relief. There is also a concept of frustration under English law which may be implied but the threshold for this is high and we currently consider this unlikely to be applicable.

Although this note provides an English law overview, it is important to note that in jurisdictions governed by civil law (including in the People's Republic of China ("PRC")), the principles of force majeure are implied into such civil law contracts. Obtaining relief from obligations tends to require that the event or circumstance(s) is beyond the party's control and, further that the event or circumstance (a) was not reasonably foreseeable at the time of entry into the contract; (b) the effects of such cannot be avoided by appropriate measures; and (c) it prevents performance.

It is worth noting that in the aftermath of the SARs outbreak in 2003, courts in the PRC held that the outbreak was in the category of an epidemic for the purposes of force majeure. Given the governmental measures being put in place, and the declaration by the WHO, the Coronavirus will almost certainly be classed as a qualifying event. Businesses should consider the response to SARs and any specific actions taken with customers or suppliers at this time as this could prove valuable intelligence for their response at this time.

Under English law (and other jurisdictions based on common law) it is vital to consider carefully the specific terms of the force majeure clause. There is no one-size fits all approach. In reviewing contractual provisions the areas we would recommend you look at in your contracts are as follows:

Force Majeure Topic	Points to consider
Trigger event - plague, epidemic or pandemic	The WHO declared Coronavirus formally as a pandemic on 11 March 2020. Therefore, from this date Coronavirus will be a trigger event where the clause refers to epidemic or pandemic.
Trigger event – acts of government	Should a relevant government put in place restrictions – such as travel restrictions or cancellation of events – then if this is specifically referenced in the contract it could be relied on if that is the event affecting contract performance.
Trigger event – shortage of labour or raw materials	There may be actions resulting in a shortage of labour (e.g. the UK government advises people to stay at home or not go to work (similar to current situation in PRC and Italy)) or the supply of raw materials (e.g. port restrictions) then this may be relied upon if it is the shortage of labour/raw materials that affects the ability to perform the contract.
Trigger event – beyond the reasonable control of the party	Many contracts under English law will include a catch all of anything that is beyond the reasonable control of the party. If the virus outbreak spreads further in the UK then this may be a relevant trigger event as the impacts of the virus would be beyond control of the parties.
Standard of proof	It will also be critical to identify the standard of proof the contract requires. Typically under English law this would be that the force majeure event "hinders", "prevents" or "delays" performance. The distinction between these terms is important. Must the affected party be prevented from performing in order to claim or it is merely enough that they are hindered or disrupted? To be 'prevented' it would need to be physically or legally impossible to perform so this sets a much higher threshold. The wording of the contract needs to be carefully considered.
Notification requirements and timelines	It will be important to consider notice requirements and follow these carefully to ensure that the right to rely on the force majeure event and/or the relief event is not lost by not following the correct processes.
Consequences and termination rights	<p>In general, force majeure clauses in English law contracts provide that neither party shall be liable under the contract for any failure during the period of the force majeure event (although the drafting of the contract will specify the actual remedy).</p> <p>Under many contracts there is a backstop termination right if the services are suspended for a specified period of time or longer. These should be noted and diarised to ensure that relevant action can be taken closer to the deadline to reassess the situation and either make use of such rights or take steps to prevent them being exercised by a counter party.</p>
Mitigation	It will be important to take steps to mitigate any impact. Customers should be pressing their suppliers to take steps in mitigation. However, in the context of the Coronavirus careful thought will need to be given to what steps practically can be taken to implement mitigation steps given the wide application.

Businesses should take care in interacting with counterparties that are reporting difficulties to ensure that you do not waive rights or confirm obligations which might later prove to be a waiver of obligations or a variation to the underlying contract provisions.

It will be important to quickly identify the position under contracts at all levels and how they interact with one another. As well as force majeure clauses, businesses should consider short term termination rights, performance measures and guarantees to get a full picture of the likely position and liability under each contract. A clear understanding of contractual terms will enable hotel businesses to plan and prioritise their response.

As the constraints on standard working practices increase, businesses should consider the options open to them for validly executing documents and legal contracts electronically. Whilst many organisations already make at least some use of electronic signature protocols or third party operated platforms, for many, an electronic signature will be a new departure raising concerns as to the legal enforceability of the signature process and how best to prove that the signature was validly given.

The most common form of electronic signature involves typing a name into the electronic form of a document or electronically pasting a signature (in the form of an image) into a soft copy version of a contract in the appropriate place, often using a web-based platform such as DocuSign.

As a general rule, across England, Wales and Scotland, the electronic signature of a contract, including a Deed, is effective and legally enforceable. Indeed, where an external system or bespoke internal process is used, the watermarking of documents and the electronic record created through the execution process, provide a very high standard of evidential proof of exactly what was signed, by whom and when. However, there are certain limits which mean that further legal advice may be required before using an electronic signature of any kind is used so businesses should consider this early and plan accordingly.

IMMEDIATE THINGS TO DO

- Review contracts terms – what is the governing law and which contracts have force majeure provisions that could be relied on and where is there exposure?
- Diarise any backstop termination rights identified in contracts to ensure the risk can be managed.
- Prepare template force majeure notices which can be populated quickly if there is a need to respond to a changing situation rapidly.
- Map supply chain through to customers – use this to inform a supply chain strategy that can be implemented in order to ensure, so far as possible, the business can operate seamlessly.
- Consider steps that could be taken to mitigate exposure – such as dual sourcing, stock piling or obtaining goods from another source.
- Put in place processes to spot any early warning signs of challenges within the supply chain so that action can be taken pro-actively.
- Consider whether any specific provisions dealing with Covid-19 (a Coronavirus clause) may be required in new agreements that are being entered into by the business.
- Provide training to account and contract management teams to ensure that they do not inadvertently waive contractual rights or create binding variations through actions to respond.
- Legal teams should also consider whether there will be any issues caused with signatory availability (e.g. if workforce are remote working) and whether any workarounds need to be put in place to address this.
- Consider putting in place processes for electronic signatures and identify where the business has contracts that will not be capable of being executed by an electronic signature.



Supply Chain

As well as looking at their own contracts businesses should consider carefully the potential impact on its wider supply chain. If a business in the wider supply chain is heavily impacted this could have a significant impact on your business' operations.

Gathering information on key questions from your supply chain is critical to assess the impact and be able to take action. We recommend you put in place holistic processes to ensure all information is collated centrally so that you have an overall view and do not miss information which on its own may look innocuous but when considered together with other information demonstrates a potential critical supply chain failure.

Businesses should be vigilant for the following. Any of these signs may indicate potential difficulties and should act as a trigger point for further investigation and action on your part in relation to suppliers.

- **Service of force majeure or release notices** – make sure the business know to look out for these and pass them to an escalation point promptly so that they can be assessed, validated and the impact can be mapped into business operations so far as possible.
- **Requests for changes in payment terms** – Requests for accelerated payment or for deposits, up-front pre-payments or reduced retentions can be a key indicator of cash-flow problems. The reasons behind any such requests should be explored fully and quickly.
- **Non-delivery** – Where supply chain members are not delivering in accordance with agreed schedules or contract terms this can be an indication of a more endemic problem. Investigate this early and ensure that lenience is only applied where appropriate so that performance of suppliers does not slide.
- **Lack of communication** – Silence, particularly after persistent enquiry, can be a key indicator that the supplier is avoiding contact and busy focussed on other things.
- **Market intelligence** – Rumour and gossip must be treated with caution and are best supported by information received from more authoritative sources. However such market intelligence may be a 'real time' indication of events occurring at your supplier. This may come from sources as diverse as your contacts at the supplier, other customers or even the media and the internet.

We are also already seeing activity where customers are pro-actively contacting suppliers requesting information on their plans to deal with the virus. This helps the customer get early insight. Savvy suppliers are developing robust plans and sharing these with customers in order to provide the customer confidence in how the supplier is dealing with the outbreak and how it will be able to continue to serve the customers business.

IMMEDIATE THINGS TO DO

- Identify critical suppliers to the business – prioritise tier 1 but also vital links in lower tiers of the supply chain.
- Put in place processes to centrally co-ordinate information received to ensure that critical information is not missed and early warning signs can be responded to accordingly. Ensure that this information is funnelled to the correct decision makers so that are able to take action fast if a failing supplier is identified.
- Communicate with critical suppliers to understand their potential exposure to the impact of Coronavirus and work collaboratively with the supply chain to minimise these exposures.
- Consider requesting from suppliers details of their Coronavirus contingency measures to gain an increased understanding of the steps suppliers are taking in order to mitigate the impact.
- Where you are a supplier be pro-active in talking to customers about the contingency measures you are implementing in order to maintain customer confidence and business.
- Remain agile and consider innovative solutions if a failing supplier is identified. For example, can critical IPR or tooling be purchased to allow in-house sourcing? Is there an opportunity to buy critical suppliers?
- Consider customer propositions and how these may be affected by the impact on the supply chain. For example, can next day delivery be sustained? Do longer delivery times need to be factored into the sales process? How can these disruptions be managed? Ensure that customer complaint departments are fully briefed on any likely challenges to provide a consistent approach to queries from customers.

Businesses should take care in interacting with counterparties that are reporting difficulties to ensure that you do not waive rights or confirm obligations which **might later prove to be a waiver of obligations or a variation to the underlying contract provisions.**

2. Employment and immigration

As more Coronavirus cases are detected in more countries, employers with globally connected workforces will need to monitor the impact of the outbreak and take steps to protect their employees where necessary. The outbreak raises points of employment law, immigration, health and safety and data protection law – businesses should take professional advice.

Sickness and self-isolation

Where workers have contracted Coronavirus they would be entitled to sick leave and sick pay in the usual way. Many company sick pay policies will include a requirement for the employee to obtain a fit note from a doctor. An employee who is following official guidance to self-isolate and who has flu-like symptoms may have difficulty obtaining a fit note. As such, employers may need to consider making exceptions to their usual sick pay policies, although we understand GPs are using phone consultations rather than requiring attendance at surgery.

If an employee is self-isolating an employer may be able to require that employee to work from home if they have the facilities and are not symptomatic (if they are then they should be on sick leave and not working). Many employees will be able to work remotely, but accommodating these absences will be more difficult where agile working is not possible. Employers may want to start thinking about whether they need to take any steps to facilitate home working, and considering whether they want to encourage employees to ensure that they have the correct set-up at home to be able to work there if required to do so. This may include ensuring that all employees have a way of logging on to secure systems from home. In similar situations in the past, some organisations provided guidance suggesting what where employees would have been able to work from home but for their failure to take certain actions – for example, requesting particular log-ins – those employees would be subject to disciplinary proceedings.

Workers required by their employer to stay home (for example, because, according to government guidance, the worker should be self-isolating) will not be classed as being on 'medical suspension', as this is only available on very limited grounds. However, workers are entitled to be paid for any period that they stay away at their employer's request, provided that they are otherwise available and ready to work. Employers are unlikely to be able to require workers to take holiday during any period of self-isolation in the absence of a contractual right to do so.

Where an employer has not been required to stay at home and the employee is self-isolating, if they have received a written notice to self-isolate from their GP or NHS 111, they will be eligible to receive statutory sick pay ("SSP"), which is currently paid at a rate of £94.25 per week. The notice is likely to be issued in email form in England. SSP will now be paid from the first day of absence without the need for waiting days. This change appears to be temporary and will only apply during the coronavirus epidemic, after which sick pay may revert to the previous position, which is that it is only paid from the fourth day of absence.

Where an employee has been advised to self-isolate but continues to come into contact with other employees or clients then employers must bear in mind the duties that they owe to other employees under UK health and safety law. If they knowingly allow an individual who has been advised to self-isolate to attend their premises or come into contact with other employees, they may be in breach of those duties, particularly where any of those other employees are more vulnerable to infection – for example, pregnant employees, those with long-term health conditions. Suspension may be an option where an individual who has been advised to self-isolate refuses to do so, but employers should consider whether they have a right to suspend in these circumstances. Where no express contractual right to do so exists, legal advice should be sought.

Business travel

Employers should consider restricting employees from travelling unless absolutely necessary (particularly in respect of high risk destinations). Where your employees need to travel provide them with additional advice on how to ensure they are following best practice in respect of hygiene; contact with sick people and any other advice relevant to their destination.

Employers should consider carefully where employees are refusing to travel on business. Whilst the law varies depending on the jurisdiction it's fair to say that worldwide employers are expected to take proportionate and sensible action to protect employees. This may include cancelling business trips where government and insurance guidelines advise against travel to specific destinations.

Communicating with employees

Under UK data protection law, personal data concerning health is 'special category data'. This means that employers need to ensure that any employer-wide communication does not include any data about the individual who is absent. For example, while it would be fine to let employees know that there has been a confirmed coronavirus case within its workforce in London, it would not be appropriate to provide any details from which the individual might be identified.

Employers that seek information from employees about travel need to be careful not to discriminate while doing so. For example, an employer is likely to be able to justify a request for all employees to declare any travel from an area in respect of which the UK government advises an individual to self-isolate. However, enquiring about travel only to certain areas - for example, China - or seeking information only from certain sections of your employee population is likely to amount to discrimination or harassment.

Discrimination and harassment

There have been reports of an uptake in racism and prejudice being shown towards those of Chinese origin since the outbreak began. There is therefore an increased risk of such behaviour occurring in the workplace. Employers will be liable for harassment or discrimination by their employees towards other employees, save where they have taken reasonable steps to prevent the conduct. Employers will be unable to rely simply on a policy that states that discrimination and harassment is not tolerated. Further steps, such as training and evidence of inappropriate behaviour being tackled, must also be taken for an employer to avoid liability.

Employers in the financial services sector must also be aware that any failure to deal with these issues appropriately may have implications for the fitness and propriety of the senior managers who are responsible for these areas of the business.

Immigration rules

Some Chinese nationals currently in the UK are unable to return to China due to travel restrictions related to the coronavirus outbreak. The UK Home Office has confirmed that leave to remain for Chinese nationals in the UK which is due to expire will be extended automatically until 31 March 2020. Visitor visas will also be automatically extended. Many Chinese nationals in the UK whose leave to remain is expiring around this time will be able to apply for an extension from within the UK.

Some overseas employees who need to return home may not be able to do so for some time - for example, intra-group assignees who intend to leave the UK and return to work for the group overseas. The business may need to resolve where such employees will work and what part of the business will pay them in the meantime.

Migrants on a Tier 2 intra-company transfer (ICT) visa cannot usually switch to the Tier 2 General route from within the UK - they usually have to return to their home country and reapply. Given the exceptional circumstances, UK Visas and Immigration (UKVI) is allowing eligible individuals to apply from within the UK if their ICT visa expires before 30 March 2020. All other eligibility rules for Tier 2 General visas will apply. Right to work checks must be kept up to date, and employers should verify the status of Chinese nationals with expiring leave who are still employed with the Home Office.

UKVI has published [guidance on immigration provisions](#) for individuals affected by travel restrictions related to the coronavirus outbreak.

Sponsored migrant workers or students may not be able to attend work or studies if they are serving a period of quarantine, or caught by coronavirus-related travel restrictions. These absences normally need to be reported to the Home Office. However, the Home Office has confirmed that these absences need not be reported in these circumstances provided that they are authorised by the sponsor. A clear

record and paper trail should be kept, particularly as absences may be relevant if the individual later decides to apply for indefinite leave to remain in the UK. Normally, a sponsor must withdraw its sponsorship of a student who can't attend their studies for over 60 days or an employee who is absent from work without pay for four weeks or more, subject to some exceptions. Sponsors need to consider whether exceptional circumstances apply here so that they do not need to do so. The Home Office has indicated that it will not take compliance action against individuals or sponsors on this basis. However, the sponsor should keep a clear record and paper trail of the reason for the absence in case of future audit.

Students could potentially be required to repeat studies if the period of absence becomes prolonged.

British nationals in China cannot currently apply for British passports from China due to reduced staffing levels at the British Embassy and Consulates and application centre closures. British employees in China who need a new passport for urgent travel will instead have to apply for an emergency travel document.

Health and safety

Employers have clear legal duties under health and safety law. There are three overlapping general obligations:

- Duty to protect the health, as well as safety, of their employees
- Duty to protect others who may be exposed to health risks as a result of the employer's activities, including members of the public, service users and contractors
- Duty to manage safety risks from workplaces under the employer's control. Further information on this third strand can be found in the Facilities section of this guide

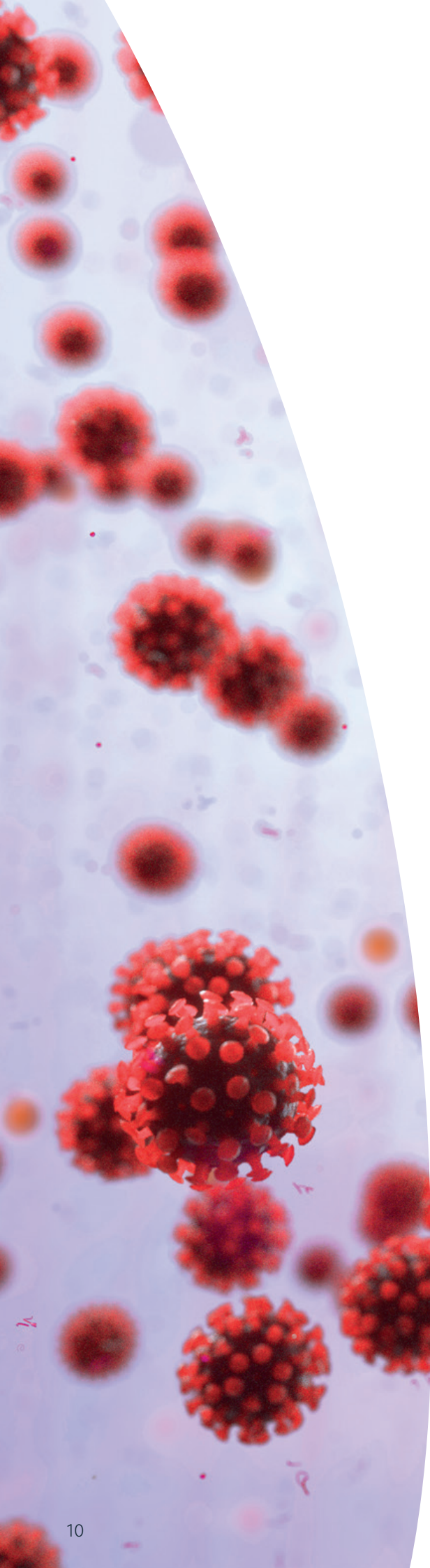
Employers need to conduct a risk assessment to determine the likelihood and consequences of exposure to the coronavirus associated with their business activities.

From a regulatory perspective, the new Coronavirus is classed as a biological agent under the 2002 Control of Substances Hazardous to Health Regulations. This means that potential exposure through work activities directly involving the virus must be carefully controlled.

The Health and Safety Executive (HSE) has [a section on its website dedicated to infections at work](#), containing useful guidance for employers. The sections on pandemic influenza and severe acute respiratory syndrome (SARS), a coronavirus which emerged in 2003, are likely to be particularly helpful in terms of conducting a risk assessment and identifying appropriate control measures.

The risk assessment should take account of the latest guidance from Public Health England and Public Health Scotland, and should be reviewed as advice changes. The level of risk will vary depending on factors such as travel and the type of work, and particularly the potential for close contact with infected individuals or body fluids. The employer must identify control measures which will eliminate or, where this is not possible, minimise the risks which emerge from the risk assessment.

Employers are required to consult with their employees about any arrangements put in place to control the risks associated with the coronavirus, and good communication will be essential to ensuring that these measures are effective.



Employers have specific legal duties which might be impacted. For example, employees must be given the correct personal protective equipment ("PPE") and work equipment for their job. Employers should ensure that they have adequate stocks of the PPE, and may need to consider what other measures need to be put in place if the supply of PPE is disrupted.

Where known work-related exposure to coronavirus occurs, there may be reporting obligations under the 2013 Reporting of Injuries Diseases and Dangerous Occurrences Regulations. Whether exposure is work-related is often a matter of judgement. As the number of cases of coronavirus rises, it will become increasingly difficult to establish. For example, HSE does not expect cases of seasonal flu to be reported.

IMMEDIATE THINGS TO DO

- Conduct a risk assessment on health and safety and put in place relevant measures to ensure the health and safety of employees in line with Public Health England guidance.
- Communicate clearly with the workforce on any updated absence procedures – for example ability to notify remotely of absence (to avoid infection), any requirement to notify Coronavirus related absences to a central inbox in order to track centrally potential workforce impact.
- Brief line managers and HR staff on company policy – using an FAQ guidance sheet. Ensure there is a consistent message to all employees on process and company policy.
- Remote working – consider if any steps required in order to facilitate home working (e.g. issue of laptops and/or network capacity for increased home working).
- Consider testing resilience through a test of part or whole of company to identify any weaknesses or lessons learned that could be resolved in advance of the situation becoming worse.
- Where relevant advise staff to take home laptops/chargers/ work mobile phones each time they leave the office during the period of instability.
- Consider working arrangements and whether the company can consider patterns which reduce the risk of infection – e.g. creating two cohorts with half of department working from home and half in office each day in order to balance operations with practical measures.
- Provide additional guidance on business travel and the expectations of the company in order to ensure employees have sufficient guidance on business trips.
- Re-visit discrimination and harassment policies and ensure processes are in place and publicised for employees to raise any concerns.
- Ensure accurate records are kept in respect of any employees on visas that may need an extension due to travel restrictions. Support such employees in understanding what they need to do to remain compliant.
- Keep clear records and audit trails of all actions and decisions that can later be used as evidence of compliance with the relevant immigration and Home Office requirements.

3. Facilities – Health and Safety obligations

Health and safety laws will apply to property owners. They should ensure that they are complying with relevant statutory duties and responding to the immediate impact of the Coronavirus on users of their premises. These obligations are additional to those as an employer (set out above).

Facility owners will have duties under the Health and Safety at Work Act 1974. These include to:

- To do everything reasonably practicable to ensure that people working in or visiting the building are not exposed to risks to their health (which includes exposure to Covid-19) and
- To the extent that they have any control of the premises (e.g. managing the common areas) to take reasonable measures to ensure, so far as is reasonably practicable, that the building, all means of access to and egress from the premises, and any plant (e.g. lifts) within the building are without risks to health.

The extent of the facility owner's duties depends on how much control they retain under the lease. Where a whole building has been leased on an FRI basis, in practice there is very little the owner will be expected to do. Compliance with health and safety law rests with the tenant.

For buildings with multiple tenants, the property owner may well have duties in relation to the common areas. A risk assessment should be conducted. Cleaning is a key consideration. The property owner should also put in place to share information between tenants in different parts of the building.

A greater level of duty arises where the property owner is more active in managing the premises, for example serviced offices. In that case, the property should take advice from a competent health and safety professional on how to manage risks within the premises.

From a practical perspective we have seen facilities owners ensure that attendees at premises are provided with adequate hand washing facilities and increased prominence of notices reminding visitors of the importance of regular hand washing with soap and water.

If it becomes necessary to close premises, official advice should be followed and a cooperative approach adopted. Regulators have powers to prohibit access to premises, for example if continued use poses a risk of serious injury.

IMMEDIATE THINGS TO DO

- Carry out a risk assessment to ensure that people working in or visiting the building are not exposed to risks to their health.
- Put in place practical measures to support those on site such as:
 - ensuring hand washing facilities are available, regularly stocked with soap and checked regularly
 - provide additional hand sanitiser stations as appropriate
 - include signage advising of hand washing protocols and reminding those on site to wash hands in line with Government guidance
 - Add signage advice on coughing and use of tissues (catch it, kill it, bin it) and provide closed bins for disposal of tissues
- Consider whether any additional screening or protocols are required for visitors to site (e.g. if food preparation or other site).
- Where appropriate consider restricting access to premises to essential personnel only.
- Follow Government advice and guidance in respect of facilities (such as any guidance or advice on closure of schools or limiting events at public places).

4. Public disclosure requirements

Businesses should reflect on new guidance issued by the UK's Financial Reporting Council (FRC) to better understand the disclosures they may need to include concerning the Coronavirus in their annual accounts and accompanying reports. The FRC's new guidance is a reminder of the need to monitor developing risks and keep investors informed.

Public listed companies are obliged under the UK Companies Act to include details of the principal risks and uncertainties facing the company in their annual reports. The FRC's guidance reflected on this obligation in the context of Covid-19, as well as the changes businesses might need to make within their balance sheets.

The FRC's guidance is that companies should consider whether to refer to the possible impact of Covid-19 on their business in their reporting of principal risks and uncertainties. Where mitigating actions can be taken, these should also be reported alongside the description of the risk itself.

As well as possible inclusion within a company's disclosures of principal risks and uncertainties, the carrying value of assets and liabilities might also be affected with a need to perform additional impairment tests and to assess whether leases have become onerous.

For December year-end reporters these events would be likely to represent non-adjusting post balance sheet events as at 31 December 2019, given that, at that date, few cases had been confirmed and the virus only just identified. However, for companies with later reporting dates, year-end balances might be affected. The FRC urged UK businesses to monitor developments and ensure that they are providing up-to-date and meaningful disclosure when preparing their year-end reports.

However, given the rapidly changing global situation, a disclosure that is sufficiently up to date to be meaningful will be challenging to get the right balance. The FRC acknowledges that the extent of the risk and the degree to which it might crystallise depends on particular circumstances. Where the impact has been felt by year end and is quantifiable – for example around staff shortages and production delays – these should be reflected in relevant disclosures without intervention.

For companies registered in other markets (e.g the Stock Exchange of Hong Kong Limited) businesses should consider the equivalent provisions relevant to the requirements of the relevant Stock Exchange.

IMMEDIATE THINGS TO DO

- Put in place processes to monitor developing risks and keep evidence of impact and mitigating actions.
- Ensure these are considered in full in light of end of year reporting. Where such reporting is imminent a summary of immediate impact on the business. This can then be updated in the next reporting cycle.
- Work with professional advisors to consider impact on accounts so that this can be clearly articulated in good time.
- Consider whether virtual annual shareholder meetings may be require in light of the Coronavirus.

“ The FRC acknowledges that the **extent of the risk and the degree to which it might crystallise** depends on particular circumstances.



5. Event staging

Businesses need to consider carefully events that they are staging where there may be a large number of attendees. This may range from sports events to conferences or training sessions. Given the efforts of authorities to contain or minimise the spread of the virus there may be a need to scale back, cancel or postpone events at short notice.

Many businesses are considering postponing or cancelling events either because of Government guidance or due to potential low attendance numbers in any event. If you may need to postpone or cancel an event consider the following:

- **Use of Technology** – is it possible to host the event using technology rather than postponing or cancelling all together? This may be possible for training sessions or some conferences. If you choose to do this you will need to consider carefully the timing of the decision and the communication in order to ensure all attendees are made aware in good time and avoid the need to travel
- **Contract with venue provider** – if you are hosting the event at a third party venue consider carefully the contract with your venue provider. Would you be entitled to a refund if the event was cancelled and in what circumstances. Factor this into your decision making process in determining whether or not to cancel the relevant event
- **Refunds** – what refunds would be required to be given to customers or attendees. If you are cancelling the event (whether due to Government guidance or low attendance numbers) you may well be required to provide a refund to attendees or customers. This will primarily be driven by the contract in place. However, it is also important to bear in mind that where the attendees are consumers they may have additional statutory rights – for example, in England consumer rights laws would entitle the attendees to a refund (excluding any booking fee). Where the contract is a business to business contract does it provide for relief (e.g. force majeure – see our contracts section above for more information)?
- **Communications** – a clear communications policy around any decision will be critical. The timing of the decision, whilst not necessarily a legal requirement, could have significant impact on reputation and good will. It should, therefore, be considered carefully in taking the decision whether to cancel or postpone any event
- **Insurance** – consider early on whether or not insurance is likely to cover any cancellation or postponement. You should liaise carefully with your insurers or brokers in order to consider the specific terms of your policy. See Section 6 (insurance) of this guide for more information
- **Supply chain** – you should consider carefully the knock on impact on other suppliers. For example catering or hospitality suppliers for the event. Could they bring a claim in respect of any cancellation and what steps can be taken in order to mitigate this
- **Commercial rights** – for sporting or music events consider carefully what rights have been granted in relation to the event. If the event does not go ahead how will this impact on sponsorship or commercial rights contracts that may have been entered into. Do these contain force majeure provisions and/or are there obligations to provide alternative rights

For organisations who have public sector stakeholders or funders keep such stakeholders or funders up to date on plans. They may well have already provided guidance and, subject to state aid requirements, may be able to provide hardship funds to cover any short term cancellation.

Where events are going ahead then businesses should consider carefully the steps that they should take to ensure the health & safety of attendees and to ensure that they are meeting their statutory obligations. In particular see Section 3 (facilities) of the guide above.

In the Sports sector in particular the Government is also considering the potential to play events behind closed doors for spectator sports. In this situation businesses will need to consider in particular:

- **Broadcast options** – what are the broadcast options and the contractual arrangements (if relevant) to ensure that members of the public are still able to enjoy the sporting event even without attending
- **Ticket refunds** – what ticket refunds may be required and how would these be processed legally and in line with contracts – see above section on refunds also
- **Supply chain arrangements** – which contracts with caterers, security staff and other venue logistics providers can be cancelled in order to minimise financial and contractual exposure
- **Staffing** – consider carefully the minimum number of staff that will be required in any event to safely stage the event behind closed doors and ensure that there are processes in place to manage the well being and safety of all athletes, officials, staff and volunteers at the event and to manage the relevant logistics

IMMEDIATE THINGS TO DO

- Plot out the events you are hosting in the short (next 1 – 4 weeks) and medium term (1 – 6 months) so that you can consider each in turn and put in place contingency plans to address issues as the situation develops.
- Consider alternative means to hold each event – e.g. use of technology – in order to ensure it can go ahead but minimising the number of people travelling.
- Review contractual provisions with venue provider, customers and supply chain in order to assess the impact of cancelling or postponing the event. Keep a full impact assessment and economic analysis for each event to help inform decision making and options analysis.
- Liaise with communications team to ensure a clear and aligned communications strategy for any event cancellation which minimises impact on brand and reputation.
- Check with insurers/brokers whether insurance is likely to cover any cancellation or postponement of events and keep them abreast of your planning activities.
- Create a schedule of commercial rights for relevant events so that decisions can be taken in this context and where relevant commercial rights holders are consulted and/or offered alternative rights in replacement of any cancelled or postponed event.

6. Insurance obligations

UK businesses should check their insurance policy wording carefully to find out if they are protected against Coronavirus related disruption.

On 5 March 2020, the UK Government has designated Coronavirus, officially Covid-19, as a 'notifiable disease' adding it to the Health Protection (Notification) Regulations 2010. This change in law now requires GPs to report all cases of COVID-19 to Public Health England and can be a critical distinction in interpreting insurance contracts.

Understanding whether you have relevant insurance cover is likely to influence a business in the actions it takes to contain the spread of Coronavirus. Businesses may look for cover under a number of different products such as business interruption cover or directors and officers insurance when considering, for example, whether to cancel planned events or to limit staff movement.

However, whether losses caused by Coronavirus are covered will depend on the specific terms of each policy. There is no consistent industry-wide approach to how policies deal with pandemic illness. Some policies exclude infectious diseases explicitly, whilst others are conditional upon a public body declaring either that the outbreak amounts to a pandemic or is a 'notifiable disease'. For businesses, it is important that they review their insurance cover to understand whether losses relating to the Coronavirus are covered at an early stage.

The World Health Organisation (WHO) declared the virus a public health emergency of international concern (PHEIC) on 30 January. On 11 March the virus was declared by the WHO as a 'pandemic', which is a term used to describe an infection disease which has spread globally.

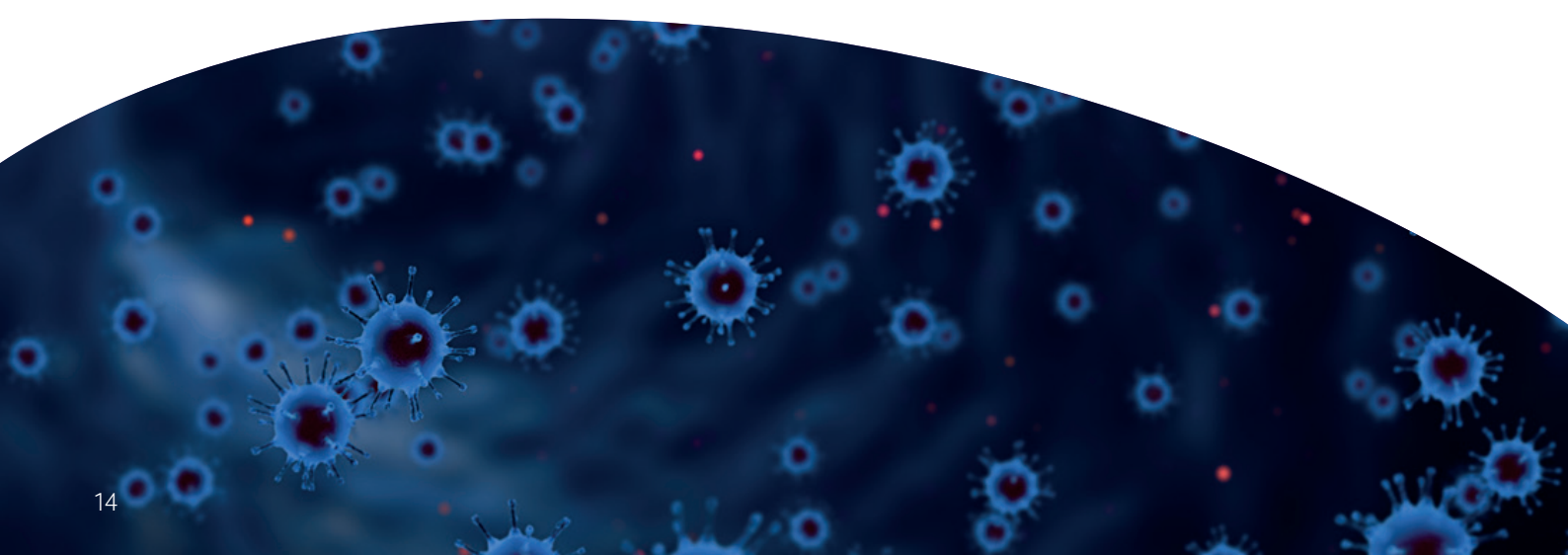
Businesses should liaise with their brokers or insurance providers in respect of the relevant products likely to be affected by Coronavirus, such as travel insurance policies, in order to get clarity on whether their policies would cover Coronavirus-related losses and in what circumstances.

Claims arising from Coronavirus have the potential to be complex in nature so ensuring advice is sought based on the current status of the disease, and how policies respond to it, will be important in enabling businesses to understand what coverage they may have.

In addition, it is worth noting that travel insurance providers which are members of the Association of British Insurers (ABI) have made a number of public commitments intended to address the concerns of customers due to travel overseas. They include commitments to direct customers to routes to claim compensation for cancelled transport or holidays; considering all valid travel insurance claims for costs not recoverable from elsewhere quickly and fairly; putting business continuity plans in place; and considering appropriate alternative evidence where standard medical certification is unavailable.

IMMEDIATE THINGS TO DO

- Monitor closely the classification of the virus by the Government and international agencies such as the World Health Organisation (WHO).
- Liaise closely with insurers and brokers to understand the cover that the business has in place and where this might be applicable to broader business decision making around event cancellation or staff movements.
- In particular consider carefully business travel insurance policies and coverage in light of FCO guidance on travel and any restrictions.
- Bear in mind claims relating to Coronavirus are likely to be complex and businesses should seek advice in how to respond and in respect of any claims.



Pinsent Masons Coronavirus Team

We have developed a cross-discipline and cross-jurisdiction team to support our clients in responding to the impact of the Coronavirus on their business. We are well placed to support your business in:

- Carrying out scenario planning and putting in place your business strategy to consider the Coronavirus impact on how you might deal with this in your business operations – providing pragmatic and practical advice
- Support your engagement with your workforce dealing with sickness reporting, self-isolation, business travel and immigration requirements
- Reviewing your contractual arrangements in place with customers and suppliers to help assess exposure and identify where relief could be sought or claimed

- Advising on standard form construction contracts, notification requirements and formal processes that will need to be complied with
- Considering the health and safety obligations you need to comply with in respect of your employees and visitors to your premises
- Advising on financial disclosure requirements that should be made in your year end reporting
- Reviewing your insurance coverage to ensure that you operate in line with this and do not invalidate any insurances through business actions taken in responding the virus

You can contact any of our team below or email coronavirusequiries@pinsentmasons.com for further guidance.



We have developed a cross-discipline and **cross-jurisdiction team to support our clients in responding to the impact of the Coronavirus on their business.**



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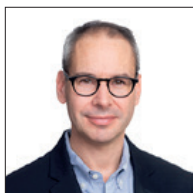
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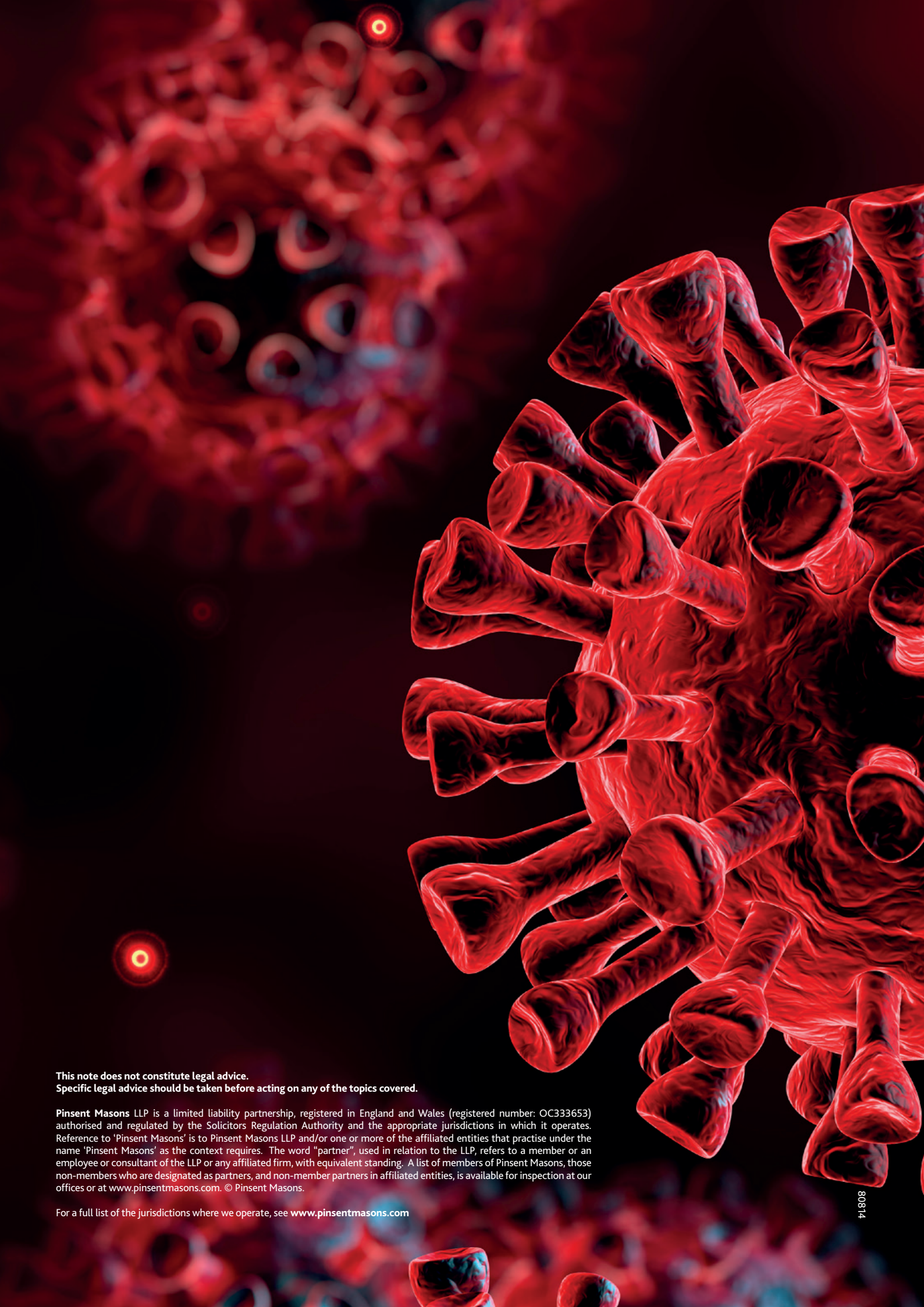
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Specific legal advice should be taken before acting on any of the topics covered.

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