

# How to manage contractual risk

Key questions to assess and manage the risks of non-performance in contracts with partners, suppliers and other counterparties

- Do you know your supply chain? Are there alternative providers?
- Are there public procurement considerations?
- Is performance time-critical?
- Do safety considerations arise in connection with continued performance?
- Do you need to consult with others such as JV partners or other stakeholders?
- Can you perform the contract in part, or can you make an allocation among customers to fulfil your obligations partially?
- Have you considered appropriate workaround measures and who should bear the costs?
- Have you tried to agree the parameters of your response with your counterparties?
- Have you considered if you need to give notice and how to determine when the event is over?
- Could you agree a suspension or postponement of deadlines to perform or bring claims?
- Have you checked for the issuance of 'force majeure certificates' by the authorities of the place of performance or other relevant jurisdictions (eg China). The effect of such certificates will depend on whether there is a right of relief at law and issues could arise where the governing law is different from the law of the place of performance.
- Have you checked whether there is an official government position on whether COVID 19 constitutes a force majeure event, or whether the government has taken a position in respect of public contracts (eg the French government has indicated that, in public sector contracts, the state will not apply penalties for delayed performance).
- Have you confirmed whether you can continue to give representations and warranties and to comply with undertakings or covenants? If not, waivers or amendments may be required.