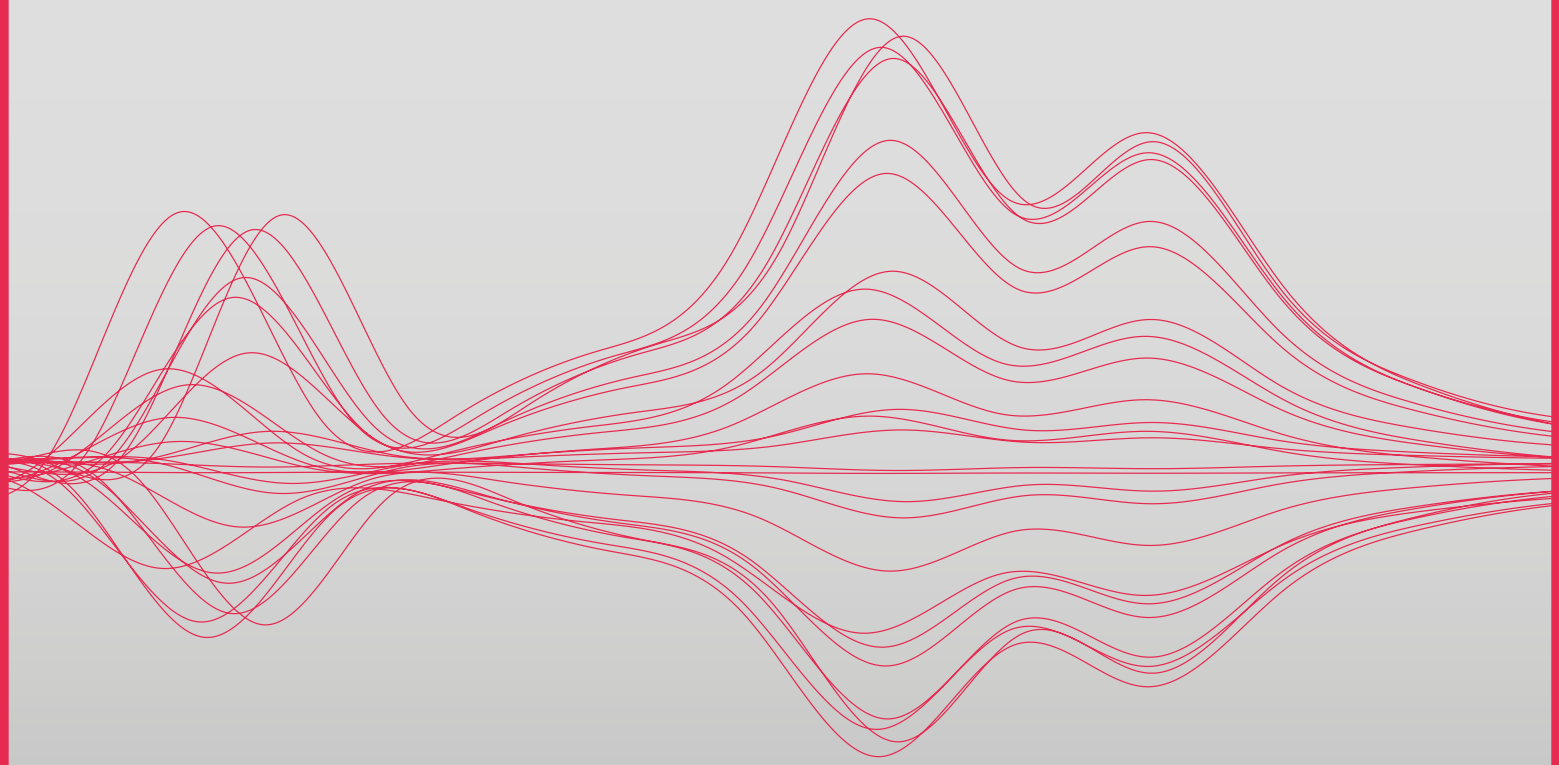


COVID-19: Media productions and filming



Contents

Introduction	03
Australia	04
China	07
Germany	09
Hong Kong	11
Hungary	14
Italy	16
Singapore	18
Spain.....	20
Sweden.....	23
UAE	25
UK	28

Introduction

As the world looks tentatively towards opening economies and takes its first steps toward the “new normal”, we are pleased to introduce this guide to provide the latest updates on the legal aspects of lockdown, and on restarting production work.

For more information or to discuss specific issues, please contact your local COVID-19 media response teams as outlined in this guide.

A second report will follow in the coming weeks in which we will examine the regulations for restarting production.



Nick Fitzpatrick
Global Co-Chair, Media,
Sport and Entertainment Sector



Peter C. White
Global Co-Chair, Media,
Sport and Entertainment Sector



Tom Ara
Co-Chair Entertainment
Finance & Transactions Practice

United States

In the U.S., the impact of the federal government’s COVID-19 regulations varies on what aspect of production and filming is in question. For more information, please see <https://www.usa.gov/coronavirus>.

At the state and local level, there are significant variations depending on the specific state or county. For more information on specific jurisdictional legal regulations, please see <https://www.dlapiper.com/en/us/services/coronavirus-covid-19/>.

Australia



Which legal regulations must be observed?

COVID-19 infection protection measures depend on where the company's production facility is located, or where exterior filming is taking place.

The relevant regulations in each Australian state and territory include:

- New South Wales – Public Health (COVID-19 Restrictions on Gathering and Movement) (No 2) Order 2020 – up-to-date information on restrictions can be found on the New South Wales government website at this link.
- Victoria – Restricted Activity Directions (No 7); Stay At Home (No 6) Directions – up-to-date information on restrictions can be found on the Victoria government website at this link.
- Queensland – Non-essential business, activity and undertaking Closure Direction (No. 10); Home Confinement, Movement and Gathering (No 6) Direction – up-to-date information on the directions can be found on the Queensland Health website at this link.
- Western Australia – Closure and Restriction (Limit the Spread) Directions (No 3) – up-to-date information on the directions by the Western Australian government can be found at this link.
- South Australia – Emergency Management (Non-Essential Business and Other Activities No 5) (COVID-19) Direction 2020; Emergency Management (Gatherings No 2) (COVID-19) Direction – up-to-date emergency directions by the South Australian government can be found at this link.
- Tasmania – Direction under Section 16 (Gatherings – No. 9); Direction under Section 16 (Stay at Home Requirements – No. 5) – up-to-date emergency directions by the Tasmanian government can be found at this link.
- Australian Capital Territory – Public Health (Closure of Non-Essential Business or Undertaking) Emergency Direction 2020 (No 7); Public Health (Non-Essential Gatherings) Emergency Direction 2020 (No 3) – up-to-date emergency directions by the ACT government can be found at this link.
- Northern Territory – COVID-19 Directions (No. 30) 2020 Directions to Close Certain Places, Services and Activities – up-to-date emergency directions by the NT government can be found at this link.



Am I still allowed to film in my production facility?

Yes, provided that the facility complies with applicable state or territory restrictions/requirements and workplace health and safety recommendations.

Some of these include:

- ensuring that, where required by state/territory authorities, employers develop a COVID-19 Safety Plan for their workplaces. This plan must be in accordance with the Safe Work Australia guidance, although each state and territory has different requirements for the COVID-19 Safety Plan;
- ensuring that infected workers do not attend the facility and complying with Safe Work Australia guidance in the event of an infection, including notifying the production if an employee has tested positive for COVID-19, and the production taking steps to notify the relevant authorities and affected employees;
- placing limits on the number of people in the facility at one time; for example, in NSW, no more than 100 people for indoor spaces and subject to there being no more than one person per 4 m²;
- ceasing all non-essential work activities that involve close personal contact (less than 1.5 m);
- implementing controls to reduce direct contact between people, including social distancing of at least 1.5 m (and not more than one person per 4 m² indoors), barriers to create space at counters, between workstations, seated areas, modifying shifts and rosters to reduce peak periods and actively supporting flexible work arrangements, including working from home; and
- implementing controls to reduce environmental exposure, including:
 - inspecting and reviewing air conditioning and ventilation systems;
 - increasing cleaning and disinfection of high-traffic areas or shared surfaces;
 - providing cleaning products and instruction for cleaning workspaces;
 - providing instruction and amenities for personal hygiene and infection control measures; and
 - consulting with employees and their representatives about the measures taken to identify and manage risks and keep employees safe.



Are my employees still allowed to come to work?

Yes, provided the employee is not subject to mandatory quarantine for COVID-19, and their work cannot be undertaken remotely. One of the reasons for which a person may leave their residence is to travel for the purposes of work if they cannot work from their place of residence.



Is exterior filming on public ground still permissible?

Yes, provided that the gathering is only for the purposes of work.

However, there is a risk that this would not fall within the prescribed exemptions in some states and territories and these gatherings would be considered “non-essential” or not “necessary” and be subject to penalties under the relevant state and territory health orders/directives. In light of this risk, businesses should closely consider the restrictions specific to their location before filming in public spaces. In particular, most states and territories have limited gatherings in public places to ten people, so any film crew comprising more than ten people would be a breach of these restrictions.



Is press reporting in public areas still permitted?

Yes, provided that the gathering of persons is only for the purposes of the news reporting and subject to the other restrictions outlined above.



What happens if I do not observe the infection protection measures?

Fines and, potentially, imprisonment. The penalties for breach of public health orders vary between the respective states and territories.

For example, in NSW:

- for individuals, a maximum penalty of AUD11,000, imprisonment for six months, or both and a further AUD5,500 penalty may apply for each day the offence continues. New South Wales police may also issue on-the-spot fines of AUD1,000 for an offence; and
- for corporations, the maximum penalty is AUD55,000, and a further AUD27,500 penalty may apply for each day the offence continues.



Can I take legal action against the infection protection measures?

All COVID-19 public health orders/directions have been made under emergency powers granted by public health legislation. The orders could potentially be challenged through judicial review proceedings on the basis that they are beyond the power granted to the executive arm of government under the public health laws, but this a long and complex process and may not be successful in light of the extraordinary challenges to which governments are responding.

It is possible to seek exemptions from the public health orders, although again, that is likely to be a difficult process.

If a fine is issued by police for a breach of a public health order, it is possible to challenge the fine in court, but you should seek legal advice before doing so.



How do doctrines of frustration and force majeure affect media productions and filming?

DOCTRINE OF FRUSTRATION

Under Australian law, the doctrine of frustration can be invoked where there is an intervening event:

- for which neither party is at fault; and
- that makes meeting the obligations under the contract become “radically different” from those contemplated by the contracting parties. It is not sufficient if the event only makes it more expensive or onerous or impracticable to perform the contract, nor if an alternative method of performance is available.

The legal consequence of frustration is that the contract is terminated at the point of frustration, and losses lie where they fall (subject to frustration-related legislation in the states of New South Wales, South Australian and Victoria).

The threshold for frustration is very high, so it is generally very difficult to make out in Australia.

FORCE MAJEURE CLAUSES

In Australia, parties are free to define the situations that would give rise to a force majeure event (provided these events are sufficiently clear) and the parties’ respective remedies. The effect of a force majeure clause is that it grants the non-performing party relief from liability for failing to perform as a result of the force majeure event (subject ordinarily to conditions around providing notice and seeking to work around or mitigate the effects of the force majeure event).

The applicability and remedies under a force majeure clause for COVID-19 would depend on the construction of the clause.

Key contacts



Nicholas Boyle
Partner
Sydney
nicholas.boyle@dlapiper.com



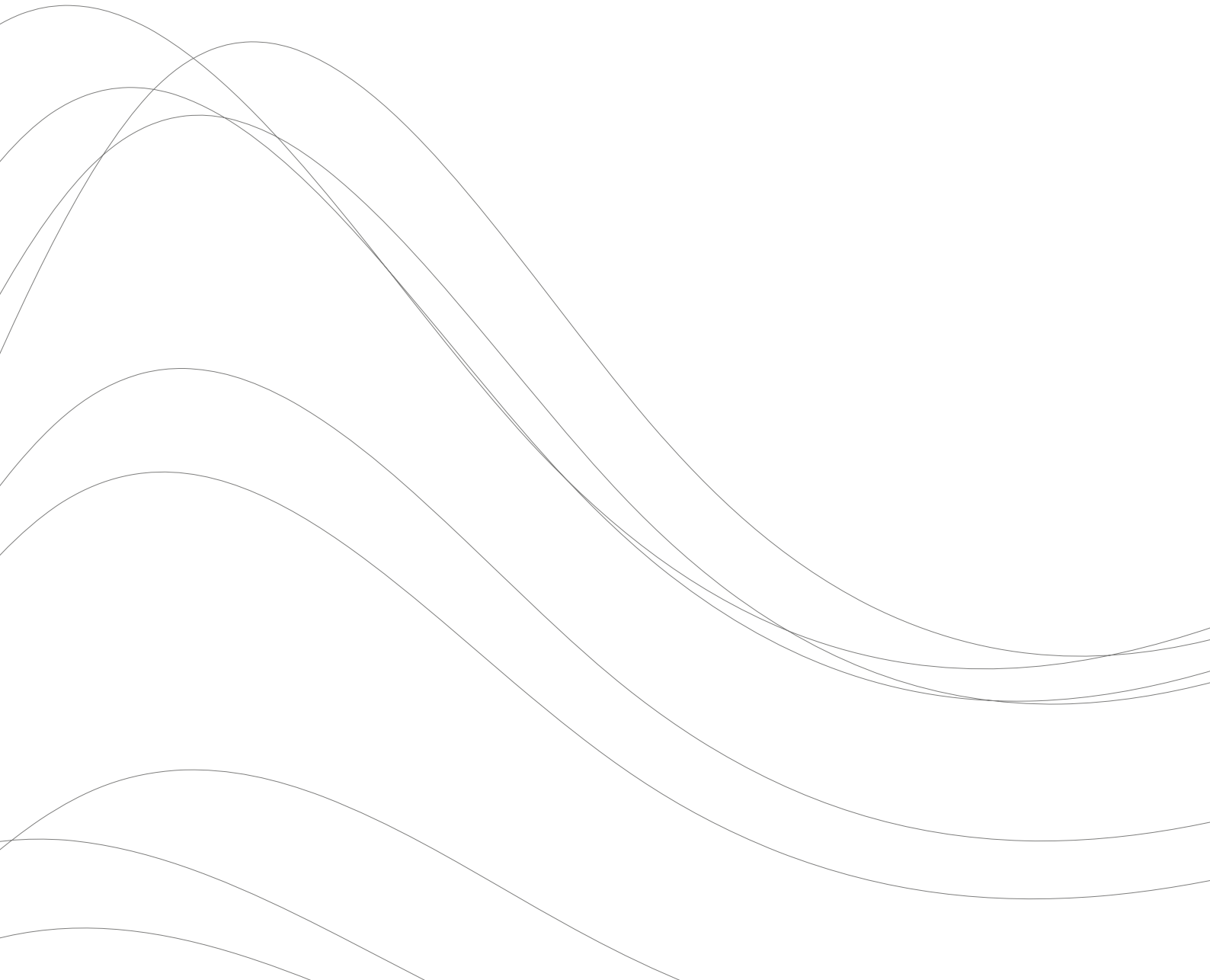
Nicholas Turner
Partner
Sydney
nicholas.turner@dlapiper.com



Clancy King
Senior Associate
Sydney
clancy.king@dlapiper.com



Valiant Warzecha
Associate
Sydney
valiant.warzecha@dlapiper.com



China



Which legal regulations must be observed?

The Chinese government has issued a number of regulations, measures and circulars providing guidance for resuming work during the COVID-19 pandemic. The Beijing Municipal Radio and Television Bureau has published three sets of guidance for media production and filming activities in Beijing, including the following (collectively, Guidelines):

- Guidelines on Preventing and Controlling Pandemic by Film Industry in Beijing to Resume Work during the COVID-19 (Version 1.0) on 26 February 2020 (Film Industry Guidelines).
- Guidelines on Preventing and Controlling Pandemic by Shooting Crew in Beijing to Resume Work during the COVID-19 (Version 1.0) on 27 March 2020 (TV Show Guidelines)
- Guidelines on Preventing and Controlling Pandemic by Radio/Television Production and Broadcasting Institutions in Beijing to Resume Work during the COVID-19 (Version 1.0) on 10 April 2020 (Radio/TV Programs Guidelines).

In addition, the Law on Prevention and Treatment of Infectious Diseases (Infectious Disease Law), and Measures on Emergency Response to Public Health Emergencies (Emergency Measures) will also apply during the COVID-19 pandemic.



Am I still allowed to film in my production facility?

Media production works such as photo shoots and filming shall comply with the Guidelines as set out in Q1, including but not limited to the following measures:

- Prior approval/filing from local COVID-19 regulatory agency must be obtained (if applicable).
- Crew must establish a plan for preventing and controlling COVID-19 and an emergency plan.
- Crew must implement a strict check against the staff, including but not limited to health conditions, travel history, etc. Staff shall use the WeChat mini program *Beijing Health Tool* to prove their health and travel condition. Staff shall undergo a temperature check before entering the working area. Staff with a temperature over 37.3°C should be denied entry to the working area.
- Entry to the office area and place of filming must be strictly monitored by issuing entry permits, etc.

- Photo shoots or filming (including in public areas and studios) is allowed for a crew of no more than 50 people, subject to limited exceptions (i.e. prior approval from regulatory authorities when the crew number exceeds 50).
- All staff must wear face masks in the working area, except for actors/actresses/interviewers/interviewees during the course of filming. All staff must keep a social distance of 1 m or 1.5 m.
- Sterilization must be conducted for the office area, filming location and equipment/appliances that are frequently touched. Handwash and sterilization facilities must be provided.
- Staff with a fever or any other suspicious symptoms must be isolated immediately and sent to a hospital.
- Filming without an audience is encouraged to reduce gathering.



Are my employees still allowed to come to work?

Yes, as long as the requirements in Q2 are satisfied. See Q2 above for more details.



Is exterior filming on public ground still permissible?

Yes, as long as the requirements in Q2 are satisfied. See Q2 above for more details.



Is press reporting in public areas still permitted?

Yes, reporting in public areas is permitted, but the crew must check the daily COVID-19 map carefully and ensure that the filming locations are at least 1 km away from the place where COVID-19 cases have been identified. Also, the requirements in Q2 (if applicable) must be complied with.



What happens if I do not observe the infection protection measures?

The Guidelines do not provide specific penalties for violation of the rules. Liabilities for non-compliance of infection protection measures are imposed based on the Law on Prevention and Treatment of Infectious Diseases (Infectious Disease Law), and Measures on Emergency Response to Public Health Emergencies (Emergency Measures).

Under the Emergency Measures, any person who fails to perform the case reporting obligation, or refuses to cooperate with the regulators in handling an emergency (including cases of COVID-19) will be subject to administrative penalties (generally detention of a maximum of 10 days and/or an administrative fine of a maximum of CNY500), and even criminal liabilities in severe cases.

Civil liabilities will ensue if the violation of the Infectious Disease Law leads to the spread and epidemic of infectious diseases, resulting in personal and/or property damage to any other person.



Can I take legal action against the infection protection measures?

In general, a qualified applicant can file a complaint against a specific administrative decision to the administrative agency with proper jurisdiction.



How do doctrines of frustration and force majeure affect media productions and filming?

FORCE MAJEURE

Force majeure provisions are contractual terms that operate to excuse or suspend performance of contractual obligations when certain specified events occur which are beyond the parties' control that might impede or obstruct the performance of the contract. While it is generally accepted that the COVID-19 pandemic may constitute a force majeure event, how such a force majeure event may impact the parties' liabilities is specific to the context of each case.

The courts have generally been cautious in applying the force majeure argument. In particular, the courts may require the party relying on force majeure to meet certain requirements, including (i) the party proves that the pandemic and its prevention measures constitute material obstacles in the contract

performance; (ii) the party is not at fault for its non-performance of the contract; and (iii) the party notifies the counterparty in a timely manner, etc. Also, it is the obligation of the party relying on the force majeure clause to provide supporting evidence and prove the causal link between the force majeure and the failure to perform the contract. The courts are generally inclined to mediate between the parties to see if it is possible (at all) to re-negotiate the terms of the contract or continue performing the contract.

DOCTRINE OF FRUSTRATION

Similar to the common law doctrine of frustration, Chinese Contract Law also provides for a "change of circumstance" doctrine where any material change of circumstances that is unforeseeable, not caused by force majeure, and not a commercial risk at the time of contract execution, makes the performance of the contract so onerous as to render it unfair, the party may petition to the court to modify or terminate the contract on grounds of "change of circumstance." That said, the "change of circumstance" doctrine, like force majeure, may be determined by the court on a case-by-case basis and is highly fact-specific.

Key contacts



Scott Thiel
Partner
 Hong Kong
 scott.thiel@dlapiper.com



Yue Lin Lee
Registered Foreign Lawyer
 Hong Kong
 yuelin.lee@dlapiper.com

Germany



Which legal regulations must be observed?

Which infection protection measures are to be observed depends on where the company's own production facility is located or where exterior filming is to take place.

The state regulations for fighting the COVID-19, which were issued on the basis of sec. 28 IfSG or sec. 32 IfSG, are authoritative. For the media locations e.g.:

- Bavaria: Bavarian ordinance on a temporary exit restriction on the occasion of the corona pandemic of 24 March 2020, available at <https://www.verkuendung-bayern.de/files/baymb/2020/130/baymb/2020-130.pdf>
- Berlin: Ordinance on measures necessary to contain the spread of the coronavirus SARS-CoV-2 in Berlin on 22 March 2020, last modified on 2 April 2020, available at <https://www.berlin.de/corona/massnahmen/verordnung/>
- Hamburg: Ordinance on the containment of the spread of the coronavirus SARS-CoV-2 in the Free and Hanseatic City of Hamburg of 2 April 2020, available at <https://www.hamburg.de/verordnung/>
- North Rhine-Westphalia: Ordinance on protection against new infections with the coronavirus SARS-CoV-2 of 22 March 2020, last modified on 30 March 2020, available at https://recht.nrw.de/lmi/owa/br_vbl_detail_text?anw_nr=6&vd_id=18380

In addition, (especially) in territorial states more extensive protective measures of the local health or regulatory authorities (e.g. the city of Munich, the city of Cologne or a district) must be observed.



Am I still allowed to film in my production facility?

Filming which is carried out in your own production facilities without an audience, but only with the necessary staff, is in our opinion, generally permissible as a professional activity according to the protective measures of the federal states, especially if the strict hygiene regulations are applied.

However, the state regulations are interpreted differently and in some cases the authorities argue that the above-mentioned case of "closed production" is also an "event" prohibited by certain state regulations.



Are my employees still allowed to come to work?

All employees who are not in (domestic) quarantine due to an official order according to sec. 30 IfSG or who are not subject to a ban on work in the sense of sec. 31 IfSG are allowed to come to work. This also means that they are allowed to travel the necessary distance to work.

Recommended, but not required by law, is the use of house ID cards.



Is exterior filming on public ground still permissible?

Exterior filming on public ground still requires a special use permit from the competent authority under certain circumstances.



Is press reporting in public areas still permitted?

Yes. Reporting by the press is still permitted. This is expressly stated in sec. 3 para. 1 no. 7 of the Hamburg ordinance of 2 April 2020.

However, the respective applicable regulations on the minimum distance in public areas must be observed.



What happens if I do not observe the infection protection measures?

In the event of non-compliance, there is a risk of state enforcement measures.

Violations are punishable by a fine according to sec. 73 para. 1a no. 24 IfSG, if the state ordinance so determines, and it can also be a crime according to sec. 75 para. 1 no. 1, para. 3 and para. 4 IfSG.



Can I take legal action against the infection protection measures?

Yes. Both general decrees or ordinances and state enforcement measures can be reviewed in court, including by way of interim relief.

The legal form of the respective regulations decides on the admissible type of legal remedy, the time limit to be observed and the extent to which the court decision is legally binding.



How do doctrines of frustration and force majeure affect media productions and filming?

Under German law, there is no explicit doctrine of frustration. However, there are similar statutory provisions in the German Civil Code (*Bürgerliches Gesetzbuch*, "BGB") that generally apply when an event occurs after a contract has been formed, which is not caused by either party, that makes it physically or commercially impossible to perform the contract, or makes an obligation radically different to perform (so-called general law on performance disruptions). In force majeure situations general law on performance disruptions may lead to the exclusion of the duty of performance (Section 275 BGB), which also applies if the performance can be rendered again at a future point in time, but it is uncertain when this might be and the parties can no longer be expected to adhere to the contract. The party affected by non-performance has the right to withdraw, whereby all payments received must be repaid with regard to the performance which has become impossible. Only in case of fault, the non-performing party may be liable for damages. Likely, this is not the case if impossibility of performance is caused by measures that are beyond the parties' control, such as the official infection protection measures. However, this will depend on the individual circumstances. Further, contracts may be adjusted or – ultima ratio – terminated according to the so-called "interference with the basis of the transaction" (*Störung der Geschäftsgrundlage*, Section 313 BGB) if fundamental contractual circumstances change after conclusion of the contract. In general the prerequisites are high and German courts are extremely hesitant in applying this law (adjustment being more likely than termination). According to voices in the legal literature, Section 313 BGB may not even be applicable if the general basis of our society is impacted, e.g. by war or natural disasters. In this case it is up to the authorities to pass laws and come up with compensation schemes, but not to adjust concluded agreements.

There is also no self-standing principle of "force majeure" under German law. Thus, the prerequisites and legal consequences will depend on specific contractual arrangements. In case the contract contains a force majeure clause, the terms of this clause will be applied primarily and, thus, the statutory provisions do not apply to the extent the force majeure clause covers the specific event. Typically, force majeure clauses contain individual abstract definitions of force majeure with specific examples and consequences may include the right to suspend or modify performance and terminate the contract after a certain period of time, depending on the interests of the parties. Special precaution should be taken when using a force majeure cause in General Terms and Conditions ("T&Cs"), as German T&Cs law is rather strict, rendering the clause invalid if one of the parties is unreasonably disadvantaged by the clause.

Key contacts



Prof Dr Stefan Engels
Partner
Hamburg
stefan.engels@dlapiper.com



Dr Michael Stulz-Herrnstadt
Partner
Hamburg
michael.stulz-herrnstadt@dlapiper.com



Dr Rabea Kjellsson
Associate
Hamburg
rabea.kjellsson@dlapiper.com

Hong Kong



Which legal regulations must be observed?

The Hong Kong government has put in place two main temporary measures that must be observed for three months from the date specified in the Gazette (subject to any further extensions by the government).

The two main temporary measures are as follows:

- The Prevention and Control of Disease (Prohibition on Group Gathering) Regulation (Cap. 599G) (Group Gathering Regulation); and
- The Prevention and Control of Disease (Requirement and Directions) (Business and Premises) Regulation (Cap. 599F) (Business and Premises Regulation).

These measures are also updated from time to time with directions.

The Group Gathering Regulation came into effect on 29 March 2020, and will be in place for three months. Pursuant to a notice issued under the Group Gathering Regulation, the government prohibited gatherings of more than four people in any public place for 14 days from 29 March 2020. This restriction was recently extended, as of 29 April 2020, to 7 May 2020. There are certain exemptions available under the Group Gathering Regulation.

The Business and Premises Regulation came into effect on 28 March 2020, and will also be in place for three months. The Business and Premises Regulation and directions issued thereunder require, among other things, certain businesses to close (e.g. amusement game centers, bathhouses, fitness centers, places of amusement, places of public entertainment) and other businesses (specifically, clubhouses) to meet requirements such as temperature-taking, the wearing of masks except when eating or drinking and the provision of hand sanitizer. These directions are, as at the time of writing, effective until 7 May 2020.

The Hong Kong government announced on 6 May 2020, that it would further relax the requirements under the Group Gathering Regulation and the Business and Premises Regulation given the continuing stability of the COVID-19 situation in Hong Kong. These relaxed requirements include, in particular, a relaxation of the number of people allowed in group gatherings in public places from four to eight (with 1.5 m or more between different groups), as well as the resumption of operations of several types of business premises,

subject to conditions. The relaxed requirements will be gazetted as directions under the Group Gathering Regulation and Business and Premises Regulation and will come into effect from 8 May 2020, for 14 days until 21 May 2020.



Am I still allowed to film in my production facility?

Filming at a production facility with only the minimum necessary staff may be permitted as it could be considered an exemption from the prohibitions under the Group Gathering Regulation, since such a gathering is likely to be considered a “group gathering at a place of work for the purposes of work.”

However, under the Occupational Health and Safety Ordinance (Cap. 509), you must take all reasonably practicable steps to protect the health, safety and welfare of employees. We recommend that stringent hygiene measures be followed, including temperature-taking, provision of face masks and hand sanitizer, reminding onsite staff to maintain good personal hygiene and regular cleaning of the production facility.



Are my employees still allowed to come to work?

Employees are still permitted to come to work provided you have taken all reasonably practicable steps to comply with your health and safety obligations as noted above. Employees should not be permitted to work if they:

- are under compulsory quarantine orders issued under the Compulsory Quarantine of Certain Persons Arriving at Hong Kong Regulation (Cap. 599C) or the Compulsory Quarantine of Persons Arriving at Hong Kong from Foreign Places Regulation (Cap. 599E);
- are self-isolating due to travel through high-risk areas or exposure to other people who have (or are suspected to have) tested positive; or
- are on sick leave (having tested positive or displayed symptoms).

Employees can refuse to come to work if they reasonably believe there is a risk to their health and safety. What will be considered reasonable should be assessed on a case-by-case basis. If the person is able to work from home and this would not cause disruption to the business, you should try to accommodate this. Employers are generally being encouraged to show employees compassion and flexibility during this period.



Is exterior filming on public ground still permissible?

Provided that the number of people filming on public ground does not exceed eight people, this should still be permissible.



Is press reporting in public areas still permitted?

Yes, reporting by the press is permitted, subject to observation of the Group Gathering Regulation (i.e. no more than eight people gathering for the purposes of press reporting).



What happens if I do not observe the infection protection measures?

People who do not comply with the Group Gathering Regulation and the notices and directions issued thereunder commit an offence and may be liable on conviction to a fine and/or imprisonment.

Specifically, any person who participates in a prohibited group gathering, organizes a prohibited group gathering, owns, controls or operates the place of the gathering, and knowingly allows the gathering to take place commits an offence under the Group Gathering Regulation. Offenders are liable to a maximum penalty of a fine at level 4 (HKD25,000) and imprisonment for six months. People who participate in a prohibited group gathering may discharge liability for the offence by paying a fixed penalty of HKD2,000.

People who do not comply with the Business and Premises Regulation and the notices and directions issued thereunder likewise commit an offence and may be liable on conviction to a fine and/or imprisonment. Offences attract a fine at level 5 (HKD50,000) and imprisonment for six months.



Can I take legal action against the infection protection measures?

In general, an applicant with legal standing can make an application to the Hong Kong courts for a judicial review of these measures.



How do doctrines of frustration and force majeure affect media productions and filming?

People who are not able to perform their contractual obligations due to the COVID-19 pandemic may seek recourse under their respective contracts via force majeure provisions (if any) and the common law doctrine of frustration.

FORCE MAJEURE

Force majeure provisions are contractual terms in a contract that operate to excuse or suspend performance of contractual obligations when certain specified events occur which are beyond the parties' control that might impede or obstruct the performance of the contract. For contracts with force majeure provisions, the question of whether the COVID-19 pandemic constitutes a force majeure event will depend on the wording of the force majeure provision in the contract. Such provision would usually also set out the consequences following a force majeure event. Examples of such consequences include an extension of time for the affected party to perform its obligations or a release of the affected parties from their contractual obligations.

When considering whether the force majeure provision will apply to a contract, one must carefully review the text of the force majeure clause. Issues to consider include, for example, the scope of the force majeure clause, the specific language used in the force majeure clause, and whether there are any exclusions.

DOCTRINE OF FRUSTRATION

Under the common law doctrine of frustration, a contract is frustrated when a supervening event, which is unforeseeable and beyond the control of the parties, occurs and makes performance impossible or renders the relevant obligations radically or fundamentally different from those contemplated by the parties at the time of contract. If the COVID-19 pandemic has such an effect, the contract is frustrated, and parties will be discharged from any further obligations under the frustrated contract. The doctrine of frustration is narrow, however, and the courts will not casually step in to discharge a commercial agreement. It will be up to the party relying on the doctrine of frustration to demonstrate to the courts specifically how their rights or obligations under the contract have been frustrated.

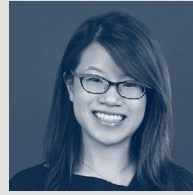
Parties should carefully review their contracts and factual circumstances to determine the appropriate relief during the COVID-19 pandemic.

Disclaimer: This update is for general information and should not be relied upon as legal advice.

Key contacts



Scott Thiel
Partner
Hong Kong
scott.thiel@dlapiper.com



Yue Lin Lee
Registered Foreign Lawyer
Hong Kong
yuelin.lee@dlapiper.com



Hungary



Which legal regulations must be observed?

On 11 March 2020, a national emergency was announced in Hungary, and as of 28 March 2020, restrictions on social contact and a curfew-like measure have been in place.

Regarding social distancing, everyone must keep social contact to a minimum and maintain a distance of at least 1.5 m from others. Leaving the place of residence is permitted only for a justified reason. Performance of any kind of work or professional obligation is permitted in general. However, filming activities are prevented for many practical reasons; therefore, most film productions in Hungary are on hiatus.

Restrictions apply until withdrawal, but they are under constant review by the government. The latest government communications suggest reviewing the restrictions as of 3 May 2020, with a view to gradual re-opening. After that date, circumstances for filming may change.

We expect the restart of international film productions within Hungary and the EU upon the opening of EU borders. International productions may restart after foreign cast and crew are allowed to re-enter Hungary.



Am I still allowed to film in my production facility?

Yes, filming carried out in your own production facilities without an audience but only with the necessary cast and crew is generally permissible as a professional activity, especially if strict hygiene measures are applied. However, most studios and production facilities in Hungary are currently closed.

Lease agreements for non-residential premises cannot be terminated until 30 June 2020, in several sectors, including the film industry. The term may be extended until termination of the national emergency situation. This may have an impact on studio lease and exterior shooting location agreements. In most cases the terms are put on hold for the pandemic hiatus by the parties' agreement until production is restarted.



Are my employees still allowed to come to work?

Yes, all crew members who are not in quarantine under an official order are allowed to go to work. No official prohibition is in force for professional activities. Employees are permitted to travel to work within Hungary. However, during the production hiatus, most crew and cast are on hold. (Note that the usual structure of film production projects in Hungary is to have the local crew engaged on an independent contractor basis.)

Please note that foreign cast and crew are not allowed to enter Hungary from abroad. Hungarian borders are closed for all international travelers other than Hungarian citizens coming home. Restrictions apply until further government regulations are introduced.



Is exterior filming on public ground still permissible?

Participation on any kind of public gatherings or outdoor events is forbidden regardless of the number of participants and the location in question. This might have a material impact on exterior filming.



Is press reporting in public areas still permitted?

Yes, reporting by the press is still permitted. However, the respective applicable regulations on keeping the minimum distance must be observed.



What happens if I do not observe the infection protection measures?

The police are responsible in the first place to supervise compliance with the restrictions. In the event of non-compliance, initiating an official proceeding is possible to establish violation of law. The consequences may be the obligation to pay a fine and to stop the activity. In cases of organizing events and public gatherings in breach of law, both the organizer and owner of the location may be held responsible.



Can I take legal action against the infection protection measures?

No, the above restrictions are legally binding for all individuals and businesses in Hungary by virtue of law. The impact of the pandemic and related restrictive measures on contracts should be considered from a civil law perspective based on the provisions of applicable laws, including the Hungarian Civil Code which is applicable unchanged. Any kind of court proceedings for legal remedy or other reasons are available unchanged.

Apart from legal regulations, several official recommendations are released to maintain strict hygiene measures during everyday life and work.



How do doctrines of frustration and force majeure affect media productions and filming?

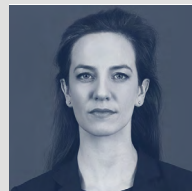
The doctrine of frustration and the concept of force majeure are not regulated in the Hungarian Civil Code. However, the agreement of the parties applies in the first place on how to handle individual circumstances. The provisions of the Hungarian Civil Code provide legal remedy to handle unforeseen circumstances that have a major impact on contractual obligations unless the parties agreed otherwise.

The impact of the COVID-19 pandemic and related restrictive measures shall be analyzed on a case-by-case basis as to whether the performance under a certain contract is delayed, hindered or became impossible. Applicable remedies may vary based on actual circumstances and subject to allocation of related risks by the parties' agreement or by law. This may include a reduction in compensation, claims for damages or also the termination of the contract in extreme cases.

Key contacts



Monika Horvath
Partner
Budapest
monika.horvath@dlapiper.com



Mariann Rajnai
Senior Associate
Budapest
mariann.rajnai@dlapiper.com



Italy



Which legal regulations must be observed?

On 16 May 2020, the Italian government issued Law Decree no. 33/2020 lifting most of the restrictions applicable to business activities, which can now be resumed as long as certain security measures are implemented. Such measures are adopted at local level in accordance with the protocols/guidelines set forth by the government, in addition to the protocol adopted in collaboration with the trade unions on 24 April 2020, to protect workers' health and safety.

Furthermore, both the government and the local authorities are allowed to reinstate adequate and proportionate restrictive measures if they deem it necessary based on the future development of the epidemiological situation.

Depending on the location of the company's production facilities, there might be different security measures to be implemented at local level. By way of example:

- Lombardy: a list of all the measures adopted by the Region of Lombardy is available at <https://www.regione.lombardia.it/wps/portal/istituzionale/HP/DettaglioRedazionale/servizi-e-informazioni/cittadini/salute-e-prevenzione/Prevenzione-e-benessere/red-coronavirusnuoviaggiornamenti>
- Lazio: a list of all the measures adopted by the Region of Lazio is available at <http://www.regione.lazio.it/rl/coronavirus/ordinanze/>
- Abruzzo: a list of all the measures adopted by the Region of Abruzzo is available at <https://www.regione.abruzzo.it/content/ordinanze-circolari-comunicazioni>



Am I still allowed to film in my production facility?

Yes, as of 18 May 2020, most business activities are now permitted.

Filming in your own production facilities must be carried out in accordance with the specific security measures provided for by local authorities in compliance with the protocols/guidelines set out by the Italian government as well as the protocol on workers' health and safety.

Therefore, based on the location of the production facility, the applicable security measures and/or restrictions may be different.



Are my employees still allowed to come to work?

Yes, workers are allowed to travel from and to the workplace.

In general, people who are quarantined, subject to preventive quarantine and/or with a fever higher than 37.5°C cannot leave their homes.



Is exterior filming on public ground still permissible?

Although gatherings either in public or locations open to the public are still prohibited, exterior filming on public ground should be permitted as long as the security measures issued at local level and the protocol to protect workers' health and safety are implemented.



Is press reporting in public areas still permitted?

Yes, as long as the security measures adopted by the relevant local authorities are implemented.



What happens if I do not observe the infection protection measures?

Unless the conduct is a criminal offence, the violation of the anti-contagion measures applicable to individuals may lead to administrative sanctions ranging between EUR400 and EUR3,000.

In addition, the violation of any other anti-contagion measures may lead to the suspension of the industrial or commercial activity of between 5 and 30 days. Such suspension may also be ordered in advance, and for 5 days, in order for the authorities to assess whether a violation occurred. Moreover, the violation of the business security measures adopted both at local and national levels may lead to the immediate suspension of the activities if they cannot be carried out safely.

In the case of multiple violations, the administrative sanctions may be doubled or applied to the maximum extent possible.



Can I take legal action against the infection protection measures?

Yes; for instance, the above administrative sanctions can be challenged before a court. Some commentators also maintain that the measures limiting personal liberty might be challenged on constitutional grounds.



How do doctrines of frustration and force majeure affect media productions and filming?

The outbreak of COVID-19 and the measures adopted by the Italian authorities to contain the spread of the virus may be relevant with reference to force majeure principles.

Under case law, a force majeure event must be extraordinary (i.e. assessed objectively, based on the frequency, size and intensity of the event) and unpredictable (i.e. assessed on a subjective basis and in light of the ordinary diligence principle).

Although an assessment on a case-by-case is required, in the event the COVID-19 outbreak or the measures adopted by the authority meet the above criteria, the most likely consequence is the applicability of either (i) the absolute/temporary/partial impossibility regimes, which may lead either to the termination or suspension of the contract; or (ii) the excessive onerousness regime, which may lead to the renegotiation of the contractual terms.

Key contact



Alessandro Ferrari

Partner

Milan

alessandro.ferrari

@dlapiper.com

Singapore



Which legal regulations must be observed?

The COVID-19 (Temporary Measures) Act 2020 of Singapore (the "COVID-19 Act") and its subsidiary legislations must be observed by persons carrying out media production and filming activities in Singapore during the COVID-19 pandemic.

The COVID-19 Act provides for certain temporary measures including, amongst other things, temporary relief from certain consequences arising from the inability to perform contractual obligations under certain contracts if such inability is caused by COVID-19 to a material extent. It also empowers the Minister of Health of Singapore to issue regulations (also known as control orders) to prevent, protect against, delay or otherwise control the incidence or transmission of COVID-19 in Singapore. Such control orders may provide for, amongst other things, the restriction of movement of or contact between people as well as the closure of workplaces.

The measures provided under the COVID-19 Act are temporary in nature and have different operative dates and periods, for example, the provisions in relation to temporary relief for inability to perform contracts are in force for a period of one year commencing from 20 April 2020 and the provisions which empower the Minister of Health of Singapore to issue control orders are in force for a period of one year commencing from 7 April 2020.

On 7 April 2020, the Minister of Health of Singapore issued a control order in force for the period between 7 April 2020 and 4 May 2020 (both dates inclusive) (the "Initial Circuit Breaker Period"), which sets out various circuit breaker measures designed to break the increasing spread of COVID-19 in the community in Singapore. On 21 April 2020, the Singapore Government announced an extension of the Initial Circuit Breaker Period by another four weeks to 1 June 2020 (inclusive) (the "Extended Circuit Breaker Period", together with the Initial Circuit Breaker Period, the "Circuit Breaker Period").

The COVID-19 Act should be read in conjunction with policies, advisories and guidelines issued by the various Singapore ministries and statutory boards, including the Ministry of Health, the Ministry of Trade and Industry Development ("MTI") and the Infocomm Media Development Authority ("IMDA") (which is of particular relevance to the media industry as the IMDA regulates the media sector).



Am I still allowed to film in my production facility?

Media production works such as shoots and filming are generally not allowed during the Circuit Breaker Period, subject to certain exemptions (as described below).

During the Circuit Breaker Period, every individual must stay at and not leave his or her ordinary place of residence in Singapore except under certain prescribed circumstances such as to work for an essential service provider, to get groceries or to obtain medical treatment for suspected COVID-19 infection or other urgent medical treatment. The Singapore Government has advised individuals to stay at home as much as possible.

In addition, unless an entity carries out activities which constitute an essential service, it is not allowed to operate from its workplace premises during the Circuit Breaker Period. Media production activities are not included in the list of essential services. For the full list of essential services, please see [here](#). The IMDA had in its "Advisories on COVID-19 Situation" published on 7 April 2020 advised that production works such as shoots have to be put on hold or postponed during the Circuit Breaker Period. However, exemptions will be given to public communications efforts related to COVID-19 and essential services. Specifically, exemptions will only apply to companies that are:

- involved in the production and critical support work for public service broadcasting by Mediacorp (which is Singapore's national media network) and campaigns related to essential services; or
- involved in the production of COVID-19 related messaging and content commissioned by the Ministry of Communications and Information of Singapore and/or government agencies.

Companies which fall within (a) or (b) above may apply for an exemption with the MTI [here](#). Companies which have been granted exemptions should continue to adhere to safe distancing guidelines. Companies should operate using minimum number of employees on-site during this period. Those who can work from home should be encouraged to do so. Safe distancing measures, including amongst others, not allowing teams working in different locations to interact physically with one another, implementing safe distancing measures at every workplace premise, and ensuring workers wear masks at their workplace, must be implemented. All workplaces must also have a system that logs their workers' entry into, and exit from, their workplaces.



Are my employees still allowed to come to work?

As mentioned in Q2 above, media production is not listed as an essential service. Accordingly, as a non-essential service provider, media content production companies are not allowed to operate from their workplace premises during the Circuit Breaker Period, unless exempted they fall under the exceptions set out in Q2 above and have obtained an exemption from the MTI. A person who is not a worker of an essential service provider must not carry on any business, undertaking or work in any premises other than at the person's ordinary place of residence. Workers should perform work by telecommuting if possible, and any work performed should only be only through means that do not require meeting any other individual in person. Essentially, employees of media content production companies are not permitted to go to the workplace during the Circuit Breaker Period and all activities should be suspended at such company's workplace premises. If there is a need for employees to work on the workplace premises for short periods of time of less than a day, a time-limited exemption would need to be applied for a day before the required date, subject to certain limitations.



Is exterior filming on public ground still permissible?

All media productions including shoots and filming are required to be put on hold or postponed during the Circuit Breaker Period, unless exemptions have been obtained. See Q2 above for more details.



Is press reporting in public areas still permitted?

Yes, reporting by the press is permitted, subject to observation of safe distancing measures.



What happens if I do not observe the infection protection measures?

Persons who do not comply with the circuit breaker measures commit an offence and may be liable on conviction to a fine and/or imprisonment. Under the COVID-19 Act, first time offenders will face a fine of up to USD10,000 or imprisonment of up to 6 months, or both. For second or subsequent offences, the penalty is a fine of up to USD20,000, or imprisonment of up to 12 months, or both.

According to the FAQs on the Singapore Government's official online communication platform (Gov.sg), individuals who do not comply with the circuit breaker measures will, in the case of a first offence, be fined USD300 or, in the case of a second offence, be penalised with a fine of USD1000 or face prosecution in court for egregious cases. Workplaces which do not comply with circuit breaker measures will be fined USD1,000 (for the first offence) and be penalised with higher fines or face prosecution in court for egregious cases (for repeat offenders). Businesses that do not implement or comply with the Singapore Government's safe distancing advisories may not be eligible for government grants, loans, tax rebates and other assistance. Businesses will be required to suspend their operations should a cluster of infection arise among their staff working on their premises.



Can I take legal action against the infection protection measures?

In general, an applicant with legal standing can make an application to the Singapore courts for a judicial review of COVID-19 measures.



How do doctrines of frustration and force majeure affect media productions and filming?

Persons who are not able to perform their contractual obligations due to the COVID-19 pandemic may seek recourse under their respective contracts via force majeure provisions (if any), the common law doctrine of frustration, statutory rules under the Frustrated Contracts Act (Chapter 115) of Singapore (the "FCA") or the COVID-19 Act.

FORCE MAJEURE

Force majeure provisions are contractual terms in a contract that operate to excuse or suspend performance of contractual obligations on the occurrence of certain specified events which are beyond the parties' control that might impede or obstruct the performance of the contract. For contracts with force majeure provisions, the question of whether the COVID-19 pandemic constitutes a force majeure event will depend on the wording of the force majeure provision in the contract. Such provision would usually also set out the consequences following a force majeure event. Examples of such consequences include an extension of time for the affected party to perform its obligations or a release of the affected parties from their contractual obligations.

DOCTRINE OF FRUSTRATION

Under the common law doctrine of frustration, a contract is frustrated when a supervening event, which is unforeseeable and beyond the control of the parties, occurs and makes performance impossible or renders the relevant obligations radically or fundamentally different from those contemplated by the parties at the time of contract. If the COVID-19 pandemic has such an effect, the contract is frustrated and parties will be discharged from any further obligations under the frustrated contract.

FCA

Where a contract has become impossible to perform or been otherwise frustrated and the parties to the contract have for that reason been discharged from the further performance of that contract, statutory rules under the FCA will intervene to adjust the rights and liabilities of the parties to the frustrated contract. For example, if payments have been made prior to the occurrence of COVID-19 and the contract is frustrated by the pandemic, such payments must be refunded, or if a party incurred costs towards the performance of the contract prior to the occurrence of COVID-19 and the contract is frustrated by the pandemic, the Singapore courts may, if it considers it just to do so, order the other party to pay for reasonable costs incurred. The FCA aims to put parties in a position as if there were no loss and no gain, save for reasonable costs incurred in the performance of the contractual obligations prior to the occurrence of the frustrating event.

COVID-19 ACT

In addition to the above, parties to certain contracts may also consider the temporary relief measures under the COVID-19 Act. The COVID-19 Act provides temporary relief to parties to certain contracts where they are unable to perform a contractual obligation and such inability is to a material extent caused by a COVID-19 event, and the notifying party has given notice in the prescribed form.

The temporary relief under the COVID-19 Act applies to limited categories of contracts which are executed before 25 March 2020, and the performance of which is expected on or after 1 February 2020. At present, the categories of contracts include certain types of loan facilities granted by banks or finance companies to Singapore-incorporated entities meeting certain criteria and secured by Singapore-based assets as well as leases or licences for non-residential immovable property (such as commercial premises). The relief would

prevent counterparties from taking certain enforcement action against the notifying party in respect of the notifying party's non-performance, including but not limited to, termination of lease of immovable property for failure to pay rent or other monies, commencement or continuation of legal proceedings and insolvency action.

The above mentioned moratorium will last until the earlier of (a) the expiry of the prescribed period (which is currently 6 months commencing on 20 April 2020, but may be extended by the Singapore Government); (b) the withdrawal of notification by the notifying party; or (c) it is determined that the notifying party does not qualify for relief under the COVID-19 Act.

The COVID-19 Act does not limit the operation of force majeure provisions in contracts, the doctrine of frustration or an action under the FCA.

Parties should carefully review their contracts and factual circumstances to determine the appropriate relief in the COVID-19 pandemic.

Key contacts



Philip Lee
Partner
Singapore
philip.lee@dlapiper.com



Mei Sum Chan
Associate
Singapore
meisum.chan@dlapiper.com



Yue Lin Lee
Registered Foreign Lawyer
Hong Kong
yuelin.lee@dlapiper.com

Spain



Which legal regulations must be observed?

On 14 March 2020, the Spanish government issued Spanish Royal Decree 463/2020 (EdA) declaring a state of alarm nationwide. Fifteen days later, Spanish Decree-Law 10/2020 made the state of alarm restrictions even stricter. The new Decree-Law included a brief reference to audiovisual companies, considering them to be of “critical national interest” and allowing their employees to go to work. The Decree-Law lasted only until 9 April 2020, and the actual scope of the authorization was never fully clarified. The EdA remains the main current reference for the media and entertainment industry during the COVID-19 crisis in Spain.

On 28 April 2020, the Spanish Prime Minister announced a “back-to-normal” plan, according to which filming activities should be allowed again as from 11 May 2020. However, (i) this should be done in a staged manner, and (ii) dates may differ across the 50 Spanish provinces. On 11 May 2020, filming activities were lawfully resumed, but only in half of Spain and under strict conditions.



Am I still allowed to film in my production facility?

It would depend on the nature of the venue and the circumstances of the filming. In most cases, filming will not be possible because most venues used for filming are included in the list of spaces that must remain closed to the public and that should be broadly interpreted. The listed spaces and what closing it to the public implies has been subject to discussion. To give a comparable example, football teams have been rebuked when trying to train together in their premises or when testing the fitness of their players. Even if a particular space is not on the list, people should adopt the official measures guaranteeing they are not likely to be infected (which makes most filming activities impracticable).



Are my employees still allowed to come to work?

Teleworking is “strongly recommended” by the authorities whenever feasible. Offices, however, are not included in the list of spaces that must be mandatorily closed, and attendance would – in principle – be legal. The return of employees working on filming productions and/or theatrical venues has been authorized in half of Spain (in the provinces under stage 1 of the “back-to-normal” plan) and under strict conditions, including very specific health and safety measures that employers should implement to protect their employees.



Is exterior filming on public ground still permissible?

No, filming on public ground is not normally permissible (except for informative purposes). In the EdA, Spain has adopted a very strict approach regarding presence on the streets. People are allowed outside for limited purposes, like buying food or medicines or going to work, but cycling, running, jogging or even walking for leisure is strictly forbidden. Gatherings are also forbidden except for helping aged/disabled people or children, and even when attached to activities like buying food, special measures like distance between individuals apply. Most TV shows that are usually filmed on public ground are now broadcasting recorded material and state explicitly that it was recorded before the implementation of the EdA.



Is press reporting in public areas still permitted?

The activity of the press has not been explicitly restricted, but it is mostly focused on COVID-19 and public service matters.



What happens if I do not observe the infection protection measures?

Most serious cases of a challenge to the EdA rules can lead to immediate imprisonment (and there are a few cases every day of this). More often, a cash fine is applied. Fines for individuals are normally around EUR1,500, while for groups/entities it tends to be around EUR10,000. Fines of up to EUR600,000 could be applied depending on the circumstances.



Can I take legal action against the infection protection measures?

Although the Courts of Justice are closed for most purposes under the EdA, they remain operative for most urgent cases, including COVID-19-related matters



How do doctrines of frustration and force majeure affect media productions and filming?

Companies are checking the terms of their contracts to verify whether force majeure language is included or not. Spanish law regulates force majeure in special laws (e.g. employment law) and more generally within Article 1105 of the Spanish Civil Code. This is a by-default regulation, which means that if the law establishes a different solution for a specific case or, as often occurs, the parties have agreed a customized solution for these scenarios, the arrangements contained within Article 1105 of the Spanish Civil Code will not apply. Article 1105 by-default regime (completed by case law from the Spanish Supreme Court) establishes that if, as a result of an event that could not be foreseen or, even being foreseeable, could not be mitigated in any way, contractual performance becomes impossible. The parties shall then not be liable for non-performance directly

connected with that event. This legal regime is very restrictive, because obligations that are not directly blocked by the event itself but rather by other surrounding circumstances would not be excused. Furthermore, if performance becomes more difficult or more expensive, but not impossible, no force majeure would be present either.

For scenarios in which a non-foreseeable, non-avoidable event causes performance to become very difficult or costly, Spanish law has an equivalent of hardship (*rebus sic stantibus*). The Spanish Supreme Court considers that this clause is implied in all contracts but, at the same time, it deems it “dangerous” because if every change in the conditions of execution of a contract determined an adjustment or a termination, trade would be seriously hampered. Therefore, it is accepted only on very rare occasions, when there is no alternative to adjust the contract (something that in a temporary event like a pandemic would be unlikely), and the event causes an exorbitant change in the balance of the obligations of the parties. Even in these few cases, the Spanish Supreme Court supports the amendment of the contract, rather than the termination thereof.

There are other legal mechanisms to delay or decline performance that should be assessed on a case-by-case basis.

Key contact



Diego Ramos
Partner
 Madrid
diego.ramos@dlapiper.com

Sweden



Which legal regulations must be observed?

The Swedish government has proposed legislation that gives greater leeway for the authorities to adopt temporary measures to battle the spread of COVID-19 (e.g. by shutting down certain businesses). However, the proposed legislation mainly targets publicly available facilities such as shopping centers and other places of commerce and should not affect production facilities.

There are no decrees or guidelines issued by public authorities in Sweden that are directly applicable to media production companies. However, media companies will be subject to the generally applicable decrees and guidelines as well as mandatory legislation such as the below.

SAFE WORK ENVIRONMENT

An employer has a legal obligation to ensure a safe work environment for its employees. This entails an obligation to conduct a risk assessment of tasks and situations that may expose employees to COVID-19 or otherwise result in a higher infection risk. The employer should adopt a plan for how to deal with infections or suspected cases of infections in its business. The employer is obligated to assess and deal with other circumstances relating to COVID-19, such as employees' worries about infection risks. The employer is, under certain circumstances, obligated to document and inform the Swedish Work Environment Authority of confirmed cases of infection in the workplace.

Furthermore, in the event there is a significant risk of infection in the workplace, an employer may be obligated, if possible, to order the employees to work from home to ensure a safe work environment. However, as yet there have been no cases that confirm this interpretation of the work safety legislation.

PUBLIC GATHERINGS

The Swedish government has issued a prohibition to hold public gatherings and events with more than 50 participants. Public gatherings include, for example, lectures, gatherings for religious practice, theater performances, cinema screenings, concerts, sporting events, dance performances, markets and fairs. Anyone who organizes an event in violation of the prohibition may be sentenced to a fine or imprisonment for a maximum of six months. Private events are not covered by the prohibition and a gathering of more than 50 workers in a production facility will not be subject to the aforementioned prohibition.



Am I still allowed to film in my production facility?

Yes, there are no applicable restrictions for companies to conduct operations in their own facilities. Businesses are only required to close their properties due to decisions made by the government or the Swedish parliament, and filming in a production facility does not constitute a violation of any applicable restrictions and does not risk enforcement.

Notwithstanding the aforementioned, the Public Health Agency recommends that all employees should work remotely to the extent it is possible for the employee to perform their tasks from home or another external location. The abovementioned obligations for the employer to ensure a safe work environment will also apply.



Are my employees still allowed to come to work?

Yes, the public authorities have not taken any measures that prohibit employees from coming to the workplace and performing their work.

However, the Swedish Public Health Agency recommends that all employees should work from home to the extent possible. Furthermore, the Public Health Agency's guidelines urge people with symptoms to limit contact with other people so as not to infect others. Employers may, to the extent it is possible for the employee to perform their work from a remote location and to ensure a safe work environment, order employees to work from home and not enter the workplace.

In general, employees have no right to refuse to come into work if they, in their own opinion, feel unsafe due to COVID-19. If, however, an employee's fear of COVID-19 is connected to a specific disability, disease or other circumstance (e.g. pregnancy) which will make the employee more vulnerable to the virus, employers should take precautionary measures in each specific case to fulfill their obligations relating to ensuring a safe work environment.



Is exterior filming on public ground still permissible?

Exterior filming on public ground is permitted as long as it does not violate the prohibition to hold public gatherings or events with more than 50 participants (private filming is not categorized

as a public gathering or event) or otherwise expose employees to such risks that the employer has breached its obligations to ensure a safe work environment.



Is press reporting in public areas still permitted?

The activity of the press has not been explicitly restricted and taking into consideration the restrictions mentioned in the above section, there are no prohibitions on press reporting in public areas.



What happens if I do not observe the infection protection measures?

Anyone who organizes a public event or gathering in violation of the aforementioned prohibition may be sentenced to a fine or imprisonment for a maximum of six months.

An employer may be subject to penalty fees, fines and/or imprisonment for serious breaches of work environment regulations.



Can I take legal action against the infection protection measures?

Yes; for instance, the above sanctions can be challenged before a competent court.



How do doctrines of frustration and force majeure affect media productions and filming?

There is no general statutory rule in, for example, the Contracts Act regarding force majeure. Force majeure is a relatively narrow exemption rule under Swedish law and as control responsibility is a generally applicable principle under Swedish contract law, a contracting party must expect to have to fulfil its obligations under the agreement even if financial circumstances change. The main rule under Swedish law is also that agreements must be kept.

For the COVID-19 event to constitute force majeure, COVID-19 must be the cause of the non-fulfilment of the contractual obligation. The obstacle caused by the event could also not reasonably have been avoided. It is thus generally not enough to be in a financially worse position as a result of the event or that it will be difficult to fulfil the agreement in order to invoke force majeure.

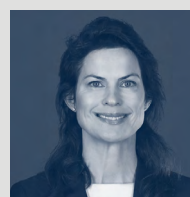
For example, it may be necessary to hire extra staff or make use of other suppliers if the prevented party is unable to fulfil the contract itself, even if it involves a considerable cost increase.

The COVID-19 event may be a force majeure event within the framework of an agreement concluded prior to December 2019 when the new coronavirus and the disease became known. It does not, however, mean that the COVID-19 event necessarily would constitute force majeure in relation to an agreement that is entered into in April 2020. At this time, COVID-19 has already gained pandemic status and its far-reaching consequences are known. COVID-19 should now be considered as a circumstance that should reasonably be expected when concluding a new contract.

The following requirements should as a minimum be met in order for a party to be able to rely on force majeure:

- **a contractual performance must have been prevented:** for example, in the case of payments, the payment is not hindered by COVID-19 in itself and the fact that the performing party has smaller margins or otherwise low liquidity due to COVID-19 is not an event that in itself obstructs payment, provided that banks remain open;
- **the obstacle must be a circumstance beyond the party's control:** this applies to, for example, measures taken by public authorities but should not apply to any circumstances that could have reasonably been avoided by the performing party (e.g. amassing a liquidity reserve instead of expanding its operations);
- **the party cannot not reasonably have been expected to have anticipated or taken the circumstance into account at the time the agreement was entered into:** the relevant time of expectation should be at the time the agreement was entered into, as stated above, COVID-19 should now be considered a circumstance that should reasonably be expected by a party; and
- **the consequences of the circumstance could not reasonably have been avoided:** for example, having all suppliers in one country (due to reasons of costs) that is currently severely affected by COVID-19 should not constitute an event that could not have reasonably been avoided if there were other suppliers available. The lack of a back-up plan should consequently be attributable to the relevant party.

Key contact



Anna Jussil Broms

Partner

Stockholm

anna.jussil.broms

@dlapiper.com

UAE



Which legal regulations must be observed?

The key pieces of legislation introduced at a Federal level in an effort to prevent the spread of COVID-19 in the United Arab Emirates (UAE) and which may affect those engaged in film and production work include:

- Resolution No. 281 of 2020 issued by the Minister of Human Resources and Emiratisation; and
- Cabinet Resolution No. 38 of 2020 (as amended by Decision No. 54/2020).

In addition, the Ministry of Foreign Affairs and the Ministry of Human Resources and Emiratisation respectively have suspended the issuance of new visas and work permits. Commercial flights (other than exceptional repatriation flights) in and out of the country are also on hold.

The situation is extremely fluid in the UAE, with both the strict legal position and the advice issued by government ministries remaining under constant review, with media reports of key decisions often coming days ahead of official publication, which leaves a degree of uncertainty. The laws and advice issued by government ministries, both at a Federal and an Emirate level, are also subject to interpretation and application by the local authorities which are tasked with applying those on the ground. Such application may not always be consistent given the pace of change. As a result of this, we therefore recommend exercising caution before proceeding with any business activities while the current situation prevails, in particular where those take place in public spaces.



Am I still allowed to film in my production facility?

FEDERAL LEVEL

Cabinet Resolution No. 38 of 2020 (as amended by Decision No. 54/2020) prevents individuals from leaving their home or otherwise travelling during the curfew times, as announced by the relevant authorities from time to time, with the fines described below applying where this restriction is not complied with. As at 21 May 2020, a curfew is in effect from 8pm to 6am in both Dubai and Abu Dhabi. Workers from “vital sectors” are exempt from this restriction. The “vital sectors” called out under Decision No. 54/2020 do not include those working in media or production.

The Ministry of Human Resources and Emiratisation (a Federal level organization) has also set out within its Business Continuity Readiness Guidelines a number of requirements which private sector establishments must comply with in order to resume operations outside the hours of the National Sterilisation Programme. These include:

- reducing the attendance of workers to the minimum level required for them to operate (up to 30% of the total workforce). This reflects the position under Resolution No. 281 of 2020, as described in further detail at below;
- preparing posters in several languages to ensure that staff understand the requirements to be followed;
- ensuring that a safe distance between workers can be maintained;
- taking temperature tests at building entrances; and
- continuously sterilizing equipment and facilities.

In addition, the National Media Council recently issued circular No (10) of 2020 on filming movies, series and programs, which set out the following restrictions:

- productions must limit entry on set to essential personnel only;
- all crew members must undergo COVID-19 testing;
- productions must adhere to health requirements determined by applicable authorities; and
- productions must have ongoing education for cast and crew on health requirements (e.g. via awareness campaigns).

EMIRATE LEVEL

Abu Dhabi

We have been informed by Hans Fraikin, Commissioner of the Abu Dhabi Film Commission (ADFC), that filming of a number of productions continued in Abu Dhabi throughout the National Sterilisation Programme, subject to the imposition of appropriate health and safety measures. Hans also emphasized that permits for new productions continue to be available. The ADFC has recently issued a set of guidance ([see here](#)) which will apply to any productions taking place within Abu Dhabi in the immediate future. The restrictions set out within that guidance include:

- crew being required to wear masks and gloves at all times on set;
- equipment, props, costumes, make-up and hair appliances are to be kept in individually labelled cast bags;
- shoot days must be limited to a reasonable number of hours per day;
- the set and common areas must be divided into sections with teams isolated from each other; and
- meals and drinks must be served and packaged as single-serving portions. Disposable cutlery must be used and delivered meals must be disinfected before being brought on set.

Dubai

The Dubai Film and Television Commission has announced that it will begin to issue filming permits once again, having stopped doing so upon commencement of the National Sterilisation Programme. The issuance of permits will be subject to applicants complying with a number of restrictions ([listed in full here](#)), including:

- the temperature of each person on set being checked at all entry points;
- no filming set exceeding ten crew members, whether indoor or outdoor;
- all casting must be conducted remotely;
- no under 18s or over 60s on set; and
- no reuse of make-up applicators.



Are my employees still allowed to come to work?

Following a period of 24-hour quarantine lasting several weeks, at the time of writing, movement is currently permitted outside of the hours of the National Sterilisation Programme, subject to certain restrictions. At present, face masks remain mandatory for anyone leaving their home.

FEDERAL LEVEL

Resolution No. 281 of 2020 issued by Minister of Human Resources and Emiratisation requires private-sector employers to reduce their workforce physically present at business premises to the minimum necessary for business operations, subject to a maximum amount of 30% of total workforce being in attendance. The media industry does not currently fall within the list of exempted vital industries under this resolution.

However, the Supreme Committee of Crisis and Disaster Management in Dubai does consider the media to be an exempted industry. It is therefore not clear at present whether the 30% limit applies. In addition, certain reports consider the Dubai media exemption as only applying to state-owned media bodies, although this is not clear based on the official statement published by the Dubai Media Office. If it does apply, the application of this 30% cap may of course present difficulties where the production team members are not employees but freelancers.

Prior to the issuance of Resolution 281 of 2020, the NMC reportedly issued guidance to its members, requiring a 30% cap on workforce members attending business premises.

EMIRATE LEVEL

According to an announcement by the Dubai Supreme Committee of Crisis and Disaster Management made on 23 April 2020, “meetings should be held at the office only if it is absolutely necessary. Attendees should not exceed five people and each person should maintain a two-meter physical distance from others.” This may of course present a challenge for those working in production facilities.



Is exterior filming on public ground still permissible?

Outside the hours of the National Sterilisation Programme, such activity may be permissible where a permit has been granted by the relevant authorities; namely, the NMC and/or the relevant Emirate level film commission, as applicable.



Is press reporting in public areas still permitted?

Given that Dubai’s Supreme Committee of Crisis and Disaster Management does regard the media industry as vital, it is likely that the DFTC would grant the necessary permit.



What happens if I do not observe the infection protection measures?

Under Cabinet Resolution No. 38 of 2020 (as amended by Decision No. 54/2020) fines of between AED1,000 and AED50,000 can be issued. Those which may be relevant include an:

- AED3,000 fine for any person leaving their home during the curfew hours under the National Sterilisation Programme, except for necessary matters such as buying food, medicine, and dealing with health emergencies;

- AED5,000 for the owner of a company, establishment or workplace where employees are not wearing masks or observing social distancing measures;
- AED3,000 for failing to comply with maximum capacity rates for the number of employees allowed inside a facility, commercial establishment or company workplace; and
- AED10,000 for whoever invites or organizes gatherings, meetings, private and public celebrations in public places or private farms. Participants at such gatherings may also be subject to a fine of AED5,000. While not expressly set out within the resolution, it is likely that holding a filming permit issued by the relevant authority would prevent the issuance of such a fine, provided that the permit requirements were complied with, including the cap on the number of crew present on set.

Fines may also be doubled for those found to be repeating the violation.



Can I take legal action against the infection protection measures?

The UAE has broad discretionary powers to create new legislation and to grant powers to its ministries and agencies. The power of businesses to challenge those measures are extremely limited.



How do doctrines of frustration and force majeure affect media productions and filming?

Under the UAE federal law, the UAE Civil Code recognizes:

- the doctrine of force majeure (Articles 273, 274, 287, 386 and 472); and
- the doctrine of change in circumstances (in other words, hardship) (Article 249).

What amounts to an event of force majeure is not defined in the Civil Code (or anywhere else) and so the specific contractual language is important. If the contract is silent (or ambiguous) as to what constitutes a force majeure event, then it will be for the court (or arbitrator, as applicable) to determine whether the existence and effects of COVID-19 constitutes force majeure under the Civil Code. It is worth noting that the requirement

under the Civil Code is that the force majeure event renders performance of contractual obligations impossible, which is a high standard (and will again depend on the specific obligations under the agreement which are affected).

It is possible (and perhaps more likely) that the current COVID-19 pandemic could satisfy the requirements of article 249 of the UAE Civil Code:

“If exceptional events of a public nature which could not have been foreseen occur as a result of which the performance of the contractual obligation, even if not impossible, becomes oppressive for the obligor so as to threaten him with grave loss, it shall be permissible for the judge, in accordance with the circumstances and after weighing up the interests of each party, to reduce the oppressive obligation to a reasonable level if justice so requires, and any agreement to the contrary shall be void.”

The requirement here is that the contract becomes oppressive (rather than impossible, and so a lower standard than force majeure). COVID-19 is objectively an “exceptional event of a public nature which could not have been foreseen.” Again, however, whether it has led to the contractual obligations becoming oppressive will depend on the specifics of the obligations set out in the agreement.

There is no one-size-fits-all solution in these circumstances and so beyond the above general overview, a careful analysis of any relevant agreement is necessary in order to consider whether force majeure or hardship may apply.

There is no one size fits all in these circumstances and so beyond the above general overview, a careful analysis of any relevant agreement is necessary in order to consider whether force majeure/hardship may apply.

Key contact



Jamie Ryder
Partner
 Dubai
 jamie.ryder@dlapiper.com

UK



Which legal regulations must be observed?

The Health Protection (Coronavirus) Regulation 2020 was enacted in February 2020 to address the imposition of restrictions and requirements, screening and isolation measures. It was followed by the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 (as amended in April) in March 2020 which gave legal force to the social distancing measures announced by the UK Government. Additionally the Coronavirus Act 2020 was published by the UK Government in March 2020 and addresses five key categories, namely containing and slowing the virus, easing legislative and regulatory requirements, enhancing capacity and the flexible deployment of staff across essential services, managing the deceased in a dignified way and supporting and protecting the public to do the right thing and follow public health advice.



Am I still allowed to film in my production facility?

UK Government guidance predominantly requires that staff should be working from home where possible and that small and large gatherings should be avoided. If working from home is not possible, then workplaces need to be adapted to comply with the Government's COVID-19 Secure Guidance (see below) to, for example, avoid crowding and minimize opportunities for the virus to spread by maintaining a distance of at least 2m between individuals wherever possible. Practically this means that although production can continue it will have to be done in a way which complies as far as possible with the health and safety requirements.



Are my employees still allowed to come to work?

Since 23 March, the Government guidance has been that individuals should work at home wherever possible. Although this continues to be the case, since the statement made by the Prime Minister on 10 May, the Government emphasis has shifted to encourage those who are unable to work from home to return to their place of work. As part of this shift in emphasis, the Government has published "COVID-19 Secure Guidance" setting out measures for working safely. There are 8 separate guidance documents covering different types of workplace including, for example, outdoor work, office work and work in vehicles. There are many instances in the sector where work cannot be undertaken at home, and in view of the

Government's updated position, employers can allow employees to return to work. However, this must be done in line with the COVID-19 Secure Guidance and in the context of the duty of care owed to employees, appropriate risk assessments and health and safety measures (not dealt with here) and scrupulously monitoring the Government guidance as it evolves.

Many of the workplaces in the sector do not lend themselves to social distancing and precautionary measures, so new ways of working need to be thought through, and how these alter the working and legal relationship with employees and workers.

For an individual employee who has been advised to follow shielding measures and the individual is able to work at home, an employer should not insist that they attend work, as doing so is likely to breach the duty to protect the individual's health and safety as well as the duty of trust and confidence.

For individuals who are not advised to follow shielding measures but are a vulnerable employee because they have an underlying health condition, they should be permitted to work from home if possible. If they cannot work at home, this should be dealt with on an individual basis and in consultation with the individual – an employer needs to understand what the employee's concerns are and try to agree if there are other reasonable adjustments to working arrangements which could be made such as travelling outside rush hour or minimizing contact with other staff in the workplace.

Employees' pay will depend on which of the following categories they fall into:

- Employees working in the workplace: normal pay.
- Employees working from home: normal pay.
- Employees required by employer to be at home but cannot work from home: normal pay.
- Employees working from home but with reduced hours due to childcare: if reduced hours have been agreed the employer may also be able to reduce pay. If, however, the employee is simply not able to work as efficiently from home the employer is unlikely to be able to reduce pay without agreement.
- Employees who have been furloughed: pay depends on agreement with the employee. Employers who place employees on 'furlough' will be able to claim a grant of 80% of pay up to a maximum of GBP2500 per month. If required to carry out training whilst on furlough they will be entitled to NMW. There are a number of qualifying conditions,

such as a three week minimum period of no working for the employer whatsoever – preparatory work, down the line interviews, conference calls and zoom meetings for work purposes would disqualify. Even football players training at home has been argued to constitute work if their club directs it.

- Employees self-isolating for 7 days due to symptoms or 14 days due to household symptoms: entitled to SSP (and would be entitled to company sick pay if this tracks SSP).
- Employees advised to follow shielding measures: these people have been told not to leave their home for 12 weeks. They are entitled to SSP from 16 April 2020 when the Statutory Sick Pay (General) (Coronavirus Amendment) (No. 3) Regulations 2020 came into force.
- Vulnerable employees not following shielding measures: not entitled to SSP. However, they can be placed on furlough (if the employer has the contractual right to do so or the employee agrees).

Employers should also issue a communication to employees requiring them to monitor and adhere to the government guidance in relation to travel and self-isolation rules etc and reminding them that they must be open and honest with the employer about contact with actual or suspected COVID-19 cases, school closures and any other circumstances involving COVID-19 which may impact their working arrangements. This communication should set out the pay entitlement of individuals who are quarantined or who self-isolate or who are working from home with children requiring childcare. It should also notify individuals that failure to adhere to the government guidance and to notify the employer of relevant circumstances may be treated as a disciplinary matter under the employer’s disciplinary policy.



Is exterior filming on public ground still permissible?

Presently there are no Coronavirus specific provisions relating to exterior filming on public grounds. This means that the usual rules apply alongside the UK Governments guidance on social distancing so filming on public ground will be subject to the requirement to maintain at least 2m between individuals and it may be necessary to limit the number of people present in order to keep the size of the gathering as small as possible.



Is press reporting in public areas still permitted?

Yes our understanding is that press reporting’s in public areas are still permitted provided that social distancing and general infection protection measures are abided by.



What happens if I do not observe the infection protection measures?

Police officers have been given powers to fine people for breaking public health regulations brought in by the UK Government in sections 51 and 52 and schedules 21 and 22 of the Coronavirus Act 2020 to prevent the spread of the virus.



Can I take legal action against the infection protection measures?

Yes, for instance the above administrative sanctions can be challenged before a court.



How do doctrines of frustration and force majeure affect media productions and filming?

Under English law, the doctrine of frustration applies when something occurs after a contract has been formed, which is not caused by either party, that makes it physically or commercially impossible to perform the contract, or makes an obligation radically different to perform. Frustration will only usually apply if there is no force majeure clause in the contract, or if the force majeure clause does not cover the specific scenario in question. If the force majeure clause covers the relevant event, then frustration will not apply because the parties considered that issue in advance and provided for it in their contract. However, if there is no force majeure clause in a contract, or if it does not cover the specific event in a full and complete way, then there may still be scope to invoke the doctrine of frustration.

Frustration is generally a strict test to meet, and its application depends on the wording of the contract in question and the specific facts. If the doctrine of frustration applies, it automatically brings the contract to an end, and the parties are discharged from all future performance. To mitigate the potentially harsh effects of automatic termination, The Law Reform (Frustrated Contracts) Act 1943 (the “1943 Act”) provides that: (i) a party may recover payments made prior to the frustrating event (subject to the court’s discretion to offset any expenses incurred by the other party for the purpose of performing the contract); and (ii) a party that has gained a valuable benefit under the contract prior to the frustrating event may be required to pay a “just” sum for it. The 1943 Act applies to many commercial contracts, but it does not apply to contracts that exclude its effect, insurance contracts, certain shipping contracts, and contracts for the sale of specific goods that have perished. If the 1943 Act does not apply, then the parties’ losses will usually lie where they fall.

Under English law, there is no free-standing principle of “force majeure”, so any force majeure clause will turn on its specific wording and the usual principles of contractual interpretation. Many commercial contracts governed by English law contain force majeure clauses that specify a right to suspend or modify performance when faced with unexpected events. However, force majeure provisions vary from contract to contract, including in relation to: (i) what constitutes a force majeure event; (ii) the relevant trigger for a force majeure event to apply; (iii) the consequences of a force majeure event; and (iv) the formalities required to invoke a force majeure clause. The application of a force majeure clause under English law will therefore depend on the specific clause in question and the facts of the case.

A key issue which can be difficult to establish is whether or not the relevant force majeure event has caused the contracting party to be unable to fully perform its obligations in a way which satisfies the wording of the relevant clause.

Key contacts



Nick Fitzpatrick
Partner
**Global Co-Chair, Media, Sport
and Entertainment Sector**
nick.fitzpatrick@dlapiper.com



Duncan Calow
Partner
London
duncan.calow@dlapiper.com



Jonathan Exten-Wright
Partner, London
jonathan.exten-wright
@dlapiper.com

