

THE HAUSFELD COVID-19 COMMITMENT FREQUENTLY ASKED QUESTIONS



1. What is the Hausfeld COVID-19 Commitment?

Hausfeld London will commit up to £1 million of lawyer time to enable businesses impacted by COVID-19 to investigate claims they may have arising as a result of the ensuing business disruption. This is what we call the Commitment.

2. What do you mean by 'impacted by COVID-19'?

We refer to the impact suffered by businesses which have incurred losses as a consequence of the actions of any contractual counterparty that may have failed to comply with contractual obligations in the wake of the COVID-19 pandemic. The aim of the Commitment is to assist claimants in that situation. The Commitment is set up in the spirit of enabling those who would not otherwise be able to investigate claims to consider them. That will be our prime focus when applying the Commitment.

3. Can you offer a few examples?

We have set out a non-exhaustive list of the possible claims which may exist arising out of the COVID-19 pandemic.

Breaches of contract arising out of:

- a. business interruption;
- b. event/order cancellation;
- c. supply chain issues;
- d. impecuniosity; and
- e. non-performance or partial performance or disrupted performance.

Contractual arguments relating to:

- a. force majeure;
- b. frustration; and
- c. material adverse change clauses.

Insurance disputes relating to:

- a. coverage; and
- b. claims notification.

Competition claims including:

- a. breaches of Articles 101 and 102 of the TFEU/Competition Act 1998
- b. breaches of State Aid rules; and
- c. breaches of Public Procurement rules.

Depending on the circumstances, impacted parties may have claims for losses suffered as a result of any of the above.

Taking force majeure arguments as an example, in order to avoid complying with contractual obligations, some parties may seek to rely on force majeure arguments. In those circumstances, the impacted party may well have claims against its counterparty for wrongfully seeking to rely on force majeure to breach the contract and may be able to recover its losses from the counterparty in any event.

Another example might be where a dominant player in the market uses the COVID-19 situation to unreasonably increase its prices. This potentially unlawful abuse of its position may have an adverse effect on a business operating in that sector and/or reliant on its products.

In some cases, the impact of these issues may lead to insolvency. Whilst an insolvency may well have been caused by COVID-19 related contractual breaches, there may not be sufficient funds remaining in the business to enable the insolvency officeholders to investigate such breaches. We can work with officeholders to investigate potential claims.

These are just a handful of examples. Contact us in case you are not sure whether your claim could be eligible. The dedicated telephone number is 020 7936 0949 or you can email us on covid19commitment@hausfeld.com.

4. Can only businesses apply?

Yes, this is limited to businesses only.

5. Do you need to be an existing Hausfeld client?

No, any business could be eligible. The requirement is that it relates to financially viable, meritorious claims.

6. Why meritorious and viable?

As Hausfeld is offering its lawyers' time and expertise at no cost to the claimant, we would like to make sure the £1 million commitment is effectively used. Also, the team's expertise typically lies in managing medium-sized to larger claims. Remaining within that expertise ensures that we apply our resources efficiently.

7. What do you mean by medium-sized to large claims?

Claims will likely need to be valued in the hundreds of thousands of pounds at least.

8. What if I have a small claim?

The Law Society's directory can be helpful and/or we can direct you to other firms outside London which may be able to assist, albeit it may be difficult to find other firms who will commit to investigate claims for no fees.

9. What about counterclaims?

In some COVID-19 disputes there may be claims and counterclaims and, in those circumstances, we can use the Commitment to investigate a party's claims or counterclaims as part of the Commitment.

10. Is there a cap on the investment sum per claim?

We have set a maximum time investment per claim of £50,000 and we expect most claims to be capable of an investigation for considerably less than this sum. This cap has been set because:

- i. (we consider this to be a sufficient investment for us to provide clients with a preliminary assessment; and
- ii. we want to make sure that a significant number of businesses will be able to make use of the £1

million Hausfeld COVID-19 Commitment.

11. How will you know how much each claim can use from the £1 million?

Our lawyers are very experienced in investigating the validity of claims. They will be able to gauge the level of investigation time needed and will discuss this upfront. We will consider each claim in its own right. Some claims may be smaller and therefore investigation costs will lie well within the cap. Some may be swiftly resolved.

12. What if the fees surpass £50,000?

The Commitment is limited to the investigation costs. The investigation will always be completed within that cap. In order to pursue the claim, we will discuss our wide range of flexible engagement structures. It is up to the client how it wants to take the dispute forward. In almost all circumstances, those investigation costs will not need to be repaid.

13. What do you mean by flexible engagement structures?

Hausfeld has always embraced new ways of thinking: we were early adopters of third party funding and have always offered a wide range of fee possibilities, including DBAs (Damages Based Agreements) and CFAs (Conditional Fee Agreements).

Transparency is key and we will discuss and agree fee possibilities with the client who ultimately decides how to take the dispute forward.

14. Will the claimant still need to pay other expert fees?

The Hausfeld COVID-19 Commitment relates to the time spent by our lawyers to investigate the dispute only.

We do not expect that barristers and experts will generally be required in the investigation stage.

15. You mention the Commitment is on a 'non-recourse' basis. Is there no situation in which you would claim the investigation costs back?

In virtually all scenarios, the Hausfeld COVID-19 Commitment amount would be non-recourse. However, should the client decide to pursue its claim with other solicitors after obtaining advice from Hausfeld using the Commitment, unless otherwise agreed, there would be a requirement to pay the sums which the client benefited from using the Commitment.

The English Courts apply the adverse costs principle so that if the client succeeds in its dispute, it can claim costs from the defendant. It may be possible, in agreement with our client, to recover any investigation costs from the defendant.

16. Does the Commitment cover claims by all your offices?

The Commitment is limited to claims in England & Wales. Hausfeld's offices in the US and continental Europe are assisting those impacted by COVID-19 in other ways. If your claim relates to one of those jurisdictions, we would be happy to refer you to our colleagues there to see if they can help.

17. I think I may have a claim. What do I do?

Please contact us on our dedicated COVID-19 Commitment telephone number - 020 7936 0949 - or email us on covid19commitment@hausfeld.com. A member of our team will respond to you as quickly as possible.