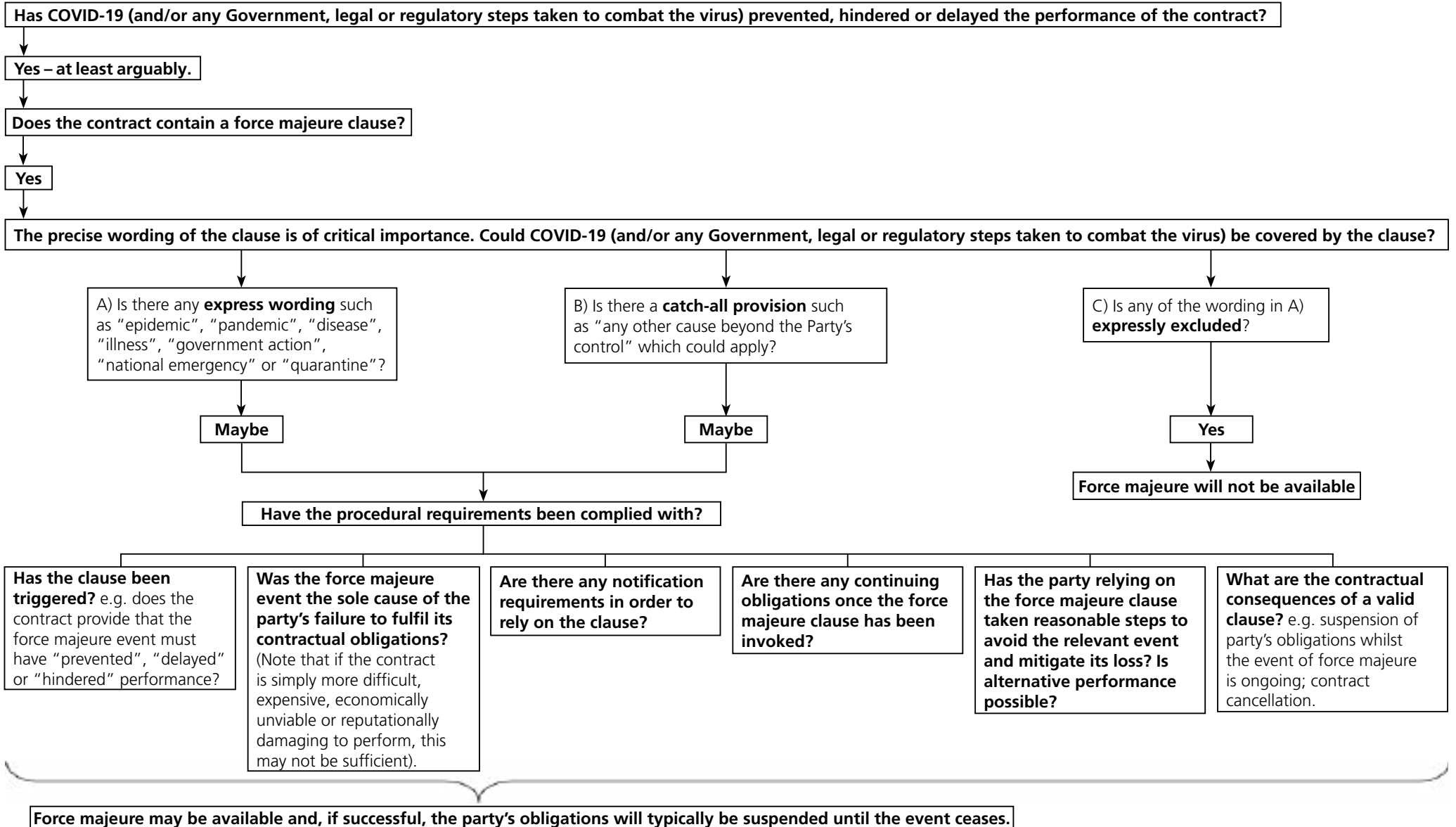


Force majeure

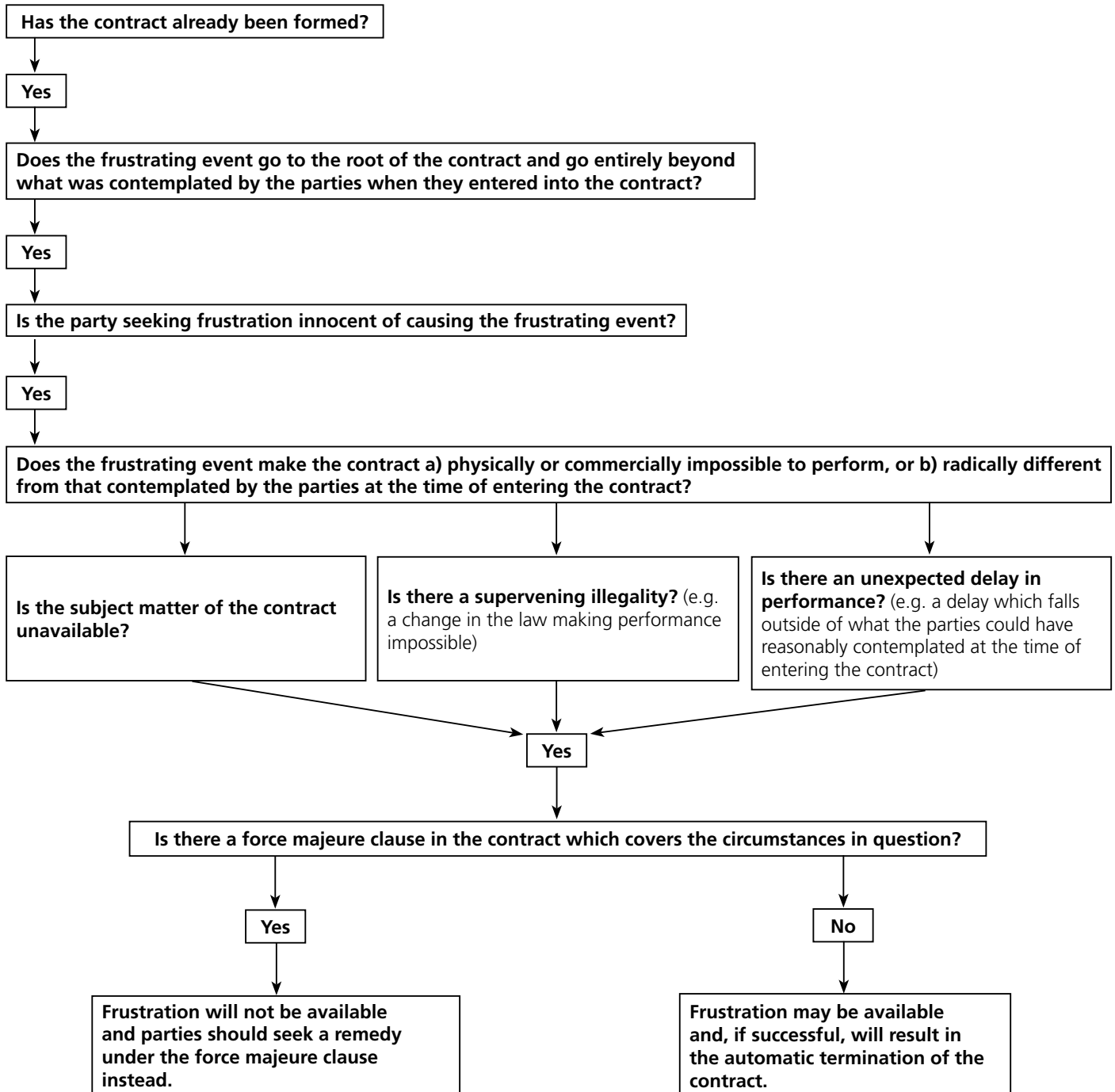
Force majeure clauses may entitle a contracting party to terminate a contract, avoid liability for breaching obligations under the contract or delay performance of contractual obligations on the occurrence of specified events which are beyond the control of the parties and where the party seeking to enforce the clause is not the cause of the specified event.



Note: Force majeure is rarely straightforward. Even where the contract does contain a force majeure clause, it is still uncertain as to whether a party will be able to rely on it to protect against claims for non-performance as a consequence of difficulties arising from COVID-19 (and/or any Government, legal or regulatory steps taken to combat the virus). We would always advise obtaining legal advice a) before declaring force majeure or b) after receiving a force majeure notice from a counterparty. For further Covid-19 advice, please contact your usual Lewis Silkin contact or Mark Lim at Mark.Lim@lewissilkin.com.

Frustration

A contract which does not contain a force majeure clause (or which contains a force majeure clause which does not cover the specified COVID-19 event or any Government, legal or regulatory steps taken to combat the virus) may be discharged (and automatically terminated) by frustration upon an occurrence which a) makes the contract physically or commercially impossible to perform, or b) makes the performance of the contract radically different from what was contemplated at the time the contract was entered into. Frustration is a common law doctrine and available even when not expressly referenced in the contract.



Note: Frustration generally only applies in extreme scenarios and is rarely upheld by the Courts as lawfully terminating contracts between commercial parties. We would advise obtaining legal advice prior to seeking reliance on this doctrine. For further Covid-19 advice, please contact your usual Lewis Silkin contact or Mark Lim at Mark.Lim@lewissilkin.com.