

The COVID-19 Pandemic

A Corporate Survival Guide

The COVID-19 pandemic has taken us all by surprise. As with all economic shocks, few predicted that a flu-like pathogen would go on to have such far-reaching effects on the world economy. Corporates, private equity sponsors and the careers of their management teams will be defined by how they react. COVID-19 is likely to give rise to other types of direct or indirect crises. Failure to deal with a crisis when it happens can be even more damaging than the original crisis itself. Clients come to Baker McKenzie for our ability to make the overwhelming manageable.

The sweeping restrictions on the movement of citizens imposed by governments and the resulting reductions in revenues and increased costs in certain sectors of the economy, increased stress on IT as employees work from home, challenges to the confidence and mental health of the workforce and investors, depreciation in asset prices and slow-down in economic activity is causing uncertainty and widespread upheaval as governments, companies and respond to the fast-evolving situation.

Companies turn to Baker McKenzie to help empower their response to this unexpected and unprecedented crisis and to help navigate the uncharted waters that lie ahead.

Our experience of prior crises – ranging from data loss to serious employee misconduct and financial distress – gives us unique experience in our ability to assist our clients in weathering the storm. We respond swiftly and seamlessly across jurisdictions to lessen the impact and to help our clients protect their businesses and their reputations.

Identifying the Issues

We have identified three principal areas in which businesses are facing unprecedented challenges associated with the pandemic. Identifying the challenges and how to manage them effectively is the first step in mitigating the effects of the Pandemic on your business.

1. Operational Issues

Although a well-run company is likely to have an incident plan to deal with emergencies, as we have seen in recent days, these are rarely perfect and the scale of the challenges presented by the pandemic has caught even the most organised businesses off guard.

We are seeing the following key operational issues arise from the pandemic and government restrictions:

Employment

- Issues arising from lack of childcare provision
- Redundancy processes for cash-starved businesses
- Health and safety at work for employees working remotely
- Redeployment of existing staff to other parts of the business
- Establishing protocols for continuity of management team if executives contract COVID-19
- MIPs often “out of the money”

IP/IT

- Implementation of home-working infrastructure
- Ensuring sufficient remote IT support
- Force majeure and termination events occurring under long-term service / outsourcing contracts
- Licensing arrangements for software to enable eg virtual meetings

Commercial

- Addressing disruption to supply chains
- Managing communications with suppliers, customers and other stakeholders
- Sourcing alternative supply for business critical products / services
- Competition law changes to permit collaboration between competitors

Real Estate

- Landlord and tenant issues for commercial and industrial businesses no longer able to operate

Compliance

- Managing compliance risks of sourcing alternative suppliers at speed
- Upholding corporate values and internal controls with a remote workforce

Disputes

- Dealing with counter-party default
- Defending claims for breach of agreements
- Force majeure, frustration, and contractual disputes
- Maintaining accountability and ensuring lawfulness of public decision-making during the crisis
- Advising on compliance risks associated with sourcing alternative suppliers at speed
- Enhancing internal controls which may be impacted by the increase in remote working

Tax

- Permanent establishment or corporate tax residence issues may arise as a result of travel restrictions or capacity requirements
- Supply chain disruption may lead to additional duties, tax cost and compliance
- Transfer pricing policies impacted by the economic downturn
- General impact on asset and business valuations

Our network of legal professionals rapidly deploy to triage and mitigate risk to the business.

“ The scale of the challenges presented by the pandemic has caught even the most resilient businesses.”

2. Reputational Issues

Reputations can take a lifetime to establish and a moment to be ruined. They are part of the intrinsic value of the business and brand and its preservation can be vital to the company and its survival.

We have already seen companies wrong-footed by their reaction to the crisis. Now more than ever, it is vital that businesses protect their reputations while responding to a fast-moving situation often played out in real time in the media. The stakes are high and an ill-timed comment or an insensitive decision can have long-lasting negative impacts on a business and its brand image.

Instances of reputational pitfalls include:

- Adopting an overly aggressive legal response to those suffering from the pandemic (both in terms of physical, mental and financial wellbeing)
- Failure to consider the destabilising effect that the pandemic has on other employees and counterparties
- Termination of employment contracts without

consideration of all options and legal ramifications

- Exercising creditors' rights without making allowance for the circumstances being seen to profit unfairly from the crisis
- Lose control of the public tax narrative — without actively managing good relations with tax authorities and monitoring compliance with agreements/rulings, there is less opportunity to seek consensual tax solutions and greater chance of an unfavourable and widely known tax position
- Lack of regulatory awareness — the law is moving quickly and companies laws regulating rights of creditors, landlords and employers are in a state of flux; by not keeping abreast, companies can unwittingly find themselves in breach of regulations and caught up in new controversy
- Actively managing relationships with tax authorities; businesses should work cooperatively with their usual contacts within tax authorities

- Monitor compliance with advanced pricing agreements and other agreements or rulings with tax authorities
- Underestimating how quickly a crisis can 'go global' whilst battling a communication backlog between different regulatory bodies

Clients turn to Baker McKenzie as trusted advisers who can help them make difficult judgement calls in tight timeframes. We are also able to draw on the deep experience of our Regulatory, Public & Media law team who are highly-experienced in managing reputational risk and who work seamlessly with our advisory and transactional practices to calibrate risks and mitigate missteps as quickly and privately as possible.

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3. Financial Issues

The pandemic and the measures implemented by governments to halt its spread have had profoundly negative effects on the world economy. Equity markets have lost 30% of their value and policy-makers' attempts to prime demand have hardly had an impact. While yesterday liquidity may have been plentiful, today it may be scarce.

Key actions for businesses with constrained liquidity:

Liquidity forecasting

- Ensure an accurate and up-to-date cashflow forecast is prepared showing different cases and identify pinch-points
- Understand any capacity or reliability issues in corporate treasury and supplement as required
- Identify financial covenant breaches or potential "near-misses" and review documents for options to provide new capital

Access to capital

- Identify existing committed credit lines and ensure any conditions to utilisation can be satisfied
- Where new money is required, assess appetite of shareholder or other stakeholders to inject fresh capital

Governance

- Does the board have the experience to manage the situation
- Is the board sufficiently independent to win support from creditors

Directors duties

- Maximising value is the overriding objective
- Shift from shareholder to creditors in many jurisdictions

- Personal liability concerns
- Ensure appropriate D&O cover
- Manage any conflicts of interest
- Take legal advice on steps to mitigate personal liability including regular board meetings and consideration of decisions to continue to trade outside a formal proceeding

Stakeholder priorities

- Shareholders may be "out of the money" and disinterested in ongoing involvement
- Sale by CLOs / par investors may change the objectives of credit investors

Dealing with creditor pressure

- Management resources can become strained
- MIP may need to be reset or other incentives offered to senior management

Options analysis

- Work with lawyers to consider ways to implement with different levels of creditor consent
- Facilitate business and financial diligence
- Assessment of options and viability

Agreeing a refinancing proposal

- Work with investors to develop a business plan
- Undertake valuation and entity priority modelling
- Consider which if any, regulators or other third parties, should be approached
- Tax structuring
- Effective project management

Tax

- Restructure financial arrangements and plan for loss utilisation
- Reduce or suspend corporation tax instalments, where applicable
- Request refunds for tax installments already paid, where applicable
- Review availability of tax credit and early reimbursement of tax overpayments
- Amend the length of the VAT return period and apply for deferral of tax payments
- Speed up refund claims of pending VAT credits and implement reverse charge mechanisms where available

Who else (e.g. customers or counterparties) might be affected?

Our Restructuring & Insolvency team is highly experienced in advising corporate borrowers, private equity sponsors and their portfolio companies. Having acted on numerous cross-border restructuring and recovery solutions, we apply our experience to provide a full service offering to our clients. Our dedicated restructuring lawyers regularly call on specialist colleagues in finance, capital markets, M&A, corporate reorganisations, employment, pensions, tax, commercial, real estate and dispute resolution.

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Co-ordinated, Decisive Responses

With our help, PE portfolio companies and corporates are responding to the unfolding crisis

Establish central crisis management team

This is the team who will guide the company through the coming months. It should map out who will handle the different risks and delegate accordingly.

- Existential continuity risks should be identified and back-up plans established
- Consider whether to bolster governance and skillset of incumbent board

Ensure the safety of the workforce

- Home-working policy: ensure adequate hardware and communicate support infrastructure
- Ensure data compromise risk is mitigated through robust IT systems
- Review and adjust workplace policies to account for home working arrangements
- Engage with regulators / public health officials
- Develop policies to stymie spread of COVID 19

Stress test liquidity and boost balance sheets

- Stress test liquidity under different scenarios
- Assess likelihood of default under credit facilities

- Develop and implement plan to manage liquidity and working capital
- Assess impact on customers' credit risk position
- Raise additional capital
- Take legal advice on directors' duties and solvency issues
- Ensure adequate D&O cover
- Understand government support measures available and make use of them where possible
- Communicate tax filing position with tax authorities

Stabilise operations

- Ensure supply chain continuity and find alternative sources where necessary
- Estimate revised customer demand
- Protect customers
- Take any necessary action to protect the brand

Prepare for recovery

- Consider adjustment to overall business strategy
- Adjust budget for new demand assumptions

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Core Practices

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Private Equity

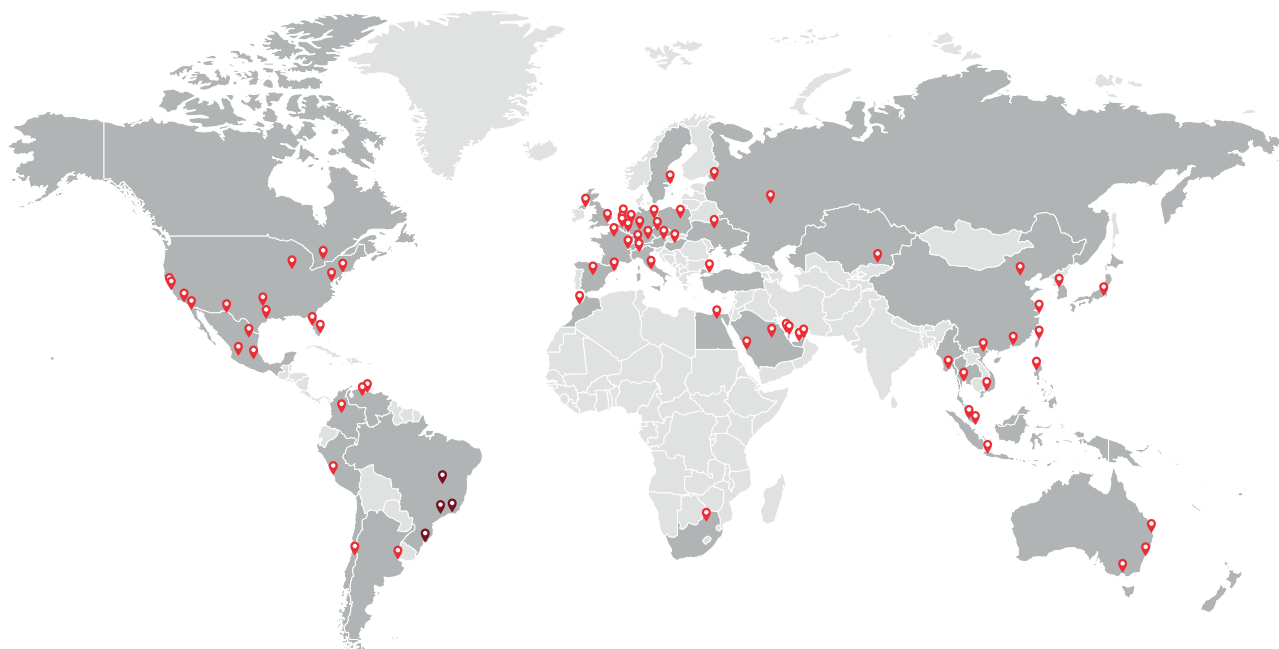
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Restructuring & Insolvency

Technology, Media & Telecommunications

Tax

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Baker McKenzie helps clients overcome the challenges of competing in the global economy.

We solve complex legal problems across borders and practice areas. Our unique culture, developed over 70 years, enables our 13,000 people to understand local markets and navigate multiple jurisdictions, working together as trusted colleagues and friends to instill confidence in our clients.

Beyond COVID-19: Resilience, Recovery & Renewal Resource Hub

As the world grapples with the COVID-19 pandemic and its profound impact across regions and industries, companies are looking for ways to safeguard their people and the long-term future of their businesses. As markets move through different response and planning stages, our multidisciplinary teams draw on regional, local, practice and industry-specific expertise to assist clients regardless of where they are on the curve of the pandemic. As part of our commitment to provide you with the latest regulatory and legal updates, we have created a dedicated [Beyond-COVID-19 Resource Hub](#). In this fast-changing environment, you will be able to access the information that matters most to your business.

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