

LANGLEYS  
SOLICITORS

COVID-19: Practical Guidance For Businesses

# Practical guidance in the face of COVID-19

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Much of the commentary about the challenges businesses are facing due to COVID-19 has, understandably, focused on how well equipped people are to work from home.

However, it is critical that you think more broadly. The knock on impact of the pandemic will touch almost every part of your organisation.

Whether you are a landlord or a tenant, you need to look at your lease provisions to understand your obligations to keep premises open and the implications if you want to close. It is highly likely your IT systems will be under extreme pressure, while GDPR requirements become even more complex with a virtual workforce.

The supply chain is another area that will experience significant strain. You need to review your contracts to ensure you understand your position. Corporate transactions that are in the pipeline will be placed in doubt and, unfortunately, many businesses will experience cashflow difficulties.

We've put this booklet together to give you some helpful and practical guidance about what you need to do in a number of key areas. There are contact details for specialists in each of them - please get in touch with them if there is anything you need. You can also contact me at any time and I will do whatever I can to help.

Tim Cross  
Managing Partner

# Contracts and the supply chain

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In the face of COVID-19 businesses are facing huge amounts of disruption on all fronts. For many there will be question marks over their ability to fulfil their contractual obligations. This means it has never been more important to review the precise wording in your contracts.

For example, they may contain a force majeure clause that, in certain circumstances, entitles a party to suspend performance or cancel a contract because of events that are outside of either party's control. In addition, contracts can sometimes be frustrated as a matter of law. Understanding your contractual rights, as well as those of other parties, will help to avoid disputes further down the line. With the courts themselves facing uncertainty, we could see litigation delayed for a substantial period of time.

Five things to consider:

1. Review all of your business contracts now so that you know your contractual rights and those of the other party. Force majeure clauses tend to be boilerplate clauses buried towards the back of a contract.
2. Open a dialogue with other parties early. Everyone is facing uncertainty and the key to avoiding disputes is likely to be a cooperative approach.
3. Keep records of all discussions and all decisions you take and check to see if you have any insurance that might cover the problem, including business interruption.
4. Do not overlook notification provisions in contracts. These are vitally important and any contractual procedures should be adhered to.
5. If you or another party have breached, or are likely to breach, a contract or you are unsure of your position, seek legal advice as early as possible to ensure that your position is protected.



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# IT and data security

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GDPR means that if you process personal data, you must have the appropriate organisational and technical measures in place to protect that data from misuse, loss or unauthorised access. This becomes a particularly acute issue when the majority or all of your people are working from home.

Apart from GDPR considerations, IT systems and infrastructure are likely to be under additional strain. You need to carry out sufficient testing to ensure they can cope and that there is no risk of interruption to essential functions. Added to that, there is likely to be an increased risk of hacking, so you need to have maximum security protection, particularly if you handle financial transactions.

Here are five things you need to consider:

1. Do you have a specific policy or procedure in place for protecting data when people are working from home?
2. Have you ensured that your staff have had a proper opportunity to read the policy and understand it?
3. Have you checked you have sufficient software licences, and bandwidth, to allow remote working?
4. Have you thought about your vulnerability to hacking? Financial transactions may need extra care.
5. Wherever possible, ensure remote workers are not using their own phones, or are prefixing the number with 141 so that the call will go out anonymously.

# Looking after your people

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COVID-19 has caused huge disruption to workplaces across the UK. As the Government advises people to work from home wherever possible, employers and employees alike are rushing to ensure they understand their rights and responsibilities under the law.

As an employer you have a duty of care to your employees. In the context of COVID-19 this means helping people work from home wherever possible; providing tissues, hand sanitiser and appropriate spacing for employees who do need to come into the office; and keeping working environments clean.

Five things to consider:

1. Have you identified and documented a suitable strategy for your workforce during the COVID-19 crisis?
2. Have you identified all of your high risk people? Older people, those with underlying medical conditions and pregnant women need extra consideration.
3. Do you have a clear policy for paying people, including when holiday pay, statutory sick pay and unpaid leave apply?
4. How will you keep in touch with your people when they are working virtually and look after their mental wellbeing?
5. How will you ensure people self-isolate in accordance with the medical guidance if they contract the COVID-19 virus?



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# Landlord and tenant

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The COVID-19 pandemic is causing profound changes to the way we use commercial premises across the country. The retail, leisure and tourism industries are generating most of the headlines, but there are significant considerations for landlords and tenants in every part of the market.

Many of the issues relate to the provisions in a lease. These will dictate the extent to which premises can be closed; for example, many retail and leisure leases, particularly in shopping centres, contain an absolute obligation on the tenant to remain open at all times. What's critical in times like these are for landlords and tenants to communicate as soon as possible to agree what can be done to the benefit of both parties.

Here are five things to consider:

1. For businesses in the retail, leisure and hospitality sectors, are you taking advantage of the business rates relief measures set out by the Chancellor?
2. If you are a landlord or tenant and want to temporarily close premises, both parties need to consider the terms and the rights granted and reserved in the lease. How can these be balanced against Government guidance?
3. If you are seeking a rent suspension, most commercial leases only grant suspensions in the event of property damage or destruction due to an insured risk. In the majority of cases COVID-19 is unlikely to be treated as an insured risk.
4. Check to see if your lease has a break clause or imminent expiry date. It is unlikely that a lease can be terminated because of COVID-19. If not, it's likely that the lease and obligations to both the landlord and tenant will continue.
5. Landlords responsible for cleaning and maintaining common parts should be providing a more frequent level of cleaning service. It is important they work with their managing agents and facilities providers to check they are complying with Government guidance.



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# Managing transactions

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COVID-19 will undoubtedly be a concern for businesses in the middle of any corporate transaction, whether you are the buyer or seller. In particular, what sector the transaction is in and the impact of COVID-19 on its underlying fundamentals will have a significant impact on whether the deal remains attractive.

The method of funding and what stage your deal is at should also impact whether the transaction continues or whether it is best for it to pause to see how events unfold. Whatever decision you take, the most important thing is to assess everything in even more detail than normal.

Here are five things to consider:

1. Can you manage the transaction on a split exchange and completion basis? As a seller this could give you the opportunity to exchange binding contracts now and at a later date, but as a buyer it could be difficult to pull out after contracts are exchanged.
2. If you have a split exchange and completion contract make sure there is a material adverse change clause included. A well drafted clause should make it possible to terminate the agreement, reduce the consideration or include other mechanisms to protect you as a buyer if anything happens that impacts the viability of the transaction.
3. If you are funding the acquisition from your cash reserves, check your financial projections to see if it is still viable. If bank, venture capital or private equity funding is involved, they are more likely to be cautious so speak to them right away.
4. If a transaction is at an early stage, consider covering some of the initial due diligence process before pausing. When the time is right to move forward with the deal, you will have made progress so that the legal process is more streamlined.
5. If a transaction is at an advanced stage and must go ahead, use this time to reassess all documentation, in particular due diligence documentation.



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