

COVID-19: ISSUES FOR BUSINESSES

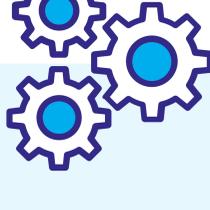
The rapid spread of the novel coronavirus COVID-19 and the unprecedented containment measures taken by many governments have created challenges for businesses operating across the globe. Below are some non-exhaustive considerations that may be relevant to your business.

Visit [our hub](#) to find out more or contact us to discuss steps to protect your business.

Employee health and safety



- 01 Workplace health and safety obligations continue to apply and will inform many employee-related decisions.
- 02 Data protection, privacy and confidentiality obligations need to be considered along with health and safety obligations.
- 03 Employee rights and entitlements remain relevant when considering temporary changes to working arrangements.
- 04 Important to keep employees informed and consider any formal consultation requirements.
- 05 Planning and implementation of alternate working arrangements essential (eg. working from home).
- 06 Consider and consult on all alternatives to redundancy (eg. paid and unpaid leave, stand down etc).
- 07 If reduction of headcount is inevitable, seek legal advice.
- 08 Moving employees internationally (travel or relocation) may give rise to unique regulatory, visa, insurance and other issues.
- 09 Employee rights and entitlements remain relevant when considering temporary changes to working arrangements.



Contractual and supply chain issues

- Consider **interdependencies** and monitor potential domino effect throughout the entire **supply chain** (factory closures, logistics disruptions, customs and quarantine delays etc).
- Force majeure (FM) clauses** may be considered differently in different countries – it is worth seeking professional advice.
- Check and comply with **FM notice requirements**.
- Insurance cover** may be available for **business disruptions**.
- Tax relief, subsidies or preferential loans** may also be possible.
- Flexibility and creativity may be required to negotiate a desirable outcome.
- If concerned about **solvency of counterparties**, consider taking professional advice.
- Regulatory requirements for alternative models for service deliveries will need to be checked.

Considerations for finance transactions

For businesses affected by COVID-19, consider in existing and future finance transactions:



Governance and corporate transactions

For ongoing M&A transactions:

- Is deal completion impacted (eg. by MAC)?**
- Can physical due diligence still be conducted?**
- Is physical signing (wet-ink signature) required and is it possible?**
- Does your W&I insurance exclude COVID-19?**

- For listed entities, it is important to consider:**
- ✓ Disclosures
 - ✓ Insider trading issues
 - ✓ Market disruption clauses which may be triggered
 - ✓ Delays in audit work (and financial reporting) due to travel restrictions
 - ✓ AGM logistics
 - ✓ Capital raising requirements (and availability of markets)
 - ✓ Takeover defence readiness
 - ✓ Distress and restructuring options

Strategic considerations



Is your business ready for COVID-19, now and in the future?

- Are any changes needed to your supply chain? Have you conducted a risk assessment of your tier 1, tier 2 and tier 3 suppliers?
- Can you accelerate the implementation of alternative business models?
- What can you do to support your suppliers and customers through these difficult times? We are all in this together.
- Is your workforce physically, mentally and culturally prepared for remote working?
- Have you stress tested your business, operationally and financially?
- Is your industry undergoing permanent structural changes, eg. as market participants change?
- Do you need a stronger balance sheet? Where are your sources of funding?
- What are your restructuring options?
- Every crisis brings opportunities – is your business ready?

Considerations for landlords, tenants and their financiers



Continuity for landlords, tenants and financiers is emerging as a critical economic issue amid the unprecedented measures to contain the spread of COVID-19. We understand what is important to you and to help make sense of the trends and evolving situation we have created an easy to follow checklist, targeted towards strategic asset management and key portfolio considerations to protect your business and its assets. We have also set out a number of tax issues which will need to be carefully considered as part of managing the impacts of COVID-19.

For more information, including [emergency measures for commercial leases](#), please visit [our Hub](#) or contact us to discuss management issues and protection strategies.

To assist in the review of your assets, now and in the future:

- 1 Whether as a direct result of COVID-19 (as an infectious illness) or as result of government imposed restrictions or intervention - does a tenant have the right to terminate their lease, abate rent, cease trading from the premises or obtain some other form of relief?
- 2 What are the respective rights of a landlord or tenant if a tenant abandons, or ceases trading from, premises? Does it make a difference if the conduct is voluntary (for example, as a result of a change in market conditions) or involuntary (for example, due to a government mandated closure)?
- 3 If a landlord and tenant agree to temporary or permanent relief (for example, rent abatement), how should the parties structure and document that relief (including with a view to preserving rights as a creditor in the event of tenant insolvency)?
- 4 What rights does a landlord have to close or restrict buildings or premises in whole or in part? What rights does a tenant have in circumstances where that occurs?
- 5 What rights does a landlord or tenant have to conduct extensive cleaning or fumigation of premises or buildings? How can costs be recovered or allocated by the party undertaking that cleaning or fumigation?
- 6 What are the rights and obligations of a landlord or tenant under their policies of insurance? Does cover extend to business interruption, loss of rent and circumstances where a third party contracts COVID-19?
- 7 What consequences will new government legislation (for example, the *COVID-19 Legislation Amendment (Emergency Measures) Act 2020 No. 1* passed by the NSW Parliament) mean for landlords and tenants and are my existing relief arrangements consistent with them?
- 8 Recognising that a number of tax liabilities, including income tax and GST, are imposed on an accruals (rather than receipts) basis, how should tax and GST obligations be managed in the context of overdue rent that has not been abated or deferred? What deferral, adjustments and variations are available from tax authorities to help manage cash flow issues?
- 9 In the event a landlord has fully geared their real estate investment based on the prior year value of the property, will the current economic climate affect the landlord's capacity to claim debt deductions under the thin capitalisation rules?
- 10 If the impacts of COVID-19 result in a landlord seeking a government bailout or various forms of capital raising (including the conversion of existing instruments), how will those actions be characterised from a tax perspective and will any stamp duty consequences arise?
- 11 What rights does a landlord or tenant have to defer the payment of land tax and rates? Have any relevant rules or exemptions been introduced to provide relief from these charges and levies?