Key Business and Legal Issues to Consider in Light of COVID-19

The outbreak and rapid spread of the coronavirus disease (COVID-19) has roiled markets and disrupted supply chains, threatening the global economy. It is also forcing companies to confront a host of hard questions about how they can and should conduct business during a global public health crisis.

Below, we outline questions that companies and their boards should consider as they navigate this uncertain era. Many of these questions are industry-agnostic, but all companies must also address challenges specific to the industry and regulatory environment in which they operate.

Sidley has organized a multi-disciplinary task force to address the wide range of regulatory, transactional, and litigation issues companies face in responding to COVID-19. To discuss the business and legal implications for your company, please contact one of the individuals below or the dedicated Sidley lawyer with whom you work.

Updated: March 22, 2020
In light of the evolving situation, we are reviewing and frequently updating the information below.

COMMON ISSUES

Labor, Employment and Immigration
    Europe – Susan Fanning

- How should employers handle employees who are coming to work?
  - What are legal obligations to provide a safe and healthy workplace?
  - How do employers implement CDC and other public health protocols and guidelines, especially if they do not neatly fit with state/local law?
  - Can a company force employees to stay home if they show symptoms or have traveled to affected areas? What are the rules about paying them?
What if employees were not in a high-risk area, but appear symptomatic? Can companies force them to be tested?

- How should employers handle employees who are not coming to work?
  - Sick pay, leave of absence, reasonable accommodations?
  - Compliance with wage/hour laws for exempt and non-exempt employees?
  - How can companies avoid “slippery slope” arguments when the health crisis abates (e.g., making sure temporary work from home doesn’t become permanent)?

- I-9 hiring process
  - What is the impact of new work from home and remote hire policies on the in-person compliance requirements in the hiring process?

- Disability/reasonable accommodation
  - Is COVID-19 a disability under state/federal law that has to be accommodated?
  - How should employers deal with employees who have asthma or other conditions that make them higher risk for complications?
  - How should companies deal with employees who do not want to come to work for fear of infection? Does the nature of the work – e.g., as a healthcare service provider – matter?

- Discrimination/harassment
  - How should companies handle possible issues around discrimination/harassment based on disability, or race/national origin perceived to be affiliated with an affected area?

- Tort liability
  - May companies be held liable if an employee infects others with the COVID-19 virus?

- Travel bans
  - How should companies plan for and handle employment disruptions caused by COVID-19-related travel bans?

- Immigration compliance
  - How can companies plan proactively to avoid lapses in status and compliance issues in visa and immigration processes for foreign national employees?

**Privacy and Information Security**

Contacts: U.S. – Colleen Theresa Brown, Kate Heinzelman
Europe – William RM Long

- What information can companies require their employees to disclose about their health status and symptoms, travel plans and history, exposure of family members, non-work activities and possible risk of exposure?
- What employee information can be shared in compliance with the Health Insurance Portability and Accountability Act (HIPAA), other federal law and state privacy laws?
- Can an employer take employees’ temperatures or collect other health-related data directly or indirectly?
- What information can companies collect from third parties and open sources about employees’ and others’ health and risk of exposure?
- What personal/health information can companies request from state and federal health authorities, and what are the considerations about how this information can and should be further used and shared?
- Are there statutory, regulatory or contractual restrictions on any data collection, processing or dissemination contemplated to address COVID-19 risks? What are the risks of these activities?
- Are existing privacy disclosures and international data transfer mechanisms adequate to address any new data collection and analyses?
- Is a privacy impact assessment, or a security risk assessment, required or advisable for any new data-related activities?
- What confidentiality or other privacy considerations bear upon identifying the names of the infected or exposed to other employees, third parties, the public or governmental authorities?
- To the extent employees who do not ordinarily work remotely must do so in light of COVID-19, are proper information security measures and monitoring in place to ensure information is appropriately secured?

**Employee Benefits and Executive Compensation**

Contacts: Eileen M. Liu, Melissa K. McGrory

- What are the implications under health and welfare plans if an employee is no longer working due to the COVID-19 outbreak?
- If employees lose health and welfare plan coverage in connection with leaves related to the COVID-19 outbreak, can a company waive plan requirements and continue coverage? If not, is the employee entitled to COBRA benefits?
- Do health plans cover (or are they required to cover) COVID-19 testing or treatment? If so, under what cost-sharing arrangements?
- Must companies provide disability pay to their employees if they are unable to come (or prohibited from coming) to work due to the COVID-19 outbreak?
- What else can companies do to help employees impacted by COVID-19? Can they allow employees to take a hardship distribution from their 401(k) plan for expenses or other financial hardships? Can companies permit employees to contribute vacation or leave time to other employees impacted by COVID-19?
- What is the financial and other impact under contracts with third-party plan service providers if they are unable to perform their services due to COVID-19?

**Public Health Emergency Authorities**

Contacts: Kate Heinzelman, Rebecca K. Wood

- Can employees be subject to mandatory quarantine imposed by governmental authorities (and, if so, by whom)?
- What information should be reported to the various state and federal authorities?
Contractual Breach/Supply Chain Considerations
Contacts: U.S. – Tai-Heng Cheng, Yvette Ostolaza
          Europe – Dorothee Schramm, David Roney
          Asia Pacific – Friven Yeoh, Yan Zhang

− What steps should a company take if it cannot supply its customers?
− Does the COVID-19 outbreak constitute force majeure and excuse non-performance of commercial contracts? For cross-border transactions involving a particular country severely impacted by COVID-19, how long can a party seek to avoid performance as a result of COVID-19?
− When should a force majeure notice be issued and what steps should be taken in response to a force majeure notice? How does COVID-19 affect “Time of the Essence” clauses in contracts?
− Who is responsible for losses when a supplier cannot supply a customer due to the COVID-19 outbreak?
− In the event of a disagreement about responsibility for loss, what is the most efficient way to resolve the disagreement?
− What steps should a company take if threatened with litigation over a supply chain disruption?

Antitrust Implications
Contacts: U.S. – Karen Kazmerzak, James W. Lowe
          Europe – Vincent Brophy

− Collective action
  o What limitations do businesses face in communicating or coordinating with their competitors in developing a collective response to COVID-19?
  o If shortages develop, can suppliers coordinate their production and sale of goods and services?
  o To what extent can ordinary limitations on coordination be overcome at the urging of public health authorities?
− Distribution and preferences in times of supply chain disruption
  o If a company is unable to produce enough output to satisfy demand for its products, what limitations does it face in allocating its production among its customers?
  o To what extent can companies use pricing adjustments to clear markets without being accused of price gouging?
  o Where firms face supply chain disruptions for key inputs, what steps can they take to ensure adequate supply without disadvantaging rivals?

International Trade Ramifications
Contacts: U.S. – Barbara Broussard, Ted Murphy
          Europe – Iain Sandford, Arnoud R. Willems

− What steps should a company take to prepare for import/export clearance delays caused by regulatory actions taken by governments?
– How should a company leverage existing supply chain security programs (e.g., C-TPAT, AEO, etc.) to help facilitate clearance?

– Has a state imposed disguised trade barriers in the name of taking action on COVID-19?
  
  o For example, have restrictions on movement of persons been imposed in a manner that appears to discriminate between populations that give rise to the same risks? Or has movement of goods been subjected to undue restrictions?

**Tax Implications**

Contacts: U.S. – Laura M. Barzilai, Robert M. Kreitman  
State – Scott J. Heyman, Richard A. Leavy  
Europe – Dr. Roderic Pagel

– In the face of travel restrictions, how should companies assess issues regarding compliance with tax operating guidelines and substantive presence requirements in certain jurisdictions?

– In the face of domestic travel restrictions and self-quarantining, how should companies assess state nexus issues?

– What tax relief is being granted or being considered to address the impact of COVID-19?

**CORPORATE/TRANSACTIONAL CONSIDERATIONS**

**Corporate Governance**

Contact: Holly J. Gregory

– What steps should companies take to ensure that their board is kept informed and satisfying its fiduciary duties, both as a matter of oversight and in the context of board actions?

– How assertive should boards of directors be in taking control of the corporate response to the COVID-19 outbreak from management?

– What are best practices for business continuity plans and crisis management procedures? Should companies form COVID-19 task forces to monitor developments? Who should be on the task force?

– Has company management, with support of a risk management system, identified risks to the business from COVID-19 and is the board positioned to provide appropriate oversight of those risks?

– Is the board’s emergency succession plan up to date with a person identified who can step in immediately as interim CEO in the event the CEO contracts COVID-19? Are plans in place for other key persons?

– Does the board have a plan in case one or more directors contracts COVID-19? For example, at what point should the board increase its size and appoint persons to fill vacancies?

– Does the company have the ability to exclude persons from a physical annual meeting venue who are showing symptoms of COVID-19?

– What steps can companies take to prepare for the possibility of shareholder activism in the event their stock price drops?
SEC Disclosure
Contacts: Stephen L. Cohen, John P. Kelsh, Thomas J. Kim, David S. Petron, Lindsey A. Smith

- How can companies draft their risk factors to effectively disclose the material risks related to the impact of COVID-19 on their business?
- How should COVID-19-related financial performance impact evaluations of materiality, both quantitatively and qualitatively?
- Is the impact or potential impact of COVID-19 on a company a “known trend” requiring disclosure in the liquidity section or elsewhere of a company’s next MD&A?
- Should a company file a Form 8-K to disclose the recent operational or other impacts of COVID-19 or to update its risk factor disclosure?
- Does a company’s forward-looking statement disclaimer adequately protect the company for the statements it makes regarding the expected impacts of COVID-19?
- How should a company frame its earnings guidance with respect to the current quarter and upcoming quarters? Should companies cease earnings guidance entirely?
- If a company issued 2020 earnings guidance in advance of the February outbreak, what considerations should prompt it to retract or modify its guidance, and what is the best way to do so?
- Do companies need to add disclosure related to the board’s oversight of COVID-19 risks in their proxy statements?
- Does the drawdown of a revolving credit facility require disclosure under Form 8-K Item 2.03?
- Should companies take advantage of the SEC order granting an additional 45 days to meet Exchange Act reporting obligations for reports due between March 1 and April 30? Will that order be extended for first quarter Form 10-Q filings?

Other Securities Law Matters
Contacts: U.S. – John P. Kelsh, Lindsey A. Smith
Asia Pacific – Raymond Oh, Matthew Sheridan

- Should companies reschedule their annual meetings or switch to a virtual meeting as a result of recent CDC guidance and travel restrictions related to COVID-19?
- Should companies preserve the right to switch to a virtual meeting even if they expect to hold a physical meeting at the time they mail their proxy statements?
- For companies continuing to plan for an in-person meeting, who are the minimum necessary company in-person attendees? What if those persons become ill? Can other company attendees participate by telephone? Can companies impose health screenings for shareholder attendees?
- How does a company make a shareholder list available for inspection prior to the annual meeting if the company’s offices are closed?
- Can companies share non-material, non-public information related to the impact of COVID-19 with their customers and other constituents?
- Do companies need to close their insider-trading windows?
- Can companies institute or continue share buybacks?
Can a company terminate an existing Rule 10b5-1 repurchase plan? If it does so, must it wait some period of time before initiating a new repurchase plan?

Can executive officers and directors purchase stock?

Capital Markets Offerings
Contacts: U.S. – Samir A. Gandhi, Edward F. Petrosky
Europe – Mark Walsh
Asia Pacific – Matthew Sheridan, Robert L. Meyers

Is a company able to conduct a securities offering if already impacted, or likely to be impacted, by, or is in the process of evaluating the impact of, COVID-19 on it?

Is the actual or likely impact of COVID-19 on a company’s business (including its supply chain), financial condition, liquidity, results of operations and/or prospects considered material to an investment decision for the company’s securities?

Is the actual or likely impact of COVID-19 included in the disclosure package for the particular securities offering, either directly in the prospectus or included in a public company's reports filed with the SEC that are incorporated by reference into the prospectus?

Is the company prepared to discuss the actual or likely impact of COVID-19 with the underwriters for the particular securities offering? What diligence should be done, or may be requested by the underwriters to be done, to verify the accuracy of the information on these matters included or incorporated by reference into the prospectus?

For equity offerings, does the company’s current earnings guidance take into account the actual or likely impact of COVID-19? If not, is the company prepared to adjust its earnings guidance prior to, or contemporaneously with, the particular securities offering?

For debt offerings, has the actual or likely impact of COVID-19 been discussed with the rating agencies? If so, have the credit ratings been affirmed or has a downgrade or negative outlook been discussed? If no action is imminent, what is the cushion in the company’s financial metrics to absorb such impact going forward?

Are any of COVID-19-related risks covered by risk insurance?

M&A
Contacts: U.S. – Paul L. Choi, Brian J. Fahrney, Ryan M. Scofield
Europe – Thomas M. Thesing, James Wood
Asia Pacific – Constance Choy, Raymond Oh, Parthiv Rishi, Charlie Wilson

In the event of a pending agreement to acquire another company, does the outbreak trigger a material adverse effect (MAE) under the acquisition agreement?

What steps can companies take with respect to contracts that have not yet been signed to protect against the outbreak triggering walk-away or suspension rights for counterparties under force majeure or material adverse effect provisions?

Does the governing law make a difference in how COVID-19 is treated for purposes of force majeure or material adverse effect provisions in commercial or acquisition agreements?

What kinds of protections can companies negotiating acquisitions or in need of debt financing expect its lenders to ask for against COVID-19 risk in the context of their lending commitments?
− What questions should companies be asking in due diligence about the impact of the outbreak on targets?

− Should companies ask for additional representations or warranties in light of the outbreak? How should closing conditions and MAE provisions be structured?

− What expectations should companies have about the timing of regulatory or other approvals in affected jurisdictions (such as China)? Should companies make changes to how their termination provisions (including the “drop dead” date) work?

− What price structuring alternatives should buyers consider to protect against overpaying for target businesses or assets that may lose value in the sign-to-close period as a result (direct or indirect) of the COVID-19 outbreak?

− What can companies do prior to beginning a sale to address potential buyer concerns about doing a transaction at this time?

− What due diligence review should purchasers of targets in Mainland China with supply or services agreements in China or Hong Kong carry out to assess the impact and potential legal liabilities as a result of the outbreak?

INDUSTRY-SPECIFIC ISSUES

Healthcare and FDA

Drug, Biotech and Medtech Companies

Contacts: U.S. – Raymond A. Bonner, Paul E. Kalb, Rebecca K. Wood
Europe – Maurits J.F. Lugard, Marie Isabel Manley, Tatjana R. Sachse
Asia Pacific – Lei Li

− How should drug, device and medtech companies address product shortage issues with FDA?

− How should manufacturers navigate FDA pathways to develop medical countermeasures to diagnose, prevent or treat COVID-19?

− How are FDA inspections being affected by COVID-19?

− How should manufacturers (or others) report fraudulent claims that a product prevents, treats or cures COVID-19?

− What is the role of the World Health Organization (WHO) in addressing COVID-19 and how do I interact with the WHO if I have a promising therapeutic/vaccine/diagnostic?

− Will FDA be changing deadlines (e.g. for end of enforcement discretion, PDUFA dates) in light of COVID-19 considerations?

Healthcare Providers

Contacts: Meenakshi Datta, Jaime L.M. Jones

− What obligations do healthcare providers have to communicate information proactively to state and local health authorities regarding patients known or suspected to have COVID-19? What about regarding their own employees?
What obligations do healthcare providers have to seek information from state and local health authorities regarding employees who are suspected of having been exposed?

Can healthcare providers post or publicize information regarding whether they have treated patients diagnosed with COVID-19? Do providers have an obligation to do so? If they do not publicize this information, do they increase their risk if other patients later acquire COVID-19 after receiving treatment from them?

Are we in a state of emergency such that state and federal privacy laws do not restrict providers from communicating information about patients diagnosed with COVID-19?

What are the obligations or rights of healthcare providers, faced with a possible shortage of test kits, to ration those test kits?

Can healthcare providers refuse to treat patients suspected of being exposed to COVID-19?

If healthcare providers screen all patients for COVID-19, can they be reimbursed? Are such screening tests per se medically necessary given the current health concerns?

What potential legal risks do healthcare providers assume when they quarantine a patient or employee?

Can healthcare providers require that employees report temperatures, testing results and/or diagnosis information? Can they require the same from contracted physicians and other healthcare providers?

How may healthcare providers best manage the risk of patient class actions filed for any outbreaks at sites of care?

Financial Services

Broker-Dealer

Contacts: FINRA-Related Issues: W. Hardy Callcott, John I. Sakhleh, Michael D. Wolk

SEC-Related Issues: Stephen L. Cohen, Thomas J. Kim, David S. Petron

How should broker-dealers’ representatives and supervisors working from home honor their obligation to register branch offices with FINRA on Form BR, and inspect branch offices?

How do FINRA and the SEC treat new workplace collaboration and communication tools under the books and records rules?

What are the SEC and FINRA’s cybersecurity expectations for remote work locations?

Are the SEC and FINRA showing any flexibility on implementation dates for new rules (e.g. Consolidated Audit Trail and Regulation Best Interest)?

What should a firm’s response be to communications and systems failures, while working remotely, and how should this be documented and communicated?

How, if at all, does working remotely, and the potential added latency resulting therefrom, factor into the firm’s best execution obligations and surveillance?

Will the SEC implement a ban on short selling, similar to what is happening in Europe?

Will the SEC still proceed with testimony and meetings?

Shouldn’t the SEC consider the importance of the matter and potential harm to firms in light of the impending recession and business issues?
Financial Institutions
Contacts: U.S. – Joel D. Feinberg, David E. Teitelbaum
Europe – Leonard Ng

- What are regulatory expectations for banks managing their responses to the COVID-19 outbreak?
- Should banks be updating their business continuity plans in light of COVID-19?
- How should banks be managing their vendor relationships during the crisis?
- Should banks make customer accommodations based on the direct or indirect impact the virus may be having on clients?

Leveraged Lending
Contacts: U.S. – Robert J. Lewis, Angela Fontana
Europe – Bryan Robson

- What due diligence questions should banks and other lenders be asking about COVID-19?
- Does the outbreak trigger a material adverse effect condition precedent to new extensions of credit or as an event of default trigger?
- What steps should borrowers and lenders take if financial or other covenant breaches are anticipated due to COVID-19?

Securitization
Contacts: U.S. – Kevin C. Blauch, T.J. Gordon, Tracey A. Nicastro
Europe – Rupert Wall

- What are a securitization issuer’s disclosure requirements related to COVID-19?
- What flexibility do receivables servicers have to defer or modify obligor payments due to COVID-19 without the consent of noteholders or rating agencies?
- Does the outbreak constitute a force majeure event that excuses servicer performance?

Insurance and Financial Services
Contacts: U.S. – Jonathan J. Kelly, Andrew R. Holland
Europe – Martin Membery

- What actions can we expect from insurance regulators?
- What steps should insurers take if they believe a TPA or other service provider may be causing or is causing policyholder service failures?
- How do we assess regulatory and tax compliance issues in the face of travel restrictions?
- What additional privacy and compliance concerns are associated with employees performing work at off-site locations or at home?
Investment Fund and Investment Adviser Considerations
Contacts: U.S. – Laurin Blumenthal Kleiman, Benson R. Cohen
Europe – Stephen J.D. Ross
Asia Pacific – Effie Vasilopoulos

- What factors should investment advisers consider when determining how and when to update their Forms ADV in light of the potential impact of COVID-19 on the adviser’s business? Assuming new disclosure is warranted, must the amendments be made “promptly” in an “other than annual” Form ADV amendment, or can amendments be made at the next regular update (for the majority of registered investment advisers, March 30, 2020)?

- How can fund managers ensure that they adequately disclose the material risks related to the potential impact of COVID-19 on the fund’s business? For mutual funds, at what point is an amendment to Form N-1A required? Should that filing be made pursuant to Rule 485(a) or (b)?

- Has the fund manager considered how to manage fund inflows and outflows in light of the potential impact of COVID-19 (i.e., closings, capital calls, redemptions)?

- Has the investment adviser reviewed its business continuity/disaster recovery plan in light of its fiduciary duties as noted in specific guidance issued by the SEC and the NFA?

- How will a mutual fund manager determine that it qualifies for the SEC no-action relief for fund boards that do not adhere to certain in-person voting requirements in the event of unforeseen or emergency circumstances affecting some or all of the directors (https://www.sec.gov/investment/staff-statement-im-covid-19)?

- Has the fund manager considered legal and regulatory implications of the local laws under which the manager and the fund(s) are organized (e.g., Delaware, Maryland, Cayman, Luxembourg, Ireland Mauritius)?

- Has the fund manager considered the implications of COVID-19 on critical operational relationships with key service providers (e.g., custodians, administrators, brokers, sub-advisers, auditors)?

OTC Derivatives
Contacts: Sara N. Shouse, Kate L. Lashley

- Does COVID-19 or any declaration of a state of emergency stemming from COVID-19 trigger a force majeure event under the 2002 ISDA Master Agreement?

- Can a force majeure event trigger an acceleration and thus a breakage payment becoming due under the 2002 ISDA Master Agreement?

- What constitutes a trading disruption and/or what actions would constitute market disruptions that would affect the valuation and settlement terms of an over-the-counter derivative transaction?

- If markets are closed or trading is disrupted on a day in which a trading contract terminates, expires, or settles, how will that contract be valued and/or settled?

- If an exchange floor is closed, would that constitute a market disruption under any ISDA-published definitions (e.g., the 2002 Equity Definitions, the 2005 Commodity Definitions, the 2006 ISDA Definitions, the 1998 FX and Currency Option Definitions)?

- What institution(s) determines when trading markets will be suspended and for how long can markets be suspended?
Will the U.S. Commodity Futures Trading Commission (CFTC) or the National Futures Association (NFA) be issuing regulatory relief from compliance with derivatives regulatory requirements in light of the impact of COVID-19 on business operations?

Are there any regulatory reporting requirements triggered if a swap dealer or other CFTC-registrant or NFA member implements a teleworking plan or activates its Business Continuity Plan for purposes other than testing?

**Consumer Products and Services**
Contacts: Amy P. Lally, Eric S. Mattson

- What statements about the COVID-19 virus can a company include in its marketing/public facing materials?
- What options does a company have if a competitor is making false statements about the COVID-19 virus in regards to the competitor’s product?
- What options does a company have if a competitor is making false statements about the COVID-19 virus in regards to its product?

**Energy and Infrastructure**
Contacts: Brian A. Bradshaw, Kevin P. Lewis, Cliff W. Vrielink

- For an LNG vessel, what are the implications if a port or other government agency will not allow a vessel to call as a result of an allegation of COVID-19 on the crew? Who pays demurrage?
- For financial contracts not dependent upon a particular asset’s performance (e.g., power sales agreements), does COVID-19 provide an excuse to performance where general contract excuse, including force majeure, would not?

**Environmental**
Contacts: David T. Buente, Jr., Timothy K. Webster

- If your company engages in any of the following activities, have you consulted EPA’s List of Disinfectant Products for the specific products qualified by EPA under the Federal Insecticide, Fungicide, and Rodenticide Act for use against the COVID-19 virus?
  - Manufacture, sale or distribution of any product that makes claims in packaging, labeling or marketing materials (including online materials) that the product can kill the COVID-19 virus
  - Manufacture, sale or distribution of any product intended to kill the COVID-19 virus
  - Import or export of any product that makes claims that the product kills the COVID-19 virus and/or is intended to kill the COVID-19 virus
  - Filing for EPA registration of a product intended to kill the COVID-19 virus

- If you are a registrant or distributor of a registered pesticide product, has your product been approved by EPA to make “emerging viral pathogen” claims on the master label for enveloped viruses, per EPA’s 2016 Emerging Viral Pathogen Guidance?
What legal issues should companies that import, export or otherwise distribute or sell any raw materials or other chemical inputs that are intended to be incorporated into a product intended to kill the COVID-19 virus consider?

What legal issues should companies that are engaged in testing products intended to kill the COVID-19 virus consider?

Under what circumstances does the impact of the COVID-19 virus on business operations constitute a force majeure event under a federal Consent Decree or other consent order?

Has USEPA issued any guidance on compliance with the TSCA lead paint rules given the shortages in wipes and masks available to installers and renovators?

Is your company the manufacturer, importer, or distributor of a pesticide device that is making efficacy claims related to COVID-19?

Does your company repair, renovate, or paint homes/child-occupied facilities built pre-1978? Alternatively, is your company a professional renovator covered by EPA’s lead safe work practices regulations/requirements? Does your company have backup supplies sufficient to meet the lead safe work practices for the foreseeable future?

Is your company installing on-site waste bins for personnel (or customers) to dispose of gloves, disinfecting wipes, masks, or other personal protective equipment that have been in contact with the virus that causes COVID-19?

In view of the plummeting stock prices on worldwide markets and other abrupt or long term impacts on business, how do US companies providing financial assurance through the use of self-guarantees based on financial tests continue to satisfy their financial assurance obligations?

Real Estate
Contacts: Scott L. Stern, Alan S. Weil, Aviva Yakren

How does COVID-19 affect “Time of the Essence” clauses in real estate contracts?

Does the outbreak trigger a material adverse effect condition precedent to new extensions of credit or as an event of default trigger?

What steps should borrowers and lenders take if financial or other covenant breaches are anticipated due to COVID-19?

How will force majeure clauses be interpreted and will force majeure be a defense to performance?