



# Checklist for Resuming Business Operations: Contract and Finance Considerations

## NOTICES TO SUPPLY CHAIN

- Review ability and practicality of resuming or continuing to suspend operations
- Assess ability of each customer, supplier logistics provider to operate and satisfy contractual and other obligations
- Send notice to each customer, supplier and logistics provider

### Force Majeure Notices

#### *[If operations not yet able to be commenced]*

- Status of ability to resume operations at full capacity
- Consider termination of contract
- Possibility of future delays
- Assurance of taking all appropriate measures and mitigating delays
- Assurance of further updates

### Notice of Resumption of Operations

#### *[If operations to be resumed]*

- Provide timetable for reopening
- List possibilities for future delays
- Schedule of forecasts for orders/releases
- Address contractual issues (*discussed below*)
- Demand adequate assurance of performance (*discussed below*)

## FINANCE CONCERNS

- Review working capital and other funding needs and availability
- Consider options for additional funding sources

### Existing Bank Debt

- Review existing status with bank (loan covenants, availability, defaults)
- Consider contacting lender for covenant modifications, waivers, payment plans
- Leverage ability for additional funding sources

### PPP Loan Status and Forgiveness Issues

#### Main Street Lending Program Options

#### Factoring Receivables

#### Supply Chain Financing (Reverse Factoring)

## CONTRACT ISSUES

- Evaluate upstream (customer) and downstream (supplier) relationships and contracts
- Identify key provisions that may be relevant (e.g., warranties, covenants, exclusivity, payment rights, schedule, delivery terms, force majeure clauses, limitations of liability, allocation rights, termination rights)
- Identify breaches of contract (either party) and develop plan to address
- Review insurance provisions for additional insured coverage
- Review indemnification clauses, penalties for events of breach
- Consider how contract should be amended to address above issues and how new requirements imposed by law (OSHA, social distancing) and other factors (worker availability, delivery costs, import-export problems, availability of supplies) could increase costs of production/pricing/raw materials
- Especially review customer payment terms (*discussed below*)

*This information is based on the facts and guidance available at the time of publication, and may be subject to change.*

## ☐ CREDITOR/BANKRUPTCY ISSUES

- Evaluate opportunities for alternative supplier relationships
- Evaluate acquiring distressed assets in your industry
- Bankruptcy preference concerns (review and manage accounts receivable and accounts receivable aging to manage potential bankruptcy preference clawbacks)
- Demands for adequate assurance of performance

## ☐ INSURANCE

### First-Party Policies

- Business interruption (BI) insurance
- Contingent BI insurance for a lost business due to dependent properties
- Supply chain insurance (coverage for losses resulting from disruptions in a supply chain not requiring physical loss)
- BI civil authority coverage
- Specialty coverages (force majeure, event cancellation, performance bonds)

### Third-Party Policies

- Commercial general liability insurance (for negligent acts leading to illness of clients or customers)
- Directors and officers insurance (covering claims of investors, shareholders, or customers against and its officers for failure to protect the business from the effects of a crisis)
- Errors and omissions insurance (covering claims that employees failed to take appropriate measures to protect third parties from the effects of a crisis)
- Employment practices liability insurance

## ☐ CORPORATE GOVERNANCE

- Adopt written policies addressing issues and notifying employees, customers, suppliers
- Document and evidence in board resolutions
- Maintain clear documentation of losses and claims, anticipating evidence needed
- Adopt and follow record retention policies carefully
- Control what is said and emailed, as it can be used against company
- Memorialize discussions in writing – contract amendments, follow-up correspondence
- Assess and adopt contingency plans for future disruptions
- Obtain waivers in advance from visitors, where possible

## PRIMARY CONTACTS



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For additional information click here: <https://www.millercanfield.com/toolkit>

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