

# COVID-19 – Legal checklist

For additional information please also see: [www.debrauw.com/covid-19-support](http://www.debrauw.com/covid-19-support)



## GOVERNANCE

- Form dedicated response team led by CEO/CFO
- Increase frequency of board meetings, allowing for swift action
- Closely monitor developments in relevant markets and prepare scenario planning: identify key interests and critical factors and processes for short, medium and long term
- Develop communication plans; comply with disclosure obligations ([link](#))
- Consider impact on and delaying annual general meeting ([link](#))
- Evaluate impact on and consider changes to dividend policy and share buy-back programmes (also in light of requirements to qualify for government support programmes) ([link](#))
- Evaluate impact on annual accounts and auditor's statement, ensure timely filing of correct annual accounts, verify filings for previous years

## FINANCE



- Liquidity management is crucial: consider full drawdown credit lines and working capital measures, e.g. (permitted) payment delays to creditors and shorter payment terms
- Prepare weekly liquidity forecasts and compare against actuals
- Develop refinancing strategy if debt matures in short or medium term
- Evaluate risk of covenant breaches and develop mitigating strategy
- Consider applying for government-sponsored liquidity relief measures ("GO")



## COMMERCIAL CONTRACTS AND LITIGATION

- Three key factors: (i) know your legal position, (ii) plan strategically for all eventualities, (iii) keep all communication lines open ([link](#))
- Identify your key contracts and assess potential impact of COVID-19 on performance by either party; monitor early warning signs of potential non-performance by your counterparty
- Identify potential contractual remedies for both parties (e.g. Force Majeure, unforeseen circumstances)
- Devise strategy for handling relationships with your key counterparties
- Realise that all court buildings are closed; in principle, no oral hearings will take place in pending cases
- In urgent cases, hearings may take place, but the threshold for accessibility is high; seeking dispute resolution through other means such as emergency arbitration may be considered
- COVID-19-related developments may cause lawsuits to slow down and create momentum or leverage to seek alternative solutions (e.g. commercial settlements)

## M&A



- Evaluate impact on pending transactions, e.g. MAC and acquisition financing ([link](#))
- Evaluate impact on pending merger control filings
- If you may pursue a distressed transaction: prepare strategies to navigate the complex legal challenges, including finance/insolvency law, merger control, state aid, employee (redundancy) considerations, tax optimisation
- For distressed acquisitions, determine merger control strategy for a speedy process, including exemption from stand-still or structuring solutions



## STATE AID AND COMPETITION ([link](#))

- If aid is claimed under general national schemes, validate if these are approved by the European Commission and secure compliance with relevant conditions (e.g. banks passing-on benefits of loans backed by state guarantees)
- If individual aid may be needed and offered by a state or local government or other governmental body (including state enterprises), prepare state aid analysis and strategy as soon as possible
- Evaluate possibilities, restrictions and strategy, including on alignment with competition authorities, under the cartel prohibition in relation to any sector-wide initiatives; competition authorities are willing to exempt those initiatives genuinely required to tackle COVID-19, but are vigilant of crisis cartels and price hikes



## EMPLOYMENT

- Implement adequate measures for keeping your employees safe
- Evaluate salary continuation and options to reduce employer costs
- Evaluate claiming temporary salary subsidies ("NOW") ([link](#))
- Evaluate possible deferral of pension premium contributions and/or vacation pay



## TAX ([link](#))

- Consider deferral of tax payments (in NL: late payment interest reduced to 0.01%)
- Reduce provisional 2020 CIT assessments
- Monitor need for notifying tax authorities of non-payment risks (in NL: late or no notification results in directors' liability)
- Optimise allocation and use of tax losses and other attributes; monetise carry-back of tax losses asap



## FINANCIAL INSTITUTIONS

- In capital planning, take into account temporary relief (P2G, SRB, CCB, P2R)
- Consider need for cancellation of dividends/SBB:
  - Banks: in principle, not expected to increase dividends or SBB; ECB/DNB will expect additional prudence
  - Insurers: consider the possibility that a DNO may be required prior to making any dividend payments or SBB
- Banks and insurers expected to act prudently in determining variable remuneration
- Consider flexibility to not qualify COVID-19-related moratoria as defaulted position or likely to default under IFRS 9
- Assess adequacy of BCP for longer periods of market-wide stress/crisis
- For liquidity management and forecasts, consider :
  - that ECB will allow banks to use LCR buffer
  - the eligibility of assets as collateral for ECB/DNB credit operations
- State aid/BRRD:
  - Aid channeled through banks is not considered extraordinary financial support within the meaning of the BRRD if the benefits are passed on to final beneficiaries to the largest extent possible; bank must be able to demonstrate
  - If legal obligation to extend the maturity of existing loans for SMEs: no guarantee fee may be charged
- Cost saving and work time limitation decisions to take into consideration the impact on internal control framework