

Conducting COVID-19 Due Diligence

Set out below are some COVID-19 specific considerations that should be kept in mind when undertaking legal due diligence.

Category	Due Diligence Considerations
<p>Commercial</p>	<p>COVID-19 has had significant ramifications for the commercial operations of many businesses across all sectors. When conducting commercial due diligence, investors should consider investigating the following potential issues:</p> <ul style="list-style-type: none"> • Whether there has been any commercial negotiations with any counterparties to vary the terms of any existing contracts • Whether any material contracts contain force majeure clauses that could be triggered by COVID-19 • Whether there has been any supply chain difficulties • Whether there are alternate suppliers • How reliant the business is on the ability of staff to travel interstate / internationally • Whether the target's business is agile and able to easily move between remote or online systems of working • Whether there are sufficient IT and cybersecurity systems in place to support remote/online working, and if not, the likely capital expenditure required to implement this technology • Whether the target has relied upon the temporary suspension of insolvent trading laws or considered reliance on 'safe harbour' protection • Whether the target maintains business interruption insurance and/or loss of rent insurance, and if so, does the policy cover events caused by COVID-19 and whether it has made a claim on those insurances in recent months • Whether the target has entered into temporary financial assistance arrangements with its lenders, and if so, the nature of those arrangements • Whether the target has received financial support from any Government department • Whether the target has had to raise capital over recent months, and if so, the details of those transactions
<p>Property</p>	<p>COVID-19 has presented challenges for both owners and tenants of commercial properties. When conducting due diligence in relation to property matters, investors should consider investigating the following potential issues:</p> <ul style="list-style-type: none"> • In circumstances where the target is a lessor:

	<ul style="list-style-type: none"> • whether any lessee is in breach of their lease for non-payment of rent, where no arrangement between the parties has been agreed pursuant to the Retail and Other Commercial Leases (COVID-19) Regulation 2020 (the Code) • whether the target has entered into any arrangements with any lessee to permit the deferral of rental payments or accept reduced rental income, and if so, the details of those arrangements • In circumstances where the target is a lessee: <ul style="list-style-type: none"> • whether the target is in breach of any leases for non-payment of rent, where no arrangement between the parties has been agreed pursuant to the Code • whether the target has entered into any arrangement with a lessor to defer rent payments, and if so, whether an adjustment to the purchase price is required in favour of the buyer
<p>Employment</p>	<p>Many businesses impacted by COVID-19 have had to reduce overheads, which has included standing down employees and reducing hours. When conducting due diligence in relation to employment matters, investors should consider investigating the following potential issues:</p> <ul style="list-style-type: none"> • Whether the target has stood down employees under the <i>Fair Work Act 2009</i> (Cth) • Whether the target has either unilaterally, or by agreement, reduced employee remuneration, reduced employee hours or modified employee duties • Whether the target has complied with any consultation or notification obligations under applicable instruments, such as employment contracts, modern awards or enterprise agreements • Whether employees have been requested or required to take unpaid leave, annual leave or long service leave • Whether the target is participating in the JobKeeper scheme • Whether employees have been required or requested to work at different locations from the target’s usual business premises • Does the target have a Working from Home policy which regulates ongoing WFH arrangements as a result of COVID-19 • Does the target propose to require staff to return to the employer’s usual business premises and if so, has the target implemented a COVIDSafe Plan for returning to work (covering issues such as social distancing, hygiene, altered working arrangements and a COVID-19 response plan in the event of suspected or actual infection)

If you require any assistance conducting due diligence or in relation to any transactions generally, please contact [Tom Morgan](#), [John Nash](#) or [Jessica Tanna](#) of our Commercial & Corporate Team.

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