

# Coronavirus: A Checklist for the Hospitality Industry Executive

March 19, 2020

As the Coronavirus (COVID-19) continues to disrupt travel and almost every other aspect of day-to-day life, the hospitality industry faces unprecedented challenges. Hotel closings, employee furloughs and other drastic measures have been implemented all over the globe and while in parts of Asia things are getting better, in Europe and the United States we are just seeing the beginning. These challenges and actions affect and cut across all aspects of the industry – from operations to financing to M&A transactions; they cover all stakeholders – investors, owners, lenders, employees and customers/guests; and they involve both day-to-day considerations related to dealing with the current crisis as well as planning for its aftermath.

In response, Proskauer has formed a cross-disciplinary, cross-jurisdictional group of lawyers focused on supporting and addressing concerns of our hospitality industry clients. Our team is ready to help clients navigate problems and implement a proper response.

Proskauer recently issued a general [Coronavirus Disruption Checklist](#). Over the past two weeks, since the crisis has intensified in the United States and Europe, we have seen more and more questions from our hospitality clients and in this post we aim to share some of our experiences and advice. Many businesses find themselves in difficult situations but our experience is that there is much to gain by forward thinking and engaging early with lenders, brands, customers and suppliers. While we have attempted to identify issues to be considered and provide concrete advice as much as possible, the nature of many of these issues makes it hard to make specific recommendations without knowing the particulars of the situation and the client.

## Coronavirus and the Hospitality Industry

### Operations:

- [Regulatory Issues:](#)

- Monitoring applicable federal, local and state public health department guidelines and regulatory requirements, as well as advisories from the U.S. Center for Disease Control (CDC) and OSHA. As these have been changing on an increasingly faster pace, we recommend monitoring these on a daily (if not more often) basis.
- In the event travel is contemplated, it is important to monitor up-to-date regulations in both place of origin and destination, as well as any connection jurisdictions.
- There are many government and state relief measures being considered all over the world and it is important to follow how those may affect specific businesses and properties, both short term (cash flows) and long term.
- Crisis Management:
  - Require updates from management companies, asset managers and other property managers.
    - Increase frequency of reporting and expand details in financial reports.
    - Require updated budgets.
    - Create protocols for time-sensitive communications.
    - Prepare for unexpected absences of key personnel.
    - Prepare for disruptions in supply chain for necessary inventory and supplies.
- Policies:
  - Reviewing workplace policies to consider what measures may be necessary to protect employees and customers from the current outbreak:
    - Review services to be provided and how they should be altered to minimize exposure (e.g., increase cleaning routine, revise F&B and events offerings).
    - Review policies related to potential or actual infection of an employee or his/her family member, significant other, roommate, etc.
    - Travel policies – consider alternatives to work-related travel to affected areas, and consult with counsel regarding other potential measures to implement around business and personal travel.

- Review/prepare policies for operations for multiple scenarios and locations.
- Business continuity plans – review policy to prepare for closures in offices and facilities and disruptions in supply chain.
- Identify critical functions that cannot be performed remotely and devise solutions to perform those functions.
- Many operators of tourism related services (airlines, hotels, tour guides) have been changing their cancelation policies, either temporarily or permanently.

These, and other issues related for employers to consider as COVID-19's impact on the workplace continues to develop, are discussed in greater detail in our [Law & the Workplace Blog posts](#).

- Communications with Employees and Customers:
  - Avoid alarmist or speculative language, and stick to providing factual information based on official guidance from the CDC, WHO and state and local health agencies.
  - Many businesses are having to deal with employees/customers (or people they live or come into daily contact with) contracting the disease or showing initial symptoms. This issue is complicated and involves complicated public health and privacy regulations as the desire to warn other individuals and protecting the privacy of the relevant individual. Advice from counsel based on the specifics of the specific situation and location is essential.
- Hotel Closings:
  - Given low occupancy/utilization, some owners in Asia shut down properties and over the last couple of days we have seen hotels in Europe and the United States do the same. In some cases this could be an opportunity for renovations / update of FF&E that would have required a closure in any event. In others this may be the first step towards repositioning or taking other actions with the assets. Such actions trigger a host of issues, from dealing with lenders and equity partners to complex labor and union issues to dealing with service contracts. There are many strategies that can be implemented and it is important to assess all of them to achieve the best result.
- Cost Reduction / Cash Flow Measures:

- Many businesses have experienced a significant downturn in occupancy and patrons and are seeking to reduce related costs. Some items to be considered:
  - Engage in discussions with property managers on potential cost cutting/delaying measures.
  - Review brand guidelines and engage in conversations with brands on ability to relax requirements / delay non-urgent capex, etc. Some brands have already been offering relief on FF&E / capex. Similar conversations related to PIPs are also likely.
  - Reduce frequency or duration of services given lower usage (e.g., restaurant hours, laundry hours, and waste and recycling pickups).
  - Review contracts with suppliers to identify cost saving opportunities.
  - Management of employee workforce – delay replacing employees that have left, reduce usage of hourly employees, etc.
  - Consider shutting down/reducing use of facilities that are underutilized (e.g., multiple restaurants).
  - Negotiate rent deferrals/reductions/forgiveness.
- Employee Termination Related Matters
  - We have already started to see hotel owners and operators take actions to reduce their labor and employment related costs including asking employees to take an unpaid leave or terminating employment, whether temporarily or permanently. The laws with respect to these issues change from one jurisdiction to another and must be taken into account as they relate to notice, severance and other related matters. Whether or not the employees are unionized will play an important role and in some countries the government has enacted specific legislation to protect employees. In the United States, attention to the WARN Act, which requires minimal advance notice, is particularly important. Some relevant factors are the number of employees whose employment is being terminated, the number of locations, and whether termination of employment is temporary or permanent.
- Contracts:
  - Identify key provisions of existing material contracts that are implicated by your failure or any counterparty's failure to comply or comply in a timely manner with any obligations:
    - **Force majeure**

- Material adverse change/event.
  - Representations/warranties.
  - Covenants (especially operational and financial).
  - Termination rights.
  - Conditions timing for delivery/supply and grace periods.
  - Notices to financing sources.
  - Timing and procedures for notification for the above.
  - Some contracts have a "materially changed circumstances" provision that allow or obligate the parties to re-negotiate in the event an unexpected event occurs that alters the parties' economics or expectations.
- Consider how to address Coronavirus in contracts currently being drafted (e.g., Coronavirus is no longer an unexpected event).
  - To the extent any budgets have been or are required to be provided, consider if and how to revise those to account for business disruption.
  - Identify options should a supplier not be able to deliver or a distribution channel is shut down.
- Insurance Policies
    - Review all insurance policies and qualifications. Companies with multiple offices should seek to create a consistent position/message (at least in the same jurisdiction) to avoid being perceived by counterparties as taking contradictory positions or actions.
      - Business interruption (BI) – typically requires physical loss to property but infestation/contamination rendering premises uninhabitable may qualify.
      - Supply chain (Contingent BI) – loss resulting from disruption of customers/suppliers/utilities/attraction properties; typically also requires physical damage trigger at CBI location; might have bacterial/virus exclusions.
      - Civil authority – covers loss resulting from prevention (or restriction) of ingress/egress to policyholder's premises by gov't authority; could apply to quarantines affecting customers or employees; may or may not require physical damage trigger.

- Specialized Policies or Coverage Extensions – communicable or infectious disease coverage.
- Travel or Trip Cancellation Insurance.
- Review timing, notice and other procedures.

## **Financing:**

- Communicating with Investors:
  - As companies engage with their investors, both at investor presentations and conferences and in their one-on-one conversations, they should be prepared to address the effect the coronavirus outbreak have had and might have on their business. Given the dynamic nature of the situation, companies should continue to evaluate whether public disclosures remain sufficient to address these concerns and, to the extent additional information is required, we would remind companies to consider and ensure their obligations under Regulation FD to make prior or concurrent public disclosures.
- Capital Calls:
  - We have been dealing with a growing number of instances where the managing member/partner of an entity has determined that additional capital should be obtained from the equity owners of the business. In the event you are contemplating making a capital call, consider the following:
    - Required approvals or veto rights.
    - Attention should be given to the category under which funds are being requested (emergency financing, budget requirements, additional expenses needed to comply with life/safety requirements, etc.) and the purposes to which such funds will be put to use (working capital, meeting debt service, etc.)
    - Notice requirements to lenders.
    - Timing issues.
    - Consequences of failure to fund by one or more investors.
    - Ability to raise funds from new investors.
- Debt-financing issues (for existing assets/projects):
  - Consider ability to draw down more cash.
  - Consider ability to and desirability of a refinancing.

- In the event Borrower may not be able to meet debt service obligations, identify the potential consequences of a breach and/or default.
  - Borrowers must actively evaluate the impact any such breach or default may have on liquidity and affirmatively undertake contingency planning initiatives to extend runway and minimize disruption.
  - Consider cross-default and cross-termination clauses where multiple documents or properties are involved.
- Lenders should conduct an ongoing review of their portfolio to identify which credits may suffer value degradation.
- Loans that are not properly serviced may trigger a variety of automatic consequences, including cash flows falling under the control of lender. This is especially difficult with respect to CMBS loans, as those loans are less flexible. How that affects operations depends on how the "cash waterfall" in the loan agreement was drafted.
- Disclosure:
  - The SEC has issued an order providing temporary exemptive relief to public companies that are unable to meet filing deadlines due to circumstances related to novel coronavirus (COVID-19). Companies that satisfy the conditions in the Order will have an additional 45 days to file certain disclosure reports, including quarterly reports on Form 10-Q, annual reports on Form 10-K, current reports on Form 8-K, and proxy statements. Click [here](#) to read Proskauer's client alert about the order.
  - When making disclosures, the SEC has publicly stated it is monitoring the situation and is encouraging issuers to include the Coronavirus outbreak in its risk management efforts.
    - Companies who are or plan to be active in the capital markets will need to continue to review the situation and their disclosures in the context of their capital raising activities. It will be especially important for companies to work closely with their underwriters and deal teams to plan ahead for any potential offerings, understand when the window for transactions might be available and be prepared with contingency financing plans to the extent market conditions preclude closings.
- Accessing Trading Windows:

- To the extent a company has a trading window open, companies will need to continually evaluate whether it is necessary to close their trading windows as the situation progresses and the potential that material non-public information about the effect of the coronavirus outbreak on the company and its business becomes available to management.

## **M&A/Transactional Implications:**

- Financing:
  - Lenders are likely to tighten covenants, escrow requirements, etc. in any ongoing negotiations.
  - Interest rates remain attractive.
  - Particularly vulnerable are deals that have signed but not yet closed.
  - The volatility in trading prices and reluctance of some investors to deal with work-out situations may create an opportunity for buyers to acquire securities / positions at an attractive discount.
- Deal Considerations:
  - We are already seeing an increase in deals driven by distress in Asia. We expect that trend to intensify and spread across the globe.
  - Given low occupancy levels, this is a good time to reflag properties.
  - Need to review budgets and financial due diligence delivered/conducted pre-crisis.
  - Development deal timelines will likely be delayed given travel restrictions, uncertainty as to availability of work force and supply/delivery difficulties.

We hope that you find this checklist informative, and as new developments arise we will continue to update and add more information:

Proskauer lawyers are here to assist, answering any questions to protect your business services and workplace.

### **[Related Professionals](#)**

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- **Yuval Tal**  
Partner



- **Jeffrey A. Horwitz**  
Partner
- **Steven L. Lichtenfeld**  
Partner
- **David J. Weinberger**  
Partner
- **Michael J. Lebowich**  
Partner
- **Vikki McKay**  
Partner
- **Peter J.W. Sherwin**  
Partner
- **Keith R. Barnett**  
Partner