

COVID-19: A quick recap of key considerations for products companies

Introduction

The rapid spread of COVID-19 and the responses to it worldwide are significantly impacting how we do business. While the exact length and severity of the crisis is uncertain and impossible to model accurately at this point, companies are preparing for considerable commercial disruption. Products companies are hit particularly hard on a number of fronts.

Longer lead times for sourcing components, delays when moving goods and issues posed by an increasingly non-centralized workforce are just a few of the operational challenges faced by products companies globally. Not to mention, in some jurisdictions, the requests for manufacturers to change their production lines to start to produce vital medical equipment.

What businesses should consider

With so much change underfoot, below is a short overview of key issues for products companies to keep in mind.

- **Keep your eye on product safety:** This could be a more challenging time to focus on information in the supply chain about product safety and related issues, but cutting corners creates risk. It's important to emphasize within the business the need to be vigilant to potential product safety issues in the usual way: even if the approach to dealing with those issues may need some creative thinking

in the current climate. Placing unsafe products on the market can lead to regulatory action and possible fines, litigation risk, criminal sanctions and reputational harm that is hard to fix.

- **Take care with new suppliers:** There are likely to be difficulties within the supply chain and it may be necessary to switch suppliers. Take the time to conduct appropriate due diligence on anyone you plan to work with. If you wouldn't have worked with the supplier before COVID-19, make sure you're working with the supplier for all the right reasons now.
- **Take care with new products:** Is your business considering manufacturing or selling a new product range for the first time, or into new markets? At this stage in time, the usual product due diligence and safety standards apply – as do the potential product liability risks. If your business is considering changing its Personal Protective Equipment (PPE) manufacturing to develop face masks (for example) – have you checked all of the laws and relevant standards that apply, and is your marketing team familiar with this product and able to promote it appropriately? If your business wants to start to describe products as having potential health benefits: have you taken appropriate advice with regards to medical device and health care rules which could apply?
- **Repairs and replacements:** Disrupted supply chains may impact your ability to meet statutory and contractual obligations to consumers and other end-users. Consider how you plan to meet this challenge and whether suitable alternatives can be put in place: do scripts with service centres need to be updated; could relevant FAQs be placed on your website to help consumers know what to expect, and when?



Visit our COVID-19 topic center for answers.

<https://www.hoganlovells.com/en/knowledge/topic-centers/covid-19/>

- **Be pragmatic:** This may be the time for tough, but mutually beneficial, conversations. Review your supply chain contracts to assess the level of risk. If a commercial relationship is under strain, open a constructive dialogue about how to manage the situation.
- **Review your force majeure clauses:** This is an area that has kept many businesses busy recently. Force majeure clauses offer relief to a party should an event occur which is out of the party's reasonable control and which prevents the party from performing its contractual obligations. Check your clause for relevant references, such as to 'disease' or 'pandemic', or for generic sweeper language. A force majeure clause will be judged on its terms and the specific context it becomes applicable to COVID-19 or its ramifications may qualify.¹
- **Review your insurance policies:** You may have different insurance policies that could respond to losses related to the pandemic, or you may suffer loss through business interruption. Business interruption policies typically only cover disruption caused by physical property damage, but you may have purchased enhanced or specific coverage that could apply (for example, standalone cover or cover for disruption to critical contingent sites or resulting from denial of access). You may also suffer losses stemming from liabilities resulting from the situation: for example, businesses should also consider whether their liability policies (such as D&O insurance or employers or public liability policies) will cover future claims arising from their response to the crisis. You may also have credit insurance in support of transactions that have been disrupted or cancelled – again, this may provide protection. Finally, work travel may be disrupted and again your company's travel or event cancellation

insurance may allow for the recovery of lost cost associated with that. In all cases, the cover provided will be driven by the precise wording of the policy, so it is important to get a handle on these contracts now.

- **Be prepared for potential litigation risks down the road:** in times of crisis thinking ahead is challenging, yet with deteriorated market conditions, one can expect a surge in both supply chain and product litigation. Do your best efforts to maintain best practices in terms of document retention, keeping a good track record of chain of events and decision making trees as this evidence may become useful later. Your usual practices to prevent and mitigate litigations risks may need to be adapted in a world where a number of employees are working from home.

The issues raised here are far from exhaustive, this is an evolving area that requires businesses and their lawyers to be adaptable. We know that this is a difficult time. Whatever your business needs, whatever challenges you face, we're here to help.

Get in touch with our leading Global Products Law Practice for more information and to navigate litigation and regulatory risks.



Valerie Kenyon
Partner, London
T +44 20 7296 5521
valerie.kenyon@hoganlovells.com



Christelle Coslin
Partner, Paris
T +33 1 53 67 47 47
christelle.coslin@hoganlovells.com



Jamie Rogers
Partner, London
T +44 20 7296 5795
jamie.rogers@hoganlovells.com

¹ For further information, see <https://www.hoganlovells.com/en/publications/coronavirus-as-a-contractual-force-majeure-event-a-simple-checklist>