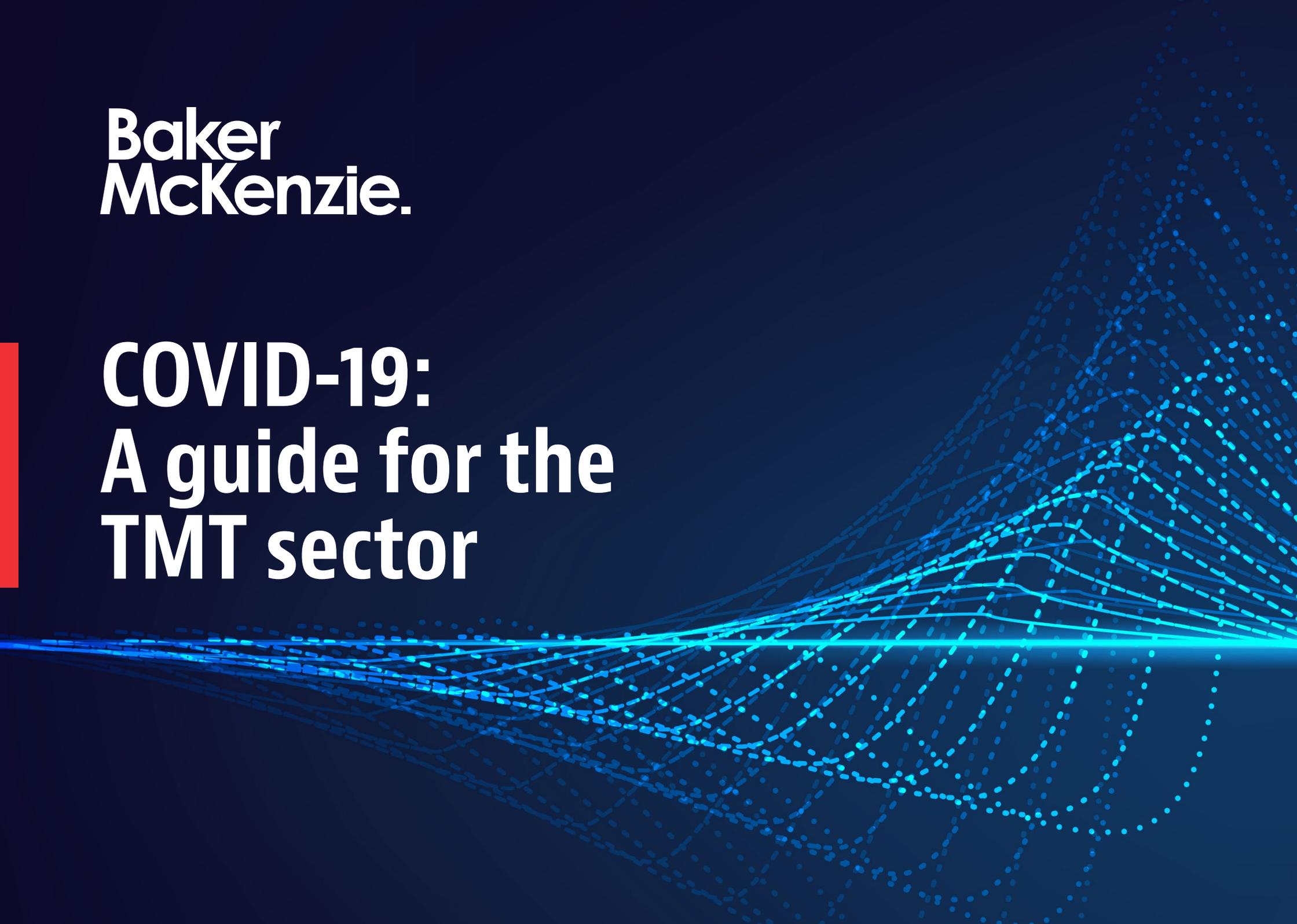


**Baker
McKenzie.**

**COVID-19:
A guide for the
TMT sector**



COVID-19: A guide for the TMT sector

With the COVID-19 pandemic quickly spreading across the globe and forcing entire countries to shut down all but essential services, businesses in all sectors urgently need to make business-critical decisions to protect their workforce, implement measures to address business continuity and prepare for an economic downturn. In doing so, they face legal and regulatory issues spanning various areas of law.

With this publication, we aim to assist companies in the TMT sector in managing this difficult and constantly evolving situation now and in the near future. Attorneys from our global team of TMT specialists offer their view on how they expect the TMT sector to be impacted, highlight the key legal and regulatory issues that need attention, and share best practices for minimising negative impact and legal risk.

Impact on the industry: What our TMT experts are seeing

The impact of COVID-19 on TMT businesses is multi-faceted. Disruption to the TMT supply chain and labour shortages may be the most obvious immediate impact for the industry. But clearly business impact goes beyond supply chain distress. For example, cancellations of major sporting and other events are affecting commercial broadcast networks that have paid significant sums for the broadcast rights and will also lose billions of dollars in advertising revenue. In the wider media industry many film and television shows are on an indefinite hiatus. Technology is also feeling the brunt of the slowdown with key products delayed or being soft launched. COVID-19 may well delay the roll out of 5G products and services. There are also reports that standard bodies including the IEEE are being forced to cancel or convert key meetings to virtual ones in which important standards are finalized. Digital platforms face the challenge of a flurry of fake news about COVID-19. They have been managing taking down unlawful content while prominently promoting the latest health information from reliable sources, including the World Health Organization (WHO) in searches and banners on websites.

At the same time, TMT companies are playing a key role in helping to fight the outbreak and are seeing increased demand for their products and services. The upside of the scale and reach of the industry is proving vital in helping to inform, entertain and keep connected those isolated by quarantine, in addition to enabling the significant upswing in remote working for an indefinite period. The industry is also working together and with governments and regulators, for example, in an effort to help vulnerable users get lower cost internet access and to help ease any traffic problems on broadband networks from increased usage of video services.

We are also seeing governments enacting emergency legislation which includes important provisions for providers of electronic communications services and platforms, recognizing they provide essential services during the outbreak.

We hope the views of our TMT experts will help you understand and address some key issues that arise. Please feel free reach out to me or any of the contacts below.

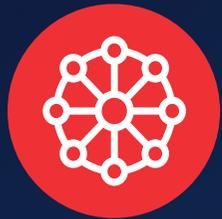
Most of all, we hope that you and your loved ones stay healthy and well.



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Supply Chain Disruption



Supply Chain Disruption

With many technology companies reliant on production and inputs from China and Southeast Asia for their consumer electronics products and services, the extended shutdown of parts of China's economy has been directly feeding through to impact the complex TMT supply chains as existing stocks are depleted. Notwithstanding that some factories and ports are resuming work in these regions with limited capacity, TMT companies are looking to make rapid adjustments to their supply and distribution chains to counteract shortages of labour, disruption in factories and ports and the spectre of weakened regional demand.



"Companies need to find constructive solutions to navigate this fluid and challenging situation. It is crucial to approach suppliers, customers and other contracting parties with flexibility. It is equally important to monitor and assess the business impact of government orders and restrictions which are being issued on a daily basis in many shapes and forms."

Anne Petterd

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Please see our alert on "How to protect yourself from distress in your supply chain" [here](#).

Checklist: Supply chains

Key recommendations for relieving the pressure and managing supply chain disruption are:

- ✓ Identify the disruptions impacting business activities. This is a changing situation, so it is important the impact is identified and then tracked so that the business can monitor on an ongoing basis the areas where it needs a new supply chain solution.
- ✓ In areas where the supply chain has halted because of a lack of demand, determine whether inputs for goods and/or personnel can be redeployed. Also consider if there is a practically viable available market for finished goods.
- ✓ In areas where the supply chain has halted because of a lack of supply (e.g., unavailability of an essential component), consider if there is a practically viable alternate source for the input. In anticipating this, it may be prudent to pre-qualify more than one supplier in different locations.
- ✓ Think about losses suffered as a result of supply chain disruption, who should bear such losses within the group – whether it be your production entity, a local sales subsidiary or the headquarters.
- ✓ Also, think about how additional cash paid for example to your production entity to cover operating expenses will affect your transfer pricing (tax and customs) and financing model.
- ✓ Consider the possibility of invoking force majeure clauses. Test if the scope of what is defined as a force majeure event covers the current situation.

Continued on next page

Checklist: Supply Chains (continued)

- ✓ Consider whether there are alternative ways of performing affected contractual obligations (for example, ability to reduce volume, exercising any step-in rights, alternative suspension rights and/or negotiate alternative arrangements with supplier). Be proactive in negotiating variations - the other parties in your supply chain are also likely looking for some flexibility on current contract obligations.
- ✓ If you need to enter into new contracts, draft provisions to cover eventualities such as the present outbreak. For example, consider if you need to ask for cancellation or suspension rights or rights to substitute supplies that you would not ordinarily seek.
- ✓ Anticipate the resumption of supply and think through the implications. For example, resumption of supply could place a heavy load on foreign port operations. It may be a good idea to identify new domestic transportation modes because large import volumes flooding ports may cause trucking costs to increase or cause a bottleneck effect.
- ✓ Monitor the announcement of any new governmental or regulatory policies. Personnel movement restrictions, essential services, red-tape reductions, support for continuation of trade and economic assistance for business are all key areas where governments are making announcements.

Looking a few months into the future, we anticipate a rise in disputes around contract breach and termination, export bans, state aid issues and insurance coverage. TMT companies would be prudent to think about their legal position and strategies to defend any such claims.

“Disruption of contractual relationship results in a need to review or revise force majeure clauses, research the applicability or enforceability of such clauses, and research rights and remedies in the absence of express force majeure clauses. Clients not only ask if they or their contracting partners are excused from performing contractual obligations, but also whether payment obligations, rights to refunds and other consideration is affected, and how they can, must or should accommodate business partners in difficult times.”

Lothar Determann

Partner | Palo Alto | Lothar.Determann@bakermckenzie.com



Contractual liabilities



Contractual liabilities

Given the unexpected nature of the COVID-19 outbreak and its impact on a wide range of business operations, parties to commercial contracts are considering the prospect that affected parties may rely on force majeure or other concepts such as frustration, material adverse change or illegality in order to excuse delay or non-performance. When unforeseeable events beyond the control of a contractual party occur, depending on the precise drafting of the clause in question, the obligations of the parties may be suspended or deferred. A party may even be released from its contractual obligations without liability in certain circumstances.

Checklist: Commercial contracts

In relation to their commercial contracts that are or may be affected by the outbreak, companies should:

- ✓ Review each contract carefully, with particular regard to the governing law and force majeure provisions, including any time bars or other procedural requirements.
- ✓ Form a preliminary view on whether any force majeure provision is "open" or exhaustive in relation to the list of force majeure events and whether the outbreak and/or resulting government crisis measures are covered or excluded. Also, consider the validity of force majeure claims made by counterparties.
- ✓ Consider your obligation to mitigate the effect on non-performance and what steps you can take, in case you need to invoke a claim. Starting a constructive dialogue with the counterparty may be an important part of the process.
- ✓ Consider any potential flow on effects from the invoking of a claim such as termination of the contract.
- ✓ Explore other remedies that may be available, such as contract frustration, the doctrine of changed circumstances or under a material adverse change clause. In joint venture agreements, consider whether the failure of joint venture parties to agree on a course of action to be taken in light of COVID-19 circumstances could trigger exit or other rights under the agreement.

Aside from the legal position, there are several other important matters of concern:

- For a counterparty that receives a force majeure claim and does not think it is valid, there is the issue of enforcement of the contract, particularly if cross-border enforcement may be required.
- There are the reputational risks and potential damage to long-term supply relationships with key industry partners. Even where there is no legal basis for force majeure relief, parties who receive force majeure claims may wish to be flexible about amending or restructuring (e.g., by postponing deliveries) the contract to accommodate the affected party.
- Declaring force majeure or receiving a force majeure claim may impact on insurance arrangements.
- Buyers who are part of a chain of supply contracts may themselves need to declare force majeure in response to a supplier's declaration in order to avoid being in breach. Each contract in the chain may of course be on different terms or subject to entirely different governing laws and this can create substantial challenges for the buyer, especially where their downstream contract has less favorable (or no) force majeure provisions. There may also be separate time bars or other procedural requirements.
- If you are entering into new contracts during this period, consider the force majeure provisions with particular care.



Employment considerations



Employment considerations

COVID-19 raises increasingly challenging issues for employers, particularly those that have multiple locations, provide a variety of services, and employ a global workforce that may travel routinely for business. As evidenced around the globe, the majority of employers are forced to require their staff to work remotely (or not at all) in order to contain the further spread of the virus, comply with quarantine requirements, travel bans and other lock-downs. An emerging challenge is how to manage the workforce amid shortages of work, business shutdowns, and/or falling revenues amid the economic downturn.

Multinational employers responding to the pandemic now require a strategy for the following:

Preventing and mitigating the spread. Employers have an obligation to prevent and mitigate further spread of the virus. A key aspect are Shelter in Place Orders which are sweeping the world. Businesses need to quickly assess the impact of those often conflicting and evolving orders on their business and identify which employees are still permitted to work under which conditions. Businesses also need to carefully assess their workplace disease mitigation obligations resulting from the WHO, country disease control organizations as well as local government orders.

Managing incidents of exposure at work. Complex questions arise around managing COVID-19 incidents such as what reporting and information obligations arise and how to comply with these without compromising individual's data privacy. Companies also need clear strategy for treating sick employees while off work that allows them to appropriately and consistently pay employees affected by COVID-19 or in quarantine.

Remote working. Virtually any business is required to facilitate remote working where possible to ensure business continuity. For more, see Spotlight on facilitating home working.

Understanding and managing leaves. Understanding and managing leaves is crucial at this time. Numerous new leave and pay requirements are being issued in the form of new orders, decrees or laws (such as the FFCRA in the US) to address the expansion of leaves and wage relief. It is important to understand and comply with these new laws but also understand the interplay between these new laws and existing entitlements and, in some cases, supplemental sick leave programs that companies have put in place.

Cost cutting. Staff costs are one of the first places that businesses look to address economic challenges, including making redundancies. While some TMT businesses might not be hit as hard as other sectors by the crisis or might have protective cash reserves, many of them will likely be forced to think about cost-cutting measures. For more, see spotlight on reducing staffing cost.

Checklist for employers:

Maintaining a safe working place, while at the same time maintaining volume and standard of operations.

- ✓ Presenting a considered and consistent approach to paying employees affected by COVID-19 or who are being quarantined.
- ✓ Minimizing exposure to liabilities:
 - Protect the health and safety of employees (in particular vulnerable employees such as those with disabilities or caring responsibilities for vulnerable relatives).
 - Protect the health and safety of vendors, customers and persons liaising with the company.
 - Protect employees affected by travel bans or who have been quarantined abroad.
- ✓ Reviewing applicable government health alerts, tracking travel and health restrictions.
- ✓ Maintaining communication with employees.
- ✓ Facilitating remote working where possible (but minimizing related data security risks).
- ✓ Ensuring compliance with data privacy regulations where additional information is collected from employees in order to manage the situation (see Data Privacy & Security Section for more).
- ✓ Examining procedures and policies around paid time off, short time working, reductions in pay, lay offs, and other options for managing the economic effects of the outbreak.
- ✓ Staying up to date with government measures to support businesses and employees to ensure appropriate support is sought where applicable.

“All businesses will also have to deal with the impact of illness and self-isolation on the workforce. Even those employees who are able to work may be doing so in homes where other adults and children are present. Caregivers may not be able to work from home as if they were in the office, and practical issues around health and safety, data protection and the strength of the employees’ own internet connectivity may apply.”



Julia Wilson
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Spotlight: Facilitating home working

Compared to other sectors, many businesses in TMT already have widespread acceptance of tech-enabled agile working arrangements which pre-date current circumstances. They are therefore well positioned to facilitate remote working and preserve business continuity. However, not all workers will be able to perform their roles from home (for example, infrastructure maintenance), and TMT businesses will need to develop more complex solutions taking account of local restrictions on movement outside the home. Complex questions arise such as: Can employers send employees on suspension from work? What are employees entitled to in terms of leave and pay if they are quarantined? What are employees entitled to in terms of leave and pay if their child's school is closed?

In addition, home working on the current scale is a whole new world. It raises mental and physical health and safety considerations, and outcomes, which employers cannot yet fully predict. Employers shouldn't assume that the home working environment is working for everyone, and should consider ways to enable thoughtful self-assessments of the homeworking environment, follow local health and safety regulator guidance, ensure people have the right equipment (a laptop and mobile phone may fall short), seek guidance for people who have a pre-existing condition which may be exacerbated by home working, remind employees they have obligations to look after their health and safety as well.

Access our [Covid-19 Global Employer Guide](#) answering for 41 jurisdictions the most pressing questions employers are currently facing, including legal requirements, practical and operational considerations, and emerging government regulation related to the outbreak.

Spotlight: Reducing staffing cost

Although some TMT businesses will benefit from an increased online spend and demand for online services if customers are spending more time at home, others in the sector will be impacted by impending recession. Already businesses are looking at how to retain shareholder value in the face of declining demand. This includes looking at a range of measures to reduce staffing costs such as cutting agency staff, temporary layoffs and short-time working.

Staff costs are one of the first places that businesses look to address economic challenges, including making redundancies. Players in the TMT sector might have significant cash reserves, and if so, their ability to justify compulsory redundancies may be limited in many countries in

those circumstances. Employers should first consider other options (offering sabbaticals, short-time working, temporary layoffs, pay reductions) and there may be a material employee relations backlash (and damage to brand reputation) if alternatives have not been raised. In some jurisdictions, there may be government subsidies available to support employers who are required to reduce hours and pay on a temporary basis.

For example, in France employees on reduced hours must receive at least 70% of their usual gross remuneration from their employer, but the state offers companies an allowance of approximately EUR7.50 per hour. In Belgium, the white-collar employees of a company recognised as being formally "in difficulties" will receive temporary unemployment allowances with the employer topping this up.

"Local law on pay and leave in respect of self-isolated employees (or employees who aren't able to work for other reasons - e.g. school closures) varies globally, and employers should familiarise themselves with the nuances of the rules in each jurisdiction. If employers apply a global policy (which may include paying full pay to employees if not required to do so), be alert to the risk that in some jurisdictions, agency workers might have a right to equal treatment."

Julia Wilson



Electronic Signatures and Documents



Full Speed Digitization: Move to Electronic Signatures and Documents

Even before the COVID 19 pandemic, individuals, companies and governments recognized many advantages that electronic signatures and documents offer over ink and paper, including speed, cost savings, convenience, easier search and analysis, cheaper archiving and retrieval, automation of retention/deletion, additional options to protect authenticity and integrity, better evidence and identification, scalability, standardization opportunities, and arguably a plus for sustainability: Don't print this article, save a tree. Forgery concerns apply equally to electronic and ink-on-paper signatures, but electronic signature technologies offer additional security measures.

Despite all these advantages of electronic documents and signatures, companies opt for "ink and paper" where they determine that an electronic document or signature will not be accepted by a customer or government authority, does not meet a particular form requirement, does not suffice to create an enforceable

contract, or will otherwise result in a disadvantage. Until recently, many have also still resorted to ink and paper when they were not sure – forgoing benefits of digitization.

But, the COVID 19 pandemic is putting extreme pressures on default inertia. With "shelter in place" ordinances and social distancing mandates, many workers are at home. Emergencies, challenges and opportunities are popping up left and right. No one has time for snail mail, ink and paper. At the same time, companies have to continue to comply with existing laws and protect their interests with enforceable contracts, valid consent declarations, formal records, effective applications for government approvals, and other documents.

Businesses and their counsels are revisiting the question whether ink and paper is necessary with acute urgency.

Checklist: Essentials for electronic signatures

✓ **Is the signature or document even required?**

Many documents that companies and consumers sign every day are neither legally required nor necessary to pursue legal objectives. For example, in many situations companies can – and probably should – just notify consumers about data processing practices or sales terms without seeking signed consent declarations; the company just needs to retain proof that the consumer proceeded with a transaction or activity after

receiving the notice, for example, by retaining evidence that a notice was conspicuously posted on premise or online. Even if a document or signature is not legally required, companies nevertheless often have good operational, customer or human relationship reasons to document a consent or acceptance. But, they do not have to worry about electronic versus other form where the document is not legally required in the first place.

✓ **Is the signature likely to be challenged?**

Software companies have relied for decades on shrink-wrap and click-through license terms. Licensees rarely challenge the validity of the license agreement if they would then be subject to greater liability for copyright or patent infringement without a valid license; they might, if they can rely on a statutory defense, such as the first sale doctrine, but otherwise not. Similarly, customers of month-to-month subscriptions or recurring services do not typically challenge the validity of an entire agreement where they remain liable for services received anyhow, based on prior course of dealing, unjust enrichment or other legal theories, and where cancelling service going forward is relatively easy. Even in these cases, companies should spell out applicable terms in documents, to reduce risks of disputes or misunderstandings and to protect against undesirable legal consequences (such as a software transaction qualifying as a “sale” exhausting copyrights), but they need not be as much concerned about challenges of signatures on formal grounds.

✓ **Where would the signature be challenged?**

Companies can reduce risks under laws of unfamiliar jurisdictions with an express choice of law and arbitration in a jurisdiction that recognizes electronic forum. Larger businesses with options regarding contracting entities can select entities in favorable jurisdictions that recognize electronic form, arbitration clauses and class action waivers. Limitations apply, for example, if you end up in bankruptcy court or in need of a preliminary injunction in a foreign jurisdiction.

✓ **What evidence do you retain to prove validity?**

In a few cases, companies have been unsuccessful in enforcing electronic contracts because they either did not have, retain or present in court evidence to substantiate that it was the other party who signed the electronic contract, see, for example, *Fabian v. Renovate America*.

✓ **Which additional measures can help reduce risks?**

Where practical, you could execute a one-time agreement on paper with handwritten signatures confirming that the parties may use electronic form going forward. If you had to press ahead with an electronic document, you could try to ratify the electronic version with hand-written signatures after the emergency is resolved and while all parties are still in agreement or you still have some leverage.

✓ **What e-signature technology is right for you?**

You can document offer and acceptance electronically in numerous ways, including per email; unilateral notices combined with mechanisms to trigger actions signifying implied assent; express click-through buttons on a web or mobile site; printing, signing, and scanning; pasting a photocopy of your handwritten signature into a Microsoft word.docx; or painting your signature on a PDF file or with a tablet. You can also use online solutions that offer additional functionality regarding authentication, retention, evidence and integrity features based on international market and legal research, see, [here](#) for example. In limited scenarios, you may also find a qualified digital signature tool that is government-certified in a particular jurisdiction to be equivalent with handwritten signatures, although in practice, such tools have not found wide-spread adoption anywhere to date. Consider the previous checklist items as well as risks, resource limitations and operational preferences as you select the best tool for different situations.

✓ **How do you manage the process?**

Larger organizations should summarize in an easy-to-follow protocol under which conditions, for which jurisdictions and for which document types their representatives may use one or more electronic signature options. Such protocols should also list transactions, documents and situations where electronic form is not sufficient due to legal form requirements or business considerations. Very large organizations may find it helpful to further differentiate between departments, including sales, procurement, human resources, tax, finance and international corporate maintenance.



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Data Privacy & Security



Data Privacy & Security

The urgent measures TMT companies implement to keep their workforce safe and ensure business continuity, frequently involve additional data processing because of the crucial role that data plays in containing the spread of the virus. From a compliance perspective, it is important to ensure that such data

processing is based on a valid processing ground anchored in applicable data privacy legislation. A balance must be found between protecting public health and personal privacy. Employers will need to assess whether or not certain data processing they are considering will comply with data privacy regulations.

Checklist: Data privacy & security

- ✓ Assessing whether data privacy regulations allow you to lawfully collect and process from employees or visitors, certain personal, and sometimes sensitive data, such as body temperature and travel information.
- ✓ Checking if your local data privacy regulator has issued any guidance either permitting or restricting the collection of personal data for the purposes of identifying COVID-19 cases, and pragmatically interpreting such guidance.
- ✓ Assessing, under both data privacy and employment legislation, whether as an employer you may establish information channels requiring employees to notify certain COVID-19 information about themselves or colleagues to HR or line managers.

“Contact tracing and other health protection measures involve processing of sensitive personal information: health data. Companies have to deal with voluntary reports from patients and concerned co-workers and decide whether they want to require or allow certain information to be reported and shared, how long to keep it, how to protect it. Companies are required to inform data subjects about their information handling processes under CCPA, GDPR and many other privacy laws. Many privacy laws contain exceptions from restrictions on health information use and sharing in cases of public health crises.”

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Access our multi-jurisdictional [COVID-19 Data Privacy & Security Survey](#) designed to assist employers assess whether or not certain data processing they may consider in light of COVID-19 is compliant with data privacy regulation.

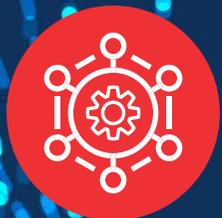
In addition, many organizations around the world are rushing to put in place telework or remote working for some or all employees. In addition to ensuring that the networks, VPNs, and other IT resources are capable of supporting such a shift, organizations that have not built such remote working into their business continuity plans should be aware of, and take

steps to mitigate, the cybersecurity and data privacy risks involved in such a shift. The cybersecurity risks associated with opening up usually restricted systems for remote access and allowing employees to use personal devices for accessing organization systems and resources, are manifold. Also, we are already seeing malicious actors attacking organizations. While many

TMT business will be better placed than other sectors in implementing remote working solutions, it is key that they put in place a teleworking strategy which minimizes the related cybersecurity and data privacy risks that arise.

Click [here](#) to access our **Cybersecurity and Data Protection Checklist for Teleworking checklist.**

At the same time, TMT companies that build and sell robust and operational cybersecurity solutions will see an increased demand in their products and services as other sectors aim to fend off cybersecurity breaches and incidents.



COVID-19 impact on governmental foreign investment screening



COVID-19 impact on governmental foreign investment screening

As COVID-19 continues to wreak havoc with the global economy, disrupting all manner of business throughout the world, stock markets have plummeted and many companies are having to grapple with the economic damage. There is a great deal of uncertainty in the transactional space, with many potential investors taking a cautious approach before committing to significant transactions.

However, this unprecedented environment could afford opportunistic buyers the chance to acquire or invest in companies that have been weakened by the crisis. In addition, creditors may unintentionally find themselves in a position where they acquire control over a business. Assuming control or ownership upon default may well be a triggering event for foreign investment regulatory authorities where the creditor (new owner) is ultimately foreign owned, such as in the United States.

Pre-COVID-19, as the world de-globalised, rising national protectionism had been driving calls for stronger screening of foreign investment across the globe. Now, COVID-19 has prompted some countries to take an even more stringent approach. Some national governments, such as Australia, Spain, Italy and France, are now considering steps to protect companies in strategic sectors (including telecoms) which have become vulnerable as their economies

are struggling from being taken over by foreign investors.

The European Commission has also issued guidelines calling for effective foreign investment screenings in the EU and at EU Member State level and encouraging Member States who don't have such screening mechanisms to implement them. The message is clear: Member States are encouraged to use all tools available to them to protect EU companies and critical assets from foreign takeover.

These developments highlight the need for investors to carefully consider foreign investment review risks at this highly sensitive and volatile time in respect of both deals which are currently underway and transactions being contemplated. While most cross-border transactions have a high likelihood of being approved, those in strategic sectors may encounter more scrutiny and face a prolonged approval process. Taking the time to understand the rules and identify a regulatory strategy, including appropriate messaging and communication with the relevant governmental authorities, and the consequential impact on deal documentation (such as whether any closing condition is required), early in the deal process can minimize the risk of delays, last-minute changes to the deal structure, or even failed transactions.



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TMT M&A Outlook in the wake of COVID-19



TMT M&A Outlook in the wake of COVID-19

The ongoing global efforts to mitigate the spread of coronavirus has had an immediate impact on corporate transactional activity, including a slowdown in mergers and acquisitions globally. The current crisis has created an imperative for corporate introspection to re-evaluate near-term and long-term supply chains, resource deployment, liquidity and other balance sheet pressures in the face of the threat of looming global recession.

Impact on M&A

Outlook

In the short-term, the challenges of the current environment has delayed completion of pending transactions and chilled M&A appetite for reasons including:

- an increased focus on liquidity, with potential buyers focussing on retaining, rather than deploying, capital;
- constraints in debt markets, including a tightening of borrowing terms;
- increased protectionism in FIR regimes and logistical difficulties posed by current restrictions on movement, frustrating diligence and regulatory processes;
- private equity's short term focus turning to preservation of value and liquidity of portfolio companies, rather than new opportunities; and
- increased conservatism in the venture capital ecosystem as investors balk at the cash burn rate of early stage companies in the face of low consumer confidence and economic uncertainty.

However, COVID-19 has generally not impacted technology company fundamentals, and changes resulting from COVID-19 nevertheless present deal-making opportunities for TMT investors and buyers. In particular, the following trends may emerge from the current crisis:

- use of technology may alleviate logistics challenges, facilitate remote working environments and cut costs, which suggests that the trend of non-technology companies acquiring technology assets and companies will continue and indeed increase in segments. A number of TMT subsectors are benefitting from the current restrictions on movement and demand for remote working, including the video conferencing, digital media and "over the top" content, e-commerce, gaming, AI, cybersecurity and healthcare sectors. Examples of the latter include surveillance tracking of patients, online consultation services, improvement in research capabilities and drug delivery logistics services;
- while venture capital is expected to deploy capital at reduced levels, corporate venture capital programs remain a part of large TMT company budgets and must continue to secure strategic longer-term opportunities with investments in the near- and medium-term. Across China and SE Asia markets, financial sponsors are renegotiating more favourable deal terms on a range of venture capital transactions, including a shift towards more investor-friendly convertible debt instruments. This is particularly

Continued on next page

relevant for emerging tech companies in the region, seeking capital for ongoing development or expansion plans;

- private equity's record levels of dry powder are likely to capitalise on sellers seeking to dispose of assets to increase liquidity and adjusted valuations (of both public and private companies), and there is renewed interest from private equity, family offices and sovereign wealth funds in public company equity following the market shock's impact on prices;

- increase in restructuring transactions and distressed M&A processes. Financing these types of deals will be a real test over the coming period. Leverage levels are expected to come down, coupled with more lender-friendly terms in this changing market. While the low interest rate environment helps, lending is expected to be much tighter than we have seen in recent years. However, where traditional lenders are taking a cautious approach, it presents another opportunity for private

credit funds to fill the liquidity gap, evidenced by increasing levels of activity on event driven financings where private credit funds are able to execute and deliver within a tight timeframe; and

- to focus resources on core businesses, corporates may determine (and in the longer term, may be pressured by shareholder activists to) to divest non-core businesses, which was seen with numerous TMT companies following the dot-com bust and 2008-9 global recession.

Deal terms

After an extended period of seller-friendly terms in TMT M&A, a shift towards buyer friendly terms is anticipated. In particular:

- due diligence will reflect greater pressure-testing of corporate infrastructure to withstand crises like the current pandemic and risk mitigation measures, with potentially new or more extensive representations being requested of targets;
- the recent trend of greater adoption of W&I insurance by strategic buyers may dampen as impacts of the current crisis will likely be excluded from coverage;
- increased use of completion accounts pricing mechanics in favour of locked box transactions given uncertainties around performance and receivables;
- more restrictive or specific operating covenants effective between signing and closing; and
- strong buyers are seeking to protect against the future unknown impact of the current crisis, while sellers are seeking deal certainty by excluding COVID-19 from the circumstances which would cause or have a material adverse effect.

For fuller discussion on the impact of COVID-19 on M&A and private equity transactions, including advice for risk mitigating provisions to incorporate into sale agreements, please refer to our detailed alert [here](#).



"While transactional activity in the TMT sector may currently be muted, there will be interest in strategic assets which solve critical business issues such as supply chain management, enabling remote working and digital transacting with customers. Investments in core data infrastructure and telecoms are increasingly attractive to investors and start-ups could be looking to a broader group of financial investors for next phase development."

William Holder

Partner | London

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Technology as a force for good



Technology as a force for good

Technology, and the scale and reach of TMT companies, is having a substantial positive impact in helping to fight the outbreak, safeguarding public health and ensuring business continuity.

Remote working. Fast internet connectivity and secure connections are enabling the current unprecedented levels of remote working for an indefinite term as quarantines take effect and workplaces close to protect their workers. As remote working and virtual meetings accelerate, many technology companies are seeing significant increased demand for telecommunications services, hardware, cloud services and other technology solutions to implement remote working and are taking steps to ensure network capacity is available and managed correctly. Also, some TMT companies are observing increased demand for products and services from consumers that enhance their health and safety and give them alternative lifestyle options while quarantined. For example many tech educational companies are providing free or subsidized services during the outbreak for remote learning.

Information and entertainment. The media industry (both traditional broadcasters and newer streaming platforms) are playing a key role during the pandemic in providing correct and responsible health information to the public with search engines and social media platforms for example giving space to and prominently displaying CDC and WHO information. In terms of morale of those isolated, access to the wealth of quality content available is important. This role is a focus for traditional broadcasters and newer technology platforms alike with many cable broadband and telco companies for example increasing data caps and looking at other ways to help subscribers.

Automation and robots. Robots are not only keeping some factories operating in the wake of a limited workforce, but also being deployed in hospitals to help diagnose and treat those affected and disinfect wards. Furthermore, China and Singapore are examples of jurisdictions that have extensively deployed technology to monitor people required to self-quarantine and to control the outbreak such as via their mobile phones.

Predictive models and diagnosis. Machine learning (trained from big datasets on existing virus clusters and other health data), algorithms and data science is being used by governments, academics and businesses worldwide to model the likely patterns of the virus, including infection rates and spread. This technology is also assisting with helping correctly diagnose the virus as more health data becomes available. One practical example is the John Hopkins University global map which tracks COVID-19 cases – see [here](#). Chinese technology companies are also building apps using modelling data to tell consumers if they have been in close proximity to potentially infected individuals. Cultural norms and the differing approach of privacy laws means different approaches are reportedly being taken to monitoring the disease and quarantines - from the use of geo-location data to track specific individuals to anonymized data tracking the movements of population groups in specific areas. In Germany, the Robert Koch Institute tasked with coordinating a national response to COVID-19 has started to analyse anonymized geo-location data to track movements to make predictions about how the virus spreads and to assess the effectiveness of social distancing. In a move that privacy rights organizations are objecting to, the German government is also considering laws requiring telecommunication and tech companies in pandemics like COVID-19 to make geo-location data accessible to authorities in order be able to warn individuals that have been in close proximity with infected individuals. There are also reports of other similar moves to procure this information from telecoms providers in Austria and Italy.



“Clearly there will be significant additional reliance across the community on TMT services – this covers all three of the letters – Technology, Media and Telecoms. In particular, there will be focus on sufficiency of networks to carry the significantly increased traffic as working from home continues to really ramp up”

Adrian Lawrence

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Spotlight: Telecommunications and technology platforms: essential services

Various governments worldwide have enacted emergency legislation which includes important provisions for providers of electronic communications services and platforms, recognizing they provide essential services during the outbreak.

Examples include:

- ✓ Italy's recently enacted "[Cura Italia](#)" Decree contains specific measures which apply, for a time limited period, to its electronic communications service and network providers. These include providers taking the necessary measures to guarantee uninterrupted access to their networks for emergency services (with priority also being given to specified public bodies), and measures designed to increase fixed-line broadband bandwidth to support remote working. The Decree also includes provisions to help expedite procurement of key IT and telecoms products and services by public bodies.
- ✓ Columbia which has just enacted a decree declaring that certain TMT services are considered as essential public utilities. One key measure of the decree is the obligation of logistics and platforms to prioritize the supply of products that are considered basic to the Colombian population.
- ✓ Also of note in this context, on 19 March 2020 the International Telecommunication Union (ITU) launched new guidelines ([here](#)) to help countries develop national emergency telecommunication plans that would support the coordination of various levels of government and humanitarian agencies seeking to help save lives. On the same day the European Commission and the Body of European Regulators for Electronic Communications (BEREC) issued a joint statement ([here](#)) giving operators in the EU guidance on how exceptional traffic measures to manage congestion, if necessary, should be implemented in the light of existing net neutrality rules.

These laws are being developed, usually, in close conjunction with the applicable national telecommunications regulator. They continue to evolve rapidly at a country level so it will be important to monitor developments closely.



"We expect COVID-19 to accelerate the implementation of digital operations and big data-driven solutions by businesses across sectors. This will result in increased demand for TMT companies' products and solutions."

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