

# COVID-19: Due diligence issues in corporate transactions

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**The outbreak of the Coronavirus disease (COVID-19) brought widescale market disruption, government-imposed lockdowns and global restrictions on travel which, in turn, triggered wholesale shifts in working arrangements and widespread cash flow and liquidity issues for many businesses.**

In this novel business landscape, it is essential for the buyer's due diligence investigation to assess the impact that the pandemic has had (or may have) on the target and its business, and what risk mitigation it has already undertaken, before making any contractual commitment.

It is beyond question that the specific matters that may require enhanced COVID-related due diligence will vary greatly according to the circumstances of the transaction and the industry and geography in which the target operates. However, there are some common examples of areas of potential concern for buyers pursuing a corporate acquisition while the effects of the COVID-19 outbreak continue to be felt by businesses.

We set out some of the key issues buyers should consider when undertaking due diligence in the wake of COVID-19.

## **Contracts and trading**

In many industries, COVID-19 could pose a serious threat to a target's supply chain. Buyers should consider the target's exposure to supply chain disruption and the extent to which this has affected, or may affect, its ability to meet its own contractual obligations.

Buyers will need to evaluate the ability of the target and its counterparties to perform their respective contractual obligations. Buyers should investigate any potential events of default or re-negotiations of existing contracts and any material contracts including a force majeure

clause or other termination rights, which can be invoked because of the pandemic.

Buyers should also assess the target's approach to business continuity planning and crisis management procedures. Buyers will need to examine the robustness and effectiveness of any such plans and procedures and consider whether any additional measures need to be implemented to mitigate the impact of the pandemic on the target's operations.

## **Finance and tax**

Rigorous financial due diligence will be crucial to evaluate the target's long-term viability, and whether it has the financial resilience to withstand the post-COVID landscape. Buyers should obtain financial information and management accounts reflecting recent trading activity (although these might not always be a reliable indicator of future profitability).

Buyers should assess the impact of COVID-19 on the target's cashflow and the options it is exploring to address any issues, including whether it is likely to require an injection of finance following completion.

Buyers should consider whether the target can benefit (or has already benefited) from one or more of the financial schemes and other support measures offered by the UK government to support businesses during the COVID-19 pandemic, set out in our recent [article](#).

Buyers should also keep in mind the application of [EU rules on state aid](#) when taking advantage of available government support; these rules still apply in the UK during the transition period following the UK's exit from the EU.

## Compliance and insurance

Buyers should consider the resultant change of law risk for the target and its business including, in particular whether the target's operations comply with applicable COVID-19 related laws and whether they have had to adapt to take account of changes in the law stemming from the pandemic.

Buyers should review the target's insurance portfolio including any business interruption and key man insurance to determine the extent to which it is covered for losses arising from a business slowdown or stoppage due to the COVID-19 outbreak.

## IT systems, cybersecurity and data protection

Buyers should evaluate the capacity and resilience of the target's IT infrastructure to support remote working arrangements on a larger scale and maintain the integrity and efficacy of the target's technology network.

Buyers should examine the measures the target has taken to secure its personal data, network and information systems and ensure these remain appropriate to the increased risk inherent in its new ways of working in response to the pandemic.

Buyers should also consider whether any capital expenditure is necessary to ensure that the target's IT systems are sufficiently robust.

## Employment and immigration

Buyers will need to find out the proportion of staff that cannot work due to COVID-19 and how many employees are in receipt of statutory sick pay or company enhanced sick pay.

Buyers should also request details of any furlough measures and the proposed length of furlough to assess the extent of any pay liabilities (as furlough varies contractual rates of pay).

**For clear detailed advice built around your target acquisition call corporate lawyer [Evangelos Kyveris](#) today.**

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