

# AG LITIGATION CHECKLIST

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Helping our clients



## PROVIDING YOU WITH THE RIGHT SUPPORT WHEN AND HOW YOU NEED IT MOST

The AG Litigation COVID-19 task force team have prepared a business support checklist to help you deal with the current unprecedented conditions impacting everyone around the world. The team have looked at the most immediate business critical issues and then looking ahead over the coming months what ways you can protect your operations whilst it recovers. We will update this regularly as new market developments unfold and please also visit <https://www.addleshawgoddard.com/en/coronavirus-covid-19/> for the very latest articles we are producing in response to the changing market landscape.

If you would like to discuss in more detail how we can support you please contact Michael Barnett on **07738 140450**.



### CONTROL

Litigation finance has helped many clients manage their costs of claims and share risk. We help our clients make decisions that are right for them and their business. If you would like to discuss ways CONTROL can help please contact Rich Wise:

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For more information visit <https://www.addleshawgoddard.com/en/control-litigation-financing/>

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## MANAGING YOUR HEALTH & SAFETY PROCESSES, PEOPLE AND ENVIRONMENTS



### QUESTIONS

- How is your business managing employee risk at the moment – what are your biggest concerns?
- Can we assist you by sharing our advice and best practice from our other clients?
- How do you manage absences, particularly where they might cause safety issues?
- How to manage risks associated with staff redeploying to unfamiliar roles or being seconded to other organisations to provide assistance?
- What sensible precautions can you adopt now to minimise the risk both to safety and of large scale absences among employees?



### BUSINESS CRITICAL ACTIONS: NOW

- Review your H&S policies and/or risk assessments, for example have your homeworkers conducted a self-assessment safety checklist.
- Keep abreast of rapidly changing rules such as the mandatory closures of workplace canteens and in-house food consumption.
- Understand your position re lockdowns and position regarding regulators?
- Giving robust and practical advice around the interpretation of Public Health England Social Distancing guidance and its application to your business.



### FUTURE ACTIONS: 2 - 3 MONTHS

- If your business requires urgent assistance in responding to the Health Protection (Coronavirus) Regulations 2020 and the Coronavirus Act we are able to advise on how to respond and prepare a business response plan in relation to Coronavirus.



## DRAFTING COMMERCIAL CONTRACTS, SUPPLY CHAINS AND GOODS



### QUESTIONS

- How are you dealing with business continuity at the moment - what is causing you the greatest concern/threat?
- Which customers/suppliers/products/services are you most concerned about/prioritising?
- Are there contracts you need to vary, suspend, terminate - or accelerate?
- How are you coordinating your approach across the business?



### BUSINESS CRITICAL ACTIONS: NOW

- Implement a robust and consistent approach to dealing with contracts and parties across the business.
- Document carefully - internally and externally (consider use of lawyers for privilege).
- In assessing existing contracts, consider the terms of any force majeure or impossibility clauses, as well as whether the circumstances of the agreement lend themselves to a frustration-of-purpose argument.
- For new orders/contracts currently being negotiated, consider updating your approach to drafting force majeure provisions.



### FUTURE ACTIONS: 2 - 3 MONTHS

- Assess the developing situation and future environment you may be operating in - is your current and planned approach sufficient for your anticipated business needs?
- Monitor the progress of customers and suppliers - consider if further steps are needed to mitigate risk.



## INSURANCE POLICIES



### QUESTIONS

- What insurance policies does your business hold? In addition to business interruption consider other policies such as credit (trade, business etc.), property and employers' liability.
- Are there notification provisions you need to comply with?
- Is there scope for challenging a rejection of cover by insurers?



### BUSINESS CRITICAL ACTIONS: NOW

- Check your insurance policies for relevant coverage and comply with any notification requirements.
- Engage with brokers, and insurers and take steps to mitigate any loss.
- Consider the implications for your insurance of any contractual disputes – make sure you look at your arrangements in the round.
- Make sure that you continue to comply with policy terms to ensure you do not invalidate any other policies (e.g. working practices, or property insurance on buildings that are suddenly empty).



### FUTURE ACTIONS: 2 - 3 MONTHS

- If renewal is approaching consider any material information that needs to be disclosed and any notifications that should be made to existing policies to hold the position.
- Consider how you will manage compliance with any conditions in your insurance policies over the coming months and as the current situation develops.



## FINANCIAL INSTITUTIONS AND THEIR CUSTOMERS



### QUESTIONS

- How are your range of customers reacting to recent events and what support is requested from consumer, SME and corporate customers?
- What is your policy on forbearance (across all types of lending) and how are you responding to requests/complaints?
- What is your exposure to thematic issues such as S. 75 CCA claims and payments fraud and how are you managing them?
- Are customers seeking to change or liquidate investment portfolios held with you?
- Are your asset managers managing asset allocation and limits? Which asset allocations are more resilient than others?
- Are you managing the risk of any WFH underwriting/trading to prevent e.g. market abuse/insider trading?



### BUSINESS CRITICAL ACTIONS: NOW

- Urgently develop your forbearance policy pursuant to FCA guidance & train staff to implement it consistently (e.g. scripts and call monitoring), avoid waiver of rights and evidence affordability checks.
- Preserve evidence of pre-Covid 19 distress to make informed enforcement decisions later.
- Continue to warn your customers of the increased risk of payments fraud, enhance training on awareness of suspicious activity and increase checks.
- Asset Managers should consider conflict management, fair margin calls and establishment of fast reaction committees for e.g. gating issues.
- Review key investment trading controls -make sure compliance monitoring systems are calibrated to current conditions and agree valuation method if insufficient liquidity.



### FUTURE ACTIONS: 2 - 3 MONTHS

- Review forbearance and complaints MI to develop enhanced monitoring and enhancement of policy and procedure manuals.
- Increase customer facing resources, further training of your teams and escalate new/novel issues to manage wider implications/CMC interest.
- Consider and manage any Prin 11/FR7 notifications.
- Develop your policy and resource for exiting forbearance mode including dealing with requests to restructure, break fixed rate loans & reset covenants/take additional security.
- Prepare your plan for dealing with thematic claims and CMC/Funded group claims eg S.75, & inappropriate application of forbearance policies, particularly for vulnerable consumers.



## TECH, INFORMATION, DATA



### QUESTIONS

- Is your tech provider supporting your business in line with contractual obligations? If so, is there any additional support that they are offering/you need them to provide?
- Are your current tech and arrangements sufficient to support the level and nature of remote/flexible working you need?
- Is there any business critical tech/software that you are specifically concerned about (e.g. where there are concerns around supplier insolvency).
- Are the current problems putting existing/future tech projects at risk? Do you need to vary, suspend or terminate certain projects? Are there any projects you need to accelerate?



### BUSINESS CRITICAL ACTIONS: NOW

- Understand the contractual terms in place. Does your current use/deployment align with the contractual terms?
- Consider software licence requirements/restrictions and whether the business remains compliant during mass remote working. Check your right to flex licences.
- Are there any practical steps that can be taken to protect your position (e.g. securing certain personnel, ensuring that you hold up to date versions of source code)?
- What rights to you have vary, suspend or terminate arrangements? What conditions that need to be met to do so?



### FUTURE ACTIONS: 2 - 3 MONTHS

- Activate and carefully record and monitor the operation of your strategy to progress, vary, suspend or terminate any current or planned tech projects/contracts.
- Assess the developing situation and future environment you may be operating in - is your current and planned tech sufficient for your anticipated business needs? Do you need less/alternative/additional software/licences?



## CRISIS MANAGEMENT, REPUTATION PROTECTION



### QUESTIONS

- Do you have (sufficient/sufficiently expert) crisis comms support?
- What are the likely reputational implications down the line of decisions you are making now about how you treat employees, suppliers, customers?
- If your people are mostly/all WFH, is that creating a cybersecurity and/or data protection risk?
- Have you had any enquiries from the media, employees or customers about compliance with government guidance on social distancing or related issues?



### BUSINESS CRITICAL ACTIONS: NOW

- Having large numbers of employees working from home heightens the risk of data breaches and other cybersecurity issues, e.g. phishing scams. Are you checking your technology and systems are sufficiently protected?
- Consider the likely reputational implications down the line of decisions you are making now about employees, suppliers, customers. Are the best business decisions going to be purely financially driven? Should you be putting sales above wider societal issues? The decisions you make today and tomorrow could shape the reputation of your business for years to come.



### FUTURE ACTIONS: 2 - 3 MONTHS

- Many businesses have spent many years burnishing their CSR/ESG credentials - how you respond to the Covid-19 crisis is going to stress test those values. Putting in place a plan to review and update will be essential.





## BOARD DIRECTORS DUTIES



### QUESTIONS

- Is the Board clear about lines of responsibility (including under SMCR where relevant) for identifying and managing the fundamental business risks resulting from COVID-19, such as:
  1. health and safety of employees
  2. business continuity
  3. IT capacity and data security issues
  4. solvency and compliance with financial covenants
  5. insurance coverage and notification obligations
- Does the Board have a clear system for staying updated about fundamental business issues arising from COVID-19?
- Are the Board and key committees meeting regularly, able to be convened remotely at short notice and keeping records?
- How is the Board taking into account its wider stakeholders in managing risk and ensuring operational continuity?
- If relevant, are the directors taking legal advice on wrongful or insolvent trading and duties owed to creditors?
- Does the Board have plans to ensure that it can comply with its reporting and AGM obligations?
- If the Company is listed, is the Board aware of its obligations under the market abuse regulation?



### BUSINESS CRITICAL ACTIONS: NOW

- Consider increasing the frequency of board and key committee meetings while not over-stretching the executive.
- Secretariat to consider re-circulating any inside information and disclosure policies to the Boards of listed companies.
- Consider whether disclosure committee members can convene meetings quickly and by phone if needed.
- Ensure a close liaison between key business areas, Finance, and Secretariat to review and assess emerging information.
- Consider contacting key advisers (PR, brokers, auditors/accountants, lawyers) to open lines of communication.
- Consider practical impacts on ability to satisfy reporting and AGM requirements and possible contingency plans.



### FUTURE ACTIONS: 2 - 3 MONTHS

- More Board and committee meetings than usual.
- Taking difficult decisions that may need help from advisers.
- More regular reports from the Finance function.
- Listed companies: plan to deal with difficult market announcement decisions.
- Consider contingency plans to address potential challenges in reporting and the practicalities of holding member and other meetings.
- Consider wider stakeholder engagement strategy in light of evolving market circumstances.

**PROBLEMS. POSSIBILITIES.  
COMPLEXITY. CLARITY.  
OBSTACLES. OPPORTUNITIES.  
THE DIFFERENCE IS IMAGINATION.  
THE DIFFERENCE IS **AG.****

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