



Novel Coronavirus (COVID-19)

Business Law

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Business Considerations for Companies Reopening During COVID-19

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As the Province of Ontario continues the process of reopening, businesses are beginning to resume operations. Companies are facing significant uncertainty and should be mindful of new conditions which will require them to adjust operations. While there are several considerations spanning across sectors, this article focuses on the corporate considerations that businesses should be aware of as they navigate reopening during COVID-19.

Government orders and new developments

First and foremost, businesses should continue to monitor and be aware of government orders. The provincial government is continuously releasing new guidance with respect to reopening during COVID-19, and it is essential for businesses to understand these developments in order to ensure compliance. Businesses should also assess eligibility for federal and/or provincial relief programs. See here for a description of the federal relief programs available to date. Depending on the nature of the business, there may also be industry specific guidelines to consider. Multijurisdictional companies have an added layer of considerations as measures may vary across provinces and countries.

Corporate governance

There are several governance considerations companies should be mindful of as operations resume, some of which include:

- implementing alternatives to in-person board meetings
- considering amendments to management incentives
- restructuring compensation packages for key personnel
- managing shareholder dynamics

- understanding the most appropriate means of raising capital

Cash flow management

Directors and company management should work together to monitor the business' financial position, which may be impacted by third parties. For example, where a supply chain is disrupted or accounts receivable are delayed. Businesses may need to consider alternatives to maintaining cash flow, including drawing on available credit lines and corporate restructuring, among other protective measures.

Material contracts

Businesses should undergo careful review of material contracts to evaluate if and how these agreements have been impacted by COVID-19. Commercial leases, service agreements and insurance policies are some of the contracts which may require review and renegotiation. For more details, please see our articles on real estate and insurance considerations during COVID-19.

The following are some contractual provisions which may be relevant in determining whether a company's rights and/or obligations have been affected by COVID-19:

- force majeure clauses
- notice requirements
- material adverse change
- events of default
- indemnities and limitations of liability
- termination provisions

Compliance with securities laws

There are several additional considerations that public companies should be aware of. Disclosure obligations may be triggered as businesses change due to COVID-19. For instance, there may be changes in overall performance, financial position and liquidity which should be disclosed. Companies may also have difficulties meeting filing deadlines. The Toronto Stock Exchange and the TSX Venture Exchange have implemented relief measures to assist businesses during this time. See here for a description of the relief measures provided in response to COVID-19.

Opportunistic transactions

If a company has not been significantly impacted by COVID-19, it may be well positioned to undergo a strategic transaction. Businesses with the upper hand may take advantage of discounted valuations and increased hiring opportunities. Companies that are experiencing financial difficulties may become the target of such transactions.

Business continuity

As businesses reopen and continue to operate, it is important to engage in effective business continuity planning. Creating a system of prevention and recovery from existing and potential threats improves the business' ability to function quickly and without significant disruption in the face of adversity.

Other considerations

In addition to the corporate considerations discussed above, there are many other aspects affecting businesses which should be considered including, but not limited to, employment considerations, health and safety risks, real estate and leasing matters, insurance, data security and privacy management, tax considerations and litigation risks. Please see our COVID-19 Resource Centre for more information on these topics.

If you have any questions, we encourage you to contact a member of our Business Law Group.

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