

THE RISE OF THE CORONAVIRUS



As the daily news out of Asia continues to show the rapid spread of the coronavirus, we thought it would be prudent to outline some of the legal issues that one should keep in mind to best understand the impacts on your business:

- **Employment/Human Resources:**
 - *Employee Travel to China.* Recently, both the U.S. Department of State and the Centers for Disease Control have issued advisories about not travelling to China. Employers with employees planning to travel there should alert their staff and consider cancelling or rescheduling all such travel or allowing employees to opt-out of such travel. Alternatives such as video-conferencing should be considered, until the situation is resolved. Employers should advise employees who do travel to China to stay informed, take precautions, and be mindful that they may be subject to health screenings and travel restrictions that could change on little to no notice.
 - *Employees Who May Have Been Exposed to the Virus.* Employers should consider a plan to address employees who have recently travelled to China, or who have come into contact with those who have recently travelled there, including directing such employees to remain at home for a period of time. Employers should administer any such absences in line with their sick leave and work from home policies, as applicable.
 - *Respect Employee Privacy and Avoid Discrimination* – Employers should avoid fearmongering or implementing well-meaning but discriminatory policies. Employers should treat employee health information as confidential, and should ensure that their policies apply to all employees equally and not single out those of a particular nationality, ethnicity or other protected class, or those perceived to have contracted the virus.
 - *Remain Alert and Monitor the Situation* – Given the rapidly changing situation, employers should be on high alert for further developments and respond accordingly.
- **Contracts:**
 - *Force Majeure.* A force majeure clause in a contract may relieve a party from liability for non-performance, if circumstances beyond such party's control prevent it from fulfilling its obligations. As best practices, parties should review their agreements to determine applicability and the notice, evidentiary and other requirements implicated.
 - *Contingency Planning.* In case contractual counterparts will not be able to comply with their obligations, it is also worthwhile to revisit what contingency plans your business may have in place, and amend them as needed.

- **Shipping:**
 - *Asset Value Test.* A ship loan agreement generally contains a loan to value requirement. Given the uncertainties created by the coronavirus on international trade and transportation, a temporary dip in vessel values may result. Shipowners should carefully review the language of the covenant to see what flexibilities the loan agreement provides for in a potential breach.
 - *Crew Shortage.* Because of travel restrictions imposed on many Chinese cities and general health and safety concerns, seafarers in China may face difficulties returning to ports, which may create crew shortage. Shipowners should consider the cost implications under the technical management agreement and the financial consequences under the charterparties in the case of any operational disruption due to a crew shortage.
 - *Demurrage.* Shipowners may be entitled to receive demurrage payments from importers for cargoes that are unable to be delivered due to closed ports. Shipowners and charterers should review their charterparty provision relating to these payments.
- **Capital Markets:**
 - *SEC Guidance.* The SEC has indicated that it will, to the extent necessary or appropriate, provide guidance and other assistance to issuers and other market participants regarding disclosures related to the current and potential effects of the coronavirus.
 - *Additional Disclosures.* While the effects of the coronavirus may be difficult to assess both generally and on an industry- or issuer-specific basis, how issuers plan for that uncertainty and how they choose to respond to events as they unfold could be material to an investment decision. Accordingly, issuers should assess the impacts of the coronavirus on their businesses and industries and any planned response to determine if additional public disclosure is warranted.
- **Investment Management:**
 - *NAV Calculations.* Managers whose funds have exposure to certain Asian positions trading on markets that are closed or are operating at a reduced capacity should consider the impact on the striking of NAVs. Such managers should review their valuation policies and discuss with their accounting and legal advisers what measures they should be taking.
 - *Investor Redemptions.* Related to the NAV issues above, to the extent there are pending investor redemptions contingent on such NAV calculations, managers should also review their fund offering document provisions to determine whether an in-kind redemption payment or other approach is a viable option.

If you have any questions concerning the foregoing, please contact your primary attorney or:

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