

CORONAVIRUS: CHECKLIST FOR FINANCIAL SERVICES FIRMS

As the Coronavirus (Covid-19) outbreak continues to spread, there has been increased focus from financial services regulators around the world on the contingency plans of regulated financial firms. Regulators will expect firms to take all reasonable steps to continue meeting their regulatory obligations and to assess their operational risks, their ability to continue operating and the steps they need to take to serve and support their customers.

This briefing provides a checklist of regulatory considerations as a starting point for regulated financial services firms, including impacts on financial contracts, regulatory requirements and expectations around business continuity planning and operational resilience. These considerations will need to be addressed alongside the employment, tax, data, insurance, general contractual and other issues addressed in our separate briefings (available [here](#)).

Financial services firms should also draw on the extensive previous work carried out by regulators and the industry on planning for major operational disruptions, including the UK and US market-wide exercises in 2006 and 2007 on the impact of a flu pandemic, and the practical experience in Asia of handling the SARS and flu pandemics.

Financial contracts

Firms should consider how the outbreak may affect their ability to comply with contractual obligations under financial and other contracts. Unavailability of personnel could also impact key person clauses or even a firm's ability to complete specific projects. Firms should also consider whether they can rely on force majeure clauses to excuse non-performance. While the 2002 ISDA master agreement, for example, includes a force majeure provision, many financial contracts do not.

In addition, the outbreak may result in unscheduled non-business days which may affect payment and delivery obligations, as well as other provisions that refer to "business days". Firms should also identify any other product-specific provisions that could affect parties' payment or delivery obligations, such as market disruption events (early closure of exchanges, inability to obtain prices, etc.), or that might be relied on to allow cancellation of underwriting or other obligations as a result of changes in market or other conditions.

Notice provisions may also be affected. For example, if it is not practical or effective to serve notices by courier or post, firms may want to consider what practical alternatives may be available (e.g. fax, email) and ensure that contact lists and details are up to date.

Firms may also need to review their ability to rely on electronic signatures where physical execution is impeded.

Governance

Firms should consider establishing a crisis management team, if one does not already exist, and ensure that they have an effective crisis management policy that would lead to an action plan to deal with the relevant crisis, covering areas such as information gathering, identifying priorities, actions and responsibilities and identifying people to with authority to act in specific situations. As part of their action plans, firms may want to consider how to mitigate the potential impact of any disruption or delay on major ongoing projects, such as regulatory implementation and IT upgrades, on the scheduling of supervisory examinations and inspections and on litigation-related deadlines. Firms' processes should ensure that boards of directors of main legal entities are informed on key issues and able to exercise oversight and take decisions where necessary.

Firms should also identify any governance roles which must be filled (such as the chief compliance officer or money laundering reporting officer) and ensure that there is a list of deputies or others who could fill the role in an emergency. Firms should consider whether the relevant rules allow the appointment of a temporary substitute and whether any of these roles require prior approval or certification or special qualifications. Key personnel may need to prepare and keep updated handover notes that would allow someone else to step into their role relatively seamlessly.

Conduct risk

Firms should consider how the outbreak may impact their ability to comply with regulatory conduct of business obligations or otherwise increase conduct risk in their businesses, especially where staff work remotely. For example, regulators will expect firms to be able to enter orders and transactions promptly into relevant systems, use recorded lines when trading, ensure appropriate supervision and give staff access to the compliance support that they need.

Firms should also consider the potential impact on clients who may be vulnerable to risks as a result of disruption or increased risks of fraud or email scams or other cyber threats. They may need to consider their policies on support or relief for clients adversely affected by the outbreak. For example, banks may agree delayed payments from individual borrowers affected by illness or by the impact of the outbreak on their employers or provide additional support to small or other businesses adversely affected by the outbreak (while considering the impact of any action on any securitisations of client exposures).

Regulators will expect firms to take proper measures to ensure the continued delivery of key financial services and to protect financial market infrastructure from disruption. However, firms will also need to address how their own reduced operational capacity might give rise to challenges around requirements to treat customers fairly (TCF); for example, if resources have to be allocated to priority customers or operations. There will be particular focus on the ability of insurers to be able to handle increased volumes of claims under travel insurance, business disruption and health insurance policies, of banks to handle increased demand for cash withdrawals and of all firms to handle increased use of online services.

Firms should seek to identify the obligations that may be impacted by, or susceptible to, disruption and consider possible risk mitigants, in accordance with relevant crisis management and operational resilience plans.

Business continuity and operational resilience

Firms need to review their business continuity plans and operational resilience strategies on an ongoing basis. They should identify how the outbreak may affect these plans and strategies, in particular which important business services may be affected and whether impact tolerances would have to be reconsidered. It is important to keep appropriate records of any such steps to demonstrate how the firm is complying with regulatory requirements and is able to identify 'lessons learnt'.

To enhance their resilience, firms may implement split team, staggered working hours or work from home arrangements and may impose self-isolation arrangements on staff that have travelled in high-risk areas.

In so far as business continuity and resilience plans focus on back-up sites or systems, firms may wish to consider whether it is necessary and/or prudent to put in place back-up to back-up arrangements. This is particularly so, given the global impact of the virus. Back-up to back-up arrangements would allow firms to deal with situations if their ability to use the first back-up arrangement/location is impaired.

Firms may need to hold discussions with key third-party service providers to identify how their business continuity plans work alongside of those of the firm. It may be necessary to carry out connectivity and stress testing in circumstances where both, the firm and its third-party service providers are operating in reliance on business continuity arrangements. It may be necessary to update existing agreed plans and procedures where the firm receives outsourced services (or provides outsourced services to another firm) in order to comply with regulatory requirements on outsourcing.

Firms should also consider the impact on recovery and resolution plans. The outbreak could adversely affect a firm's ability to execute recovery/resolution plans if triggered by other factors, even if the outbreak is not itself sufficient to activate the recovery plan triggers or cause the firm to fail.

Information management

As firms deploy their business continuity plans, it may be necessary to review and consider data management policies, including any impact in respect of obligations to keep certain information confidential. For example, reliance on remote working arrangements or the use of business continuity arrangements may require putting in place additional processes to ensure that client confidentiality is maintained and also that any inside information is properly managed (e.g., ensuring that information barriers can be maintained, that insider lists are kept updated and that employees' remote working does not compromise client confidentiality or risk dissemination of inside information). There should be additional scrutiny of firms' cybersecurity arrangements, particularly in light of remote working arrangements and possible exploitations of security weaknesses by cyber threat actors.

Information about the impact of the outbreak on a firm and of its own plans for dealing with it may also be inside information in relation to the firm's own listed securities, requiring information management and possible public announcements.

Firms need to monitor and be able to respond to announcements and guidance from regulators and health authorities.

Licensing issues

The outbreak may result in a firm's staff working outside the jurisdiction of their normal workplace for extended periods (e.g., as a result of travel restrictions, family requirements or the roll-out of business continuity measures). Firms should identify any staff that may be working remotely in this way and whether this is in accordance with existing cross-border business policies. In particular, it may be necessary to consider whether remote working arrangements trigger any requirements for licensing or regulatory notifications or approvals or tax concerns.

Firms will need to consider whether existing specific business models in respect of cross-border business with clients in particular jurisdictions, including reverse solicitation or 'chaperoning', continue to be appropriate in the context of remote working arrangements or during the roll-out of business continuity plans. This includes considering whether changes to the record-keeping processes are required to ensure that any such arrangements are adequately documented and able to be used as evidence. Firms may wish to consider putting in place contact lists for available chaperones in the event that primary contacts are not available.

Communication and engagement strategy

Firms should expect increased interest from their main home country regulators as well as from other regulators. Firms should put in place a communication and engagement strategy that deals with any relevant regulatory obligations requiring notifications to regulators, alongside their wider media and communications strategy in respect of the impact of the outbreak on the firm.

Firms may also want to identify key and emergency contacts at regulators in case regulators are also adversely affected. Regulators, central banks, courts and other public bodies will be taking their own measures to manage risks which may affect communications with firms or firms' ability to make filings or carry out other interactions.

Any communications strategy should have a working group or task force managing it, to ensure that all regulatory requests are coordinated and there is a consistent response to media and regulators. At all times, firms should be able to identify key internal primary and emergency contacts (including emergency contacts for reporting any concerns, seeking approval, etc.). These contact lists and reporting lines should be kept under review to ensure that all personnel in the reporting line and contacts remain available and contactable.

Firms may also want to understand what emergency or forbearance powers are available to regulators and what requirements regulators could put in place in order to require firms to remain operational. Firms may wish to develop a list of areas where it may be

necessary to engage with regulators to seek forbearance or other accommodations. For example, firms may seek to engage with regulators to delay regulatory examinations, inspections or investigations and in cases where disruption may affect the firm's ability to comply with obligations (reporting, taping, surveillance, etc.).

A communications strategy should include a specific client communication strategy to ensure that clients are kept appropriately updated, particularly if there may be delays or interruptions in service or closure of business premises. Similarly, firms should aim to keep all employees informed of the firm's response to the outbreak, the impact of remote working in relation their function and any limits on the activities that they can carry on remotely.

Firms should seek to engage with market infrastructure and other service providers to establish what their contingency plans are and to ensure that firms can receive notice of such plans in sufficient time. It is important to review and identify key contacts, channels for updates and other communications (and to identify what emergency powers are available to market infrastructure to respond to disruption). This will include engagement with trading venues, central counterparties, payment and settlement systems, custodians, cloud and other IT service providers and data firms, but also functions such as emergency office cleaning services which may need to be on standby.

Financial impact

Central bank interest rate cuts and market volatility will have a significant impact on many firms. Insurers will also need to consider the likely impact of increased claims. All firms may be affected by reduced revenues, increased expenses and possible outflows of liquidity to meet client claims, collateral calls or other demands.

Financial firms need to assess the impact of the outbreak and of the responses of governments, central banks, clients, counterparties and markets on their own financial position and collateral requirements and their compliance with regulatory capital and liquidity rules and regulatory and public reporting and announcement obligations. They also need to identify and manage their financial exposures to clients or counterparties who are particularly vulnerable to supply chain or other impacts arising from the outbreak.

Checklist of issues for financial services firms

Financial contracts	
Performance/force majeure	Assess whether performance may be impaired and if force majeure clauses in contracts may be engaged.
Unscheduled non-business days	Consider the impact of any unscheduled non-business days on contractual obligations, such as payment and delivery obligations.
Payment/delivery obligations	Identify other product-specific provisions that could affect parties' payment or delivery obligations, e.g. market disruption events.
Service of notices	If notice provisions require service by post or courier, consider what practical alternatives may be available.
Refresh contact lists	Ensure that all contact lists are up to date (e.g. in relation to notice provisions).
Key person clauses	Consider the impact of unavailability of personnel on any key person clauses or on the firm's ability to complete specific projects.
Electronic signatures	Consider the ability to make use of electronic signatures instead of physical execution of documents.
Governance	
Crisis management team/policy	Ensure that the firm has an effective crisis management policy and consider establishing a crisis management team (if one does not already exist).
Internal key person risk	Identify any governance roles which must be filled and ensure that the firm has a list of deputies or others who could carry out the roles in an emergency.
Functions which require prior approval	Identify senior management and other roles requiring prior approval or certification or special qualifications and ensure that anyone who may be required to carry out these functions temporarily is appropriately approved or certified.
Process for handing over roles/responsibilities	Key personnel should prepare handover notes to allow their functions to be taken over by someone else.
Managing upcoming deadlines	Identify key upcoming deadlines (such as in connection with litigation, regulatory implementation projects, etc.) and consider how to mitigate risk of disruption impacting the firm's ability to meet them.
Board governance	Review processes for ensuring that boards are kept informed on key issues and are able to exercise oversight and take key decisions.
Conduct risk	
Surveillance and oversight	Ensure that appropriate systems for surveillance and oversight are in place for any employees who are permitted to work remotely, such as telephone recording and system access.
Reporting and disclosure obligations	Identify where disruption could affect ability to comply with regulatory reporting or disclosure obligations, especially where reporting is not wholly automated or is dependent on availability of staff or third parties.
Client relief and support	Identify institutional and retail clients vulnerable to risks as a result of disruption and consider policies around client relief and support and implications for the firm's liquidity and capital position.
Physical operations	Review processes for cash handling, new card issuance and branch opening to determine how disruptions may arise and be managed.
Fraud and cyber threat risks	Take action to mitigate against increased fraud and cyber threat risk and consider impact on vulnerable client groups.
Conflicts of interest/ treating customers fairly	Consider whether reduced operational capacity may give rise to conflict or TCF issues if resources have to be allocated to priority customers and processes for managing these.
Primary dealer and market maker obligations	Consider possible impact of disruption on primary dealer or market maker obligations, such as trading activity and record keeping.
Other time-sensitive obligations	Identify any other particularly time-sensitive obligations susceptible to disruption (e.g. cross-border payments) and possible risk mitigants.
Mutual aid arrangements	Consider whether to discuss mutual aid arrangements with other firms to facilitate continued customer service in the event of severe disruption.

Business continuity and operational resilience	
BCP, operational resilience planning	Ensure ongoing review and record keeping of how the firm's business continuity and operational resilience plans are engaged in responding to the outbreak and identify any 'lessons learnt'.
New working arrangements	Implementing split team, staggered and remote working arrangements and adhering to guidance from health authorities.
Outsourcing	Engage with critical service providers to understand their business continuity plans in line with outsourcing requirements.
Back-up to back-up	Consider whether there may need to be back-up to back-up arrangements, given the global impact.
Recovery/resolution planning	Review the relationship with recovery plans to identify where the outbreak could impair the ability to execute recovery/resolution plans, if triggered, or itself trigger activation of recovery plans.
Information management	
Confidential/inside information	Consider whether any additional processes need to be put in place to maintain client confidentiality and manage inside information.
Announcement/disclosure obligations	Consider whether information about the impact of Coronavirus on the firm and its own plans may be inside information relating to the firm's listed securities, requiring announcement and information management.
Cybersecurity	Consider the resilience and security of remote working arrangements and whether this carries an increased risk of cybersecurity concerns.
Announcements and guidance	Monitor and respond to announcements and guidance from regulators and health authorities.
Licensing issues	
Remote working	Identify any staff who may be working outside their normal jurisdiction and consider whether that may raise any licensing or tax concerns.
Licensing requirements	Consider whether remote working or activating business continuity plans may require changes in the way that people comply with existing licensing requirements.
Communication and engagement strategy	
Regulators	Develop a communication strategy for keeping regulators appropriately updated, understand what emergency or forbearance powers they have and develop a list of areas where it may be necessary to seek forbearance.
Clients	Develop a client communication strategy to ensure that clients are kept appropriately updated, particularly if there may be delays or interruptions in service or closure of business premises.
Employees	Ensure that all employees understand remote working policies and limits on activities they can carry on remotely; keep internal contact lists updated and reporting lines under review.
Market infrastructure and other service providers	Engage with market infrastructure and other service providers to establish what their plans are, key contacts, channels for updates and other communication.
Financial impact	
Capital and liquidity	Assess impact on financial position, collateral requirements, capital and liquidity.
Client exposures	Identify and manage exposures to clients who are particularly vulnerable to risks resulting from the outbreak.

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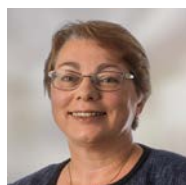


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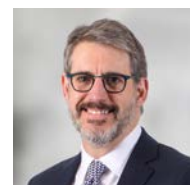


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