

## Beyond Coronavirus: How to Prepare Your Business for the Pandemic Era

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### What You Need To Know:

- Experts predict more outbreaks after COVID-19. Business leaders should start preparing now.
- Paying attention to force majeure clauses in contracts and watching for pandemic exclusions in insurance policies will be critical first steps.
- Leaders should assess supply chains and contracts with suppliers to ensure they have options when disruptions occur.

With **more than 153,000 cases reported globally** (as of March 15, 2020), including **more than 1,600 in the United States** (as of March 13, 2020)—and both totals increasing by the hour—the COVID-19 pandemic is already wreaking havoc on financial markets. Industries like travel and hospitality have sustained staggering direct hits. The manufacturing sector's reliance on China, where the disease originated, has meant disrupted supply chains and upended energy markets.

At this point, executives in every industry should be scrutinizing contracts, reviewing insurance coverage, and assessing potential supply chain, workforce, or revenue disruptions. And they should also be thinking beyond COVID-19, preparing their businesses to withstand the next mass epidemic—and the ones after that.

Because whether COVID-19 turns out to be a deadly-but-short-lived outbreak or a global cataclysm, **experts predict** more public health scares are on the way. We can't know exactly how these events will unfold, or what

disruptions they might bring, but we know there are questions all leaders should ask and steps they should take to mitigate future losses their organizations may face.

**Take force majeure seriously.** In the past, few contract negotiations focused on force majeure—the clauses that allow parties to suspend or terminate performance when circumstances beyond their control make it impossible or unwise to carry out their obligations. Now executives the world over are learning that the fate of their enterprises may hinge on the language in these clauses. Moving forward, every force majeure clause in every agreement with vendors and suppliers should be carefully scrutinized, worded, and negotiated. At the very least, epidemics should be explicitly defined as force majeure triggers.

**Review supply chains—and identify alternatives.** The average C-suite executive isn't accustomed to fully understanding the details of every product's specific supply chain. With the disruptions spreading far beyond China, senior

executives will have to get creative. They should consider ways to fund alternative production sites, seek locations for product assembly (for an expanding list of products) that meet the **substantial transformation test** (also see this **Lowenstein Client Alert**), and assess tariff classification determinations. Companies will have to explore new foreign relationships, consider creative ways to take advantage of U.S. free trade agreements, and even evaluate the development of possible North American source alternatives.

**Review supplier contracts.** Businesses often agree to grant suppliers the exclusive right to produce their goods or parts in order to secure a lower price. That philosophy should be revisited, and contracts with existing suppliers should be reviewed; if they grant strict exclusivity, consider renegotiating. Then determine where your next-best alternative is, and how that will impact costs and the efficiency of your supply chain. And be wary of agreeing to exclusivity in future supplier agreements.

**Anticipate insurance exclusions.** Executives the world over are no doubt scouring their companies' insurance policies to determine whether the COVID-19-related losses will trigger business interruption coverage. The scope

of available coverage will largely depend on whether companies can demonstrate direct physical losses flowing from the virus, such as work facilities being infected, and whether government actions will amount to sufficient exertions of civil authority to require insurers to step up. But whatever the answers or the outcomes of inevitable battles with insurers, business leaders should start thinking ahead, to their next rounds of policy renewals. Rest assured that the insurance industry is assessing the COVID-19 fallout, knowing that similar global health issues may arise in the future. Some insurers may impose pandemic exclusions on policies to avoid coverage litigation. We saw these kinds of exclusions following the outbreaks of SARS and Ebola. Assessing the impact of pandemic exclusions should become a key part of future policy negotiations. If the exclusions cannot be removed, then businesses should be pressing for premium reductions commensurate with the reductions in coverage.

**Note:** Lowenstein's **Antitrust & Trade Regulation** practice will be hosting a live webinar to answer questions on pandemic-related antitrust issues. Please check our firm's **Events** page for further information.

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