

# Coronavirus



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## Commercial Agreement Tips for the COVID-19 Era

The global impact of the coronavirus has caused some U.S. companies to end their traditional commercial activity and consider new lines of business or other activities to support the global fight against the coronavirus pandemic. Companies that are considering novel engagements in light of the coronavirus pandemic will likely need to enter into commercial agreements to accomplish these goals with investors, unions, co-development partners, suppliers and other third parties.

Under traditional circumstances, these commercial agreements would take weeks or months to negotiate before implementation. However, in the current environment where speed can save lives, such commercial agreements need to be structured to permit negotiating parties to move swiftly to execution and implementation of projects, while protecting their interests. Described below are a few ways in which commercial agreements can be structured to accomplish these goals:

- 1) *Play the Short Game.* Structure commercial agreements with short terms, termination for convenience provisions and flexible renewal provisions that permit the contracting parties to engage swiftly, but exit easily when necessary or, if the working relationship proves to be positive, renew and extend future terms for longer periods.
- 2) *Kick the Can.* When time is short and parties are aligned, less may be more. Consider structuring high-level agreements with provisions that permit the parties to subsequently modify certain less time-critical items in a separate document. The high-level agreement should provide that upon execution of the separate document, the separate document will be deemed to be incorporated in the high-level agreement without further action by the parties. The resultant agreement should give comfort to the parties that key terms have been agreed, while punting less critical items to be negotiated at a later time.
- 3) *Play Nice with IP in the Short Term.* For potentially contentious issues like ownership of jointly developed intellectual property, allow each party equal ownership of such intellectual property developed within a limited window of time and state that the parties will agree as to the appropriate



ownership of such property at a later time. This provision should be coupled with a covenant of each party to take all necessary action to assign ownership of intellectual property as necessary to comply with the subsequent agreement.

- 4) *Dodge the Tax Fight.* If parties are unable to come to speedy agreement on the appropriate tax treatment of various activities, provide that each party may pursue its own preferred tax treatment and thereby bear the risk associated with disapproval of such tax treatment by tax authorities in the near term. Couple this provision with language that permits the parties to come to alignment on tax treatment following execution of the agreement.
- 5) *Delegate, delegate, delegate.* Save time in near-term negotiation by including provisions that require teams to be established that are tasked with working together to determine processes and procedures for non-immediate activities. Such teams can be charged with idea generation and negotiation of such procedures, subject to final approval of management members of the contracting parties.

If you would like assistance in drafting any of the foregoing provisions, or if you would like more ideas on ways that you can structure commercial agreements, please contact us.

As the legal and practical issues related to 2019 Novel Coronavirus (COVID-19) continue to evolve, [King & Spalding's Crisis Practice Coronavirus Task Force](#) brings experience and judgment to help the c-suite, legal team and the Board address mounting business and legal issues. Our clients benefit from the experience of our [Crisis Practice](#) lawyers who have deep experience leveraging the firm's resources around the globe to routinely assist clients in incident response planning and live crisis management situations. We are also able to leverage relationships with premier global duty of care and crisis communications advisors to help our clients stay in front of today's unprecedented and rapidly unfolding developments.

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