

Opportunities During and After COVID-19: A Legal Perspective

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First and foremost, we hope all are safe and well during the COVID-19 pandemic. Now that Western New York is on the road to reopening, we want to highlight potential opportunities to assist in economic recovery after so much uncertainty.



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Crisis yields disruption and displacement. However, with displacement, there is inherently opportunity. For local businesses, that opportunity can take many forms, including acquisitions, investments, strategic partnerships and other business development opportunities.



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Acquisitions and Strategic Partnerships

Unfortunately, not all businesses will weather COVID-19 and remain viable. Businesses that are able to successfully navigate this period should evaluate whether any potential target companies need a lifeline, and if so, whether those targets align with a strategic objective. Such strategic fit may be by providing, among other opportunities, an expanded customer base, expanded product lines, enhanced geographic reach, complimentary intellectual property, or new synergies and infrastructure to improve efficiencies. The facts and circumstances of the parties will determine the most effective structure for pursuing these transactions, whether by stock or asset acquisition, joint venture or other strategic partnership.

When a transaction is pursued, thorough diligence will be of heightened significance. All transactions, whether acquisitions or otherwise, require careful diligence even in the best of times. During or after a crisis of this magnitude, a careless purchaser may unknowingly assume a liability or acquire an impaired asset that has not been fully realized due to the uncertainty of COVID-19. Definitive legal documents for any transaction must be carefully prepared to ensure that a new opportunity doesn't instead end in buyer's remorse.

Organic Growth and Adaptation

Even for businesses that do not see a distressed acquisition or collaboration transaction as the right opportunity, there will be other avenues for growth. With or without an acquisition or strategic partnership, certain companies may not return to past operating performance or be in a position to support key pre-COVID-19 relationships. Others may struggle to adapt to the "new normal." As a result, customers may be looking elsewhere for more competitive pricing or supplier diversification. Suppliers may be offering discounted rates relative to pre-pandemic prices in order to move inventory. Manufacturers may need to restructure distribution channels. Talented employees may be looking for new employment due to layoffs, salary or benefit reductions, or a number of other reasons caused by COVID-19. For businesses that remain in a position of relative strength and stability, these realities will offer opportunities, including the possibility to leverage existing relationships.

Although Western New York is beginning to reopen, this will be a lengthy process given the phased approach. Once reopened, business may not return to pre-COVID-19 levels immediately. Consider whether this is the time to complete a back-burner project that could not be implemented while business was running at pre-COVID-19 levels. Evaluate adaptations put in place during COVID-19, such as remote work assignments and reduced infrastructure, that if kept or expanded upon, can create greater efficiencies upon reopening. If business is

expected to lag at the outset, consider whether now is the time to implement certain employee education initiatives. Stay informed regarding the requirements and best practices for reopening, which are changing daily. Rethinking established norms and adapting quickly to the "new normal" should result in greater organic growth than expecting business as usual. Also, undertake a self-assessment of actions taken in response to the COVID-19 pandemic, noting successes and shortcomings, and condense the results into an action plan to be utilized in the event of a recurrence or similar event.

Material Contracts

Finally, now may be the time to reevaluate material contracts – whether with suppliers, distributors or others – and terms and conditions in standard commercial forms, such as purchase orders, invoices and sales confirmations. Do any have less than favorable terms? Have any

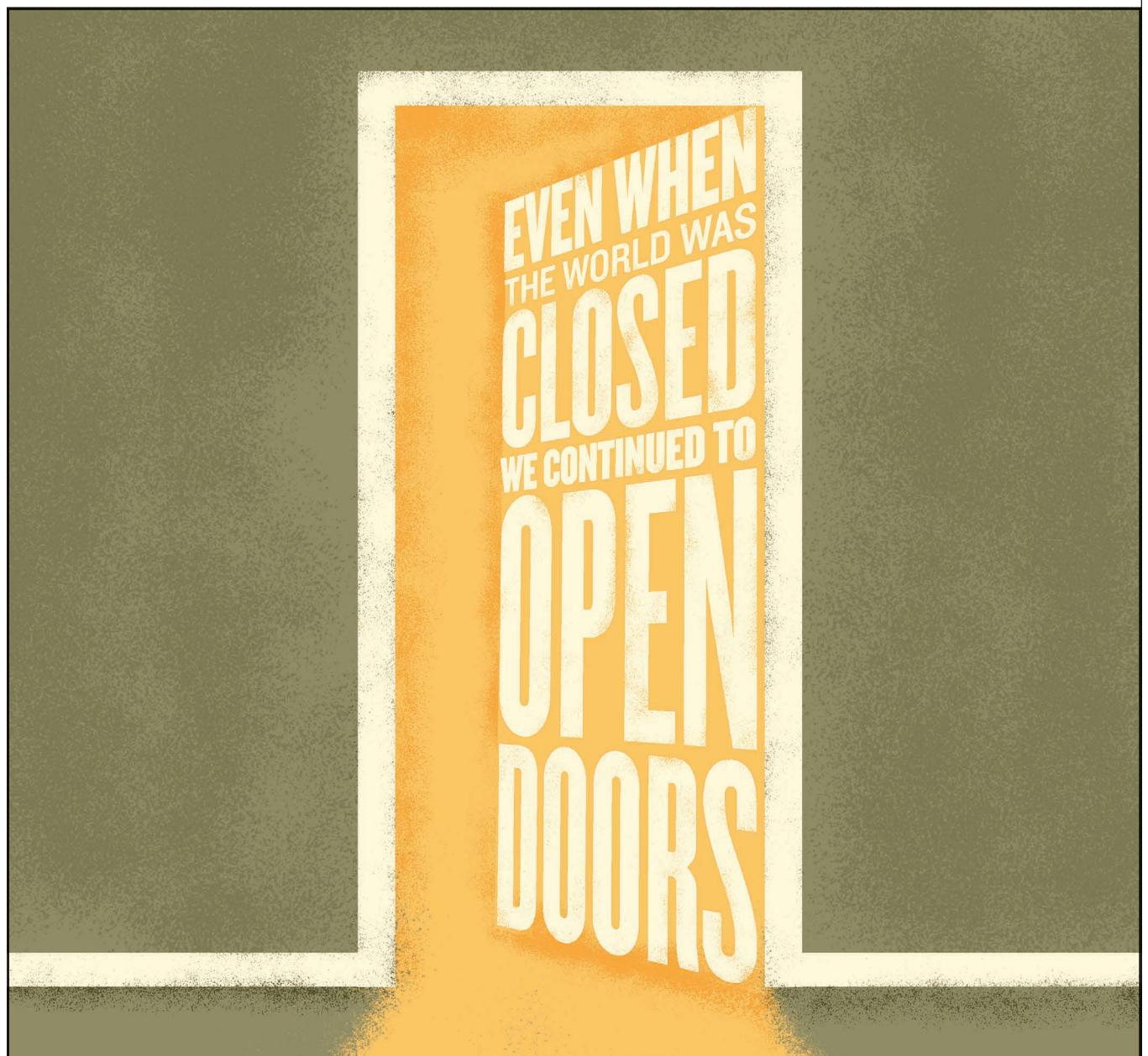
counterparties struggled to live up to their obligations? Has a *force majeure* clause been invoked, and is COVID-19 captured within the *force majeure* clause? Generic *force majeure* language may be insufficient on its own to waive nonperformance for COVID-19 reasons given that the event has occurred and its impacts are foreseeable. Depending on the circumstances, this may be a chance to renegotiate unfavorable terms or get out from under an unfavorable contract.

Conclusion

While COVID-19 has brought economic uncertainty, it's important not to lose sight of the opportunities that will be available to those businesses that are ready to act and adapt. With crisis undoubtedly comes new opportunities. Capitalizing on such opportunities requires careful evaluation, planning and execution, as well as reliable legal counsel who can provide guidance as businesses delve into uncharted territory.

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