# Minimizing COVID-19's impacts on financing agreements

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**OVER THE PAST YEAR,** due to COVID-19, many governments have adopted measures regarding certain sectors and established practices to ensure economic sustainability. These have significant impacts on commercial relations, including the parties' undertakings and obligations under financing agreements. As it is not predictable when the pandemic will come to an end, it is becoming more difficult for borrowers and their sponsors to continue fulfilling their obligations toward lenders. So, the parties may need to reconsider the provisions of their financing agreements and make amendments or adjustments to avoid any breach or default under the respective transactions.

COVID-19's impacts may adversely affect the fulfilment of both "conditions precedent" and "conditions subsequent" obligations under financing agreements. Failure to fulfil these obligations may directly cause delays in loan utilizations or bond issuances. Such conditions mainly oblige the borrower or its sponsor to submit the lender the project-related documents or documents evidencing the good standing of the respective company or provide security in favor of the lender. Transactions to be conducted before official authorities, such as obtaining official permits or establishing mortgages, may not be timely completed. Thus, the parties may consider postponing the deadlines for such conditions or alternatively request the lenders to re-define such obligations as condition subsequent to prevent any delay in the transaction's closing.

The financing agreements include "material adverse effect" definitions that enable lenders to preserve their rights in case of unforeseeable situations. Considering the standard content of definitions commonly used in the market, these are very likely to cover the pandemic and may trigger the occurrence of defaults under financing agreements. So, parties may assess whether COVID-19's impacts trigger an event of default and consider requesting a waiver from the lender for a certain period.

Several transactions that are crucial for the sustainability of a borrower's commercial operations during the pandemic may have been restricted under the financing agreement. In that sense, the borrower is generally not allowed to borrow from other lenders or dispose of its assets without the lender's prior consent. These restrictions may create obstacles for the borrower to meet urgent cash needs during the pandemic. Therefore, it may be necessary for the parties to negotiate exemptions to make room for these transactions of the borrower. The borrowers may also need to assess their financial undertakings under the agreements, accounting for COVID-19's impact on their businesses. Unpredictable costs and expenses due to the pandemic may adversely affect the financial ratios which were previously agreed upon between the parties based on the borrower's cash flow, net profit or financial statements. So, the parties may choose to adjust the calculation methods for such ratios, particularly by amending the definitions that directly affect these methods, such as net cash flow, EBITDA or exchange currency. Similar to the financial undertakings, the borrowers may also need to reconsider their undertakings related to budget and expenditures that are likely to be breached due to the pandemic, particularly in project finance transactions. The parties may assess whether these budgets projected under the financing agreement have some buffer to cover unforeseeable cost and expense items. Otherwise, it would be necessary to amend the related provisions to cover the potential additional expenses and avoid any event of default related to such undertakings.

Finally, the financing agreements commonly include cross-default clauses which automatically put the borrower in default if it defaults under other financing agreements. Accordingly, COVID-19 may create a "domino effect" on financing transactions. Thus, the borrowers may consider reviewing their financial agreements from that perspective and discussing with the respective lenders, if needed.

With significant effects on commercial relations in many sectors, COVID-19 has been a major threat to the world economy. In the finance sector, COVID-19 has been forcing the parties to reconsider their undertakings and obligations under the financing agreements. To minimize COVID-19's impacts on their financing agreements, it is crucial for the parties to take the necessary actions in advance.