

# Daily COVID-19 Bulletin

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April 14, 2020

To Our Clients and Colleagues:

Gibson Dunn's lawyers regularly counsel clients on issues raised by the COVID-19 pandemic, and we are working with many of our clients on their response to COVID-19. The following is a round-up of today's client alerts on this topic prepared by the Gibson Dunn team. Our lawyers are available to assist with any questions you may have regarding developments related to the outbreak. As always, for additional information, please feel free to contact the Gibson Dunn lawyer with whom you usually work, or any member of the firm's

**[Coronavirus \(COVID-19\) Response Team.](#)**

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## GLOBAL OVERVIEW

### Corporate/M&A in Times of the Corona Crisis – Current Legal Developments for German Business

On March 28, 2020, the German Federal legislature's response to the Corona crisis entered into force, introducing a varied array of far-reaching legislative measures to stabilize and support the German economy. In the sphere of corporate law, such statutory implementation measures are, in particular, contained in the Act on the Mitigation of the Consequences of the COVID-19 Pandemic in Civil, Insolvency and Criminal Procedural Law and the so-called Act on the Introduction of an Economic Stabilization Fund. The German Institute of Auditors (Institut der Wirtschaftsprüfer - IDW) has dealt with the consequences of the Corona crisis on current and future financial statements in three separate official communications in March and April 2020. The EU Commission reacted a couple of days ago by publishing a Communication providing guidance on the foreign investment control mechanisms of the

Member States. Last but not least, several anti-trust authorities have issued statements either specifically with regard to merger control issues or, more generally, regarding the application of the competition rules in the current crisis situation, including, *inter alia*, the EU Commission and the German Federal Cartel Office.

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## COVID-19: Regulatory Forbearance for Fund Annual Reports under EU AIFMD

The European Securities and Markets Authority has published a public statement detailing actions to mitigate fund managers' reporting obligations. This client alert provides EU alternative fund managers ("AIFMs"), and non-EU AIFMs marketing their funds in the EU, with an overview of the impact of the public statement on the obligation to publish an annual report for the funds they manage.

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## Federal Trade Commission and Department of Justice Issue Joint Statement Regarding COVID-19 and Competition in Labor Markets

The COVID-19 pandemic has drastically reshaped the economy in many ways, and labor markets are not immune to its impact. As demands for goods and services—and the workers required to meet those demands—shift, employers should carefully consider the antitrust implications of any steps they might take to adjust to changing markets.

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## *Force Majeure* Primer and Flowchart for Oil and Gas Leases

Within the oil and gas industry, *force majeure* clauses are often (but not always) included in oil and gas leases where they play an important role. These clauses provide generally that, under certain circumstances, a lessee may be relieved from the consequences of a failure to comply with the terms of the lease due to the occurrence of an unforeseen event, even where the resulting liability might otherwise include damages or the forfeiture of the lease.

Assessing the applicability and enforceability of such clauses in oil and gas leases requires a highly fact-specific analysis. To assist clients in identifying issues they should evaluate in connection with their lease obligations in the face of the pandemic, we have prepared the following five-step analysis and flowchart to assist in the review and assessment of *force*

*majeure clauses in your oil and gas leases.*

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## Recent Trends Involving Intellectual Property Rights in the Responses to COVID-19

As the pandemic continues, organizations around the world are grappling with the intellectual property implications associated with encouraging the rapid distribution of personal protective equipment (“PPE”) and the development of pharmaceutical treatments to help fight COVID-19. Increasing public attention is also being directed to misconduct associated with some of these efforts, such as price gouging for PPE, or the distribution of fake or ineffective products. In this alert, we review recent initiatives promoting the donation of intellectual property rights that entities may use in connection with their efforts to combat COVID-19, related pending legislation, and how some entities are using trademark law to combat what they regard as price gouging for PPE and false marketing of coronavirus testing kits.

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## Supreme Court Reschedules Half of Remaining Cases for Argument in Fall 2020

On April 13, the Supreme Court announced that for the remainder of this Term, it will hear (by telephone) only 10 of the 20 cases that were previously scheduled for oral argument in March and April 2020. The remaining cases apparently “will be carried over and the arguments will be conducted early in the 2020 term.” Much has been made of the 10 cases the Court has scheduled for extraordinary telephonic arguments in May. The 10 cases that were carried over, however, have thus far received less attention. Those cases (including consolidated cases) include several of significant importance to the business community and are summarized in this client alert.

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