

# COVID-19 Weekly Report

11 – 17 May 2020

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## 1. Foreword

The finer points of health and safety compliance have come to the fore as many Western countries cautiously reopen their economies. Businesses have a general duty to keep their premises and operations reasonably safe for both their employees and customers – a duty that demands an ever-higher standard of care in the midst of a pandemic, incorporating issues surrounding the provision of personal protective equipment (PPE), the accommodation of employees with reasonable concerns about returning to work and the implementation of novel working patterns to lower the risk of infection. In this regard, companies in many jurisdictions face a thicket of constantly evolving government guidance – some legally binding, some merely suggested best practices. Regardless, HR departments and in-house counsel should remain vigilant in monitoring and acting on these where practicable and required; the litigation risk remains high.

On the commercial front, companies continue to carefully navigate their existing liabilities to customers and suppliers while maintaining cash flow, notably against a backdrop of wildly fluctuating supply and demand as well as backlash against certain contentious refund policies. This will involve mitigating the adverse effects on contractual counterparties, such as through customer credits against future transactions and increasing flexibility in supply chains, among other things.

The next section summarises some of the most pressing legal issues faced by our in-house counsel audience over the past week.

We endeavour to develop and refine the content of these weekly reports over time to ensure utmost relevance and usefulness to readers' daily practice. As such, we invite you to send any feedback on how the scope of future editions can be improved to [admin@internationallawoffice.com](mailto:admin@internationallawoffice.com).

### **Make your voice heard – take our survey now!**

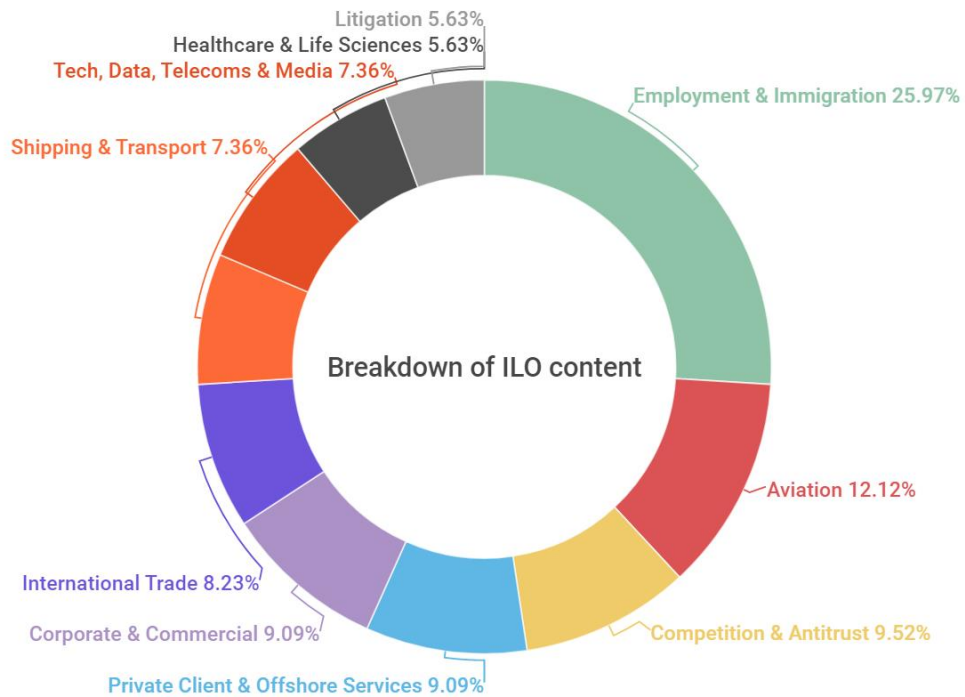
The aim of the survey is to better understand what corporate counsel need in terms of content and support around the COVID-19 pandemic, and to ensure that we continue to offer a high standard of legal information at this challenging time.

[www.surveymonkey.co.uk/r/6DQ8JCG](https://www.surveymonkey.co.uk/r/6DQ8JCG)

## 2. Content snapshot

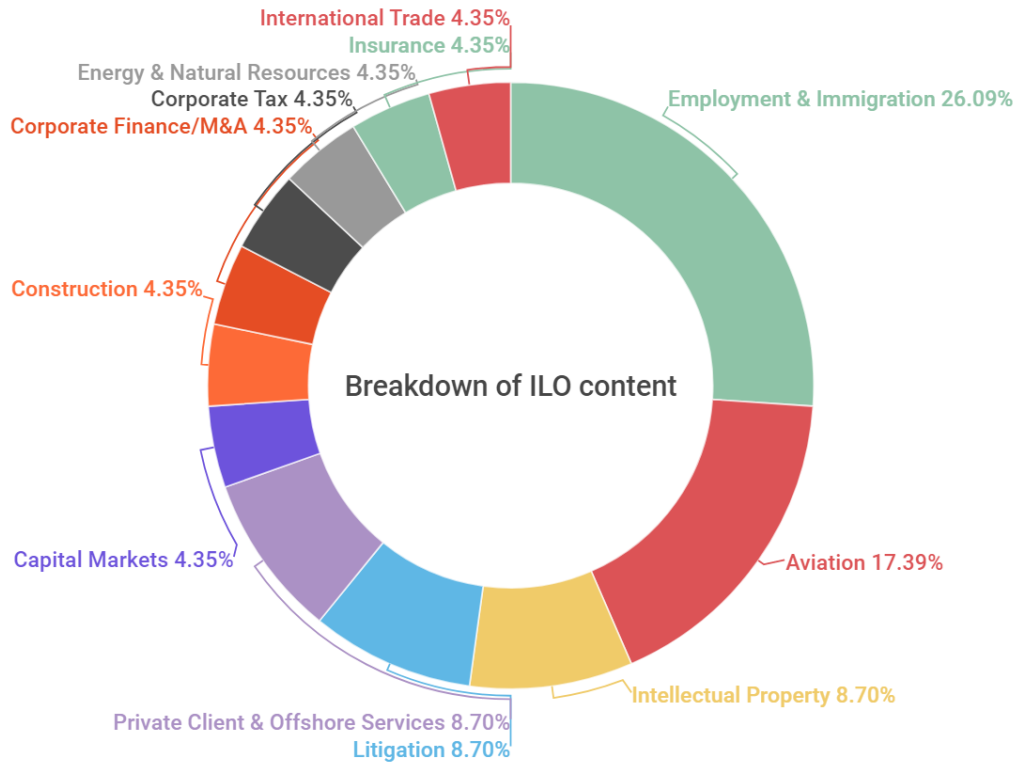
### 2.1. Chart 1: Work areas with most COVID-19 content published since 27 February 2020

Chart 1 provides a summary of the 10 ILO work areas with the most COVID-19 content published between 27 February and 17 May 2020. Employment & Immigration continues to have the most published content to date.



## 2.2. Chart 2: Work areas with most COVID-19 content published in past week

Chart 2 provides a summary of the ILO work areas which published COVID-19 content between 11 May and 17 May 2020. Employment & Immigration and Aviation had the most published content this week, which is unsurprising given that these are two areas of law most affected by the pandemic.



### 3. Key legal issues this week

1

**FACE MASKS AND PPE:** Some jurisdictions are requiring employers to provide employees with face masks and PPE as a condition for reopening their businesses, while others are merely offering suggested usage guidelines. However, regulatory guidance is not always clear as to what constitutes sufficient PPE and face covering, while certain authorities specify that PPE stocks should be reserved for healthcare workers. Employers should consult expert counsel where in doubt over how best to protect their workforce and ensure compliance.

2

**EMPLOYEE ACCOMMODATIONS:** Employers in many jurisdictions must make reasonable accommodations for employees with underlying health conditions and those with increased childcare burdens in light of the pandemic. Even where no strict obligations apply in this regard, companies should be wary of threatening adverse action against employees unable or unwilling to return to work – they may expose themselves to discrimination claims where actions and policies disproportionately affect protected groups.

3

**FORCE MAJEURE:** The validity of contractual *force majeure* clauses remains a relevant issue for in-house counsel, with many continuing to consult resources outlining the specific circumstances in which courts will find these clauses effective. In many common law jurisdictions, the triggering *force majeure* event must be the direct and sole cause of the failure to perform obligations and the party relying on the clause must take reasonable steps to mitigate the damage arising from non-performance.

## 4. Expert commentary

Over the past seven days ILO's panel of expert international legal commentators have written about recent legislative and regulatory guidance. Produced in partnership with a team of specialised editors, ILO content provides readers with easy-to-digest insight into how COVID-19 is affecting a specific work area and jurisdiction from a single thought leader in each jurisdiction.

If you would like to submit a question to the ILO panel, please email [admin@internationallawoffice.com](mailto:admin@internationallawoffice.com).

### 4.1. Africa & the Middle East

#### 4.1.1. Energy & Natural Resources



#### **DPR issues COVID-19 circular and declares pandemic event of *force majeure*** *Nigeria - Streamsowers & Köhn*

After the president issued regulations directing a lockdown of areas where oil and gas companies' head offices are located, the Department of Petroleum Resources issued a circular to ensure the safety and welfare of all personnel and contain the spread of COVID-19, directing that all operators and their contractors must comply with the directives of government authorities on measures such as social distancing, curfews and lockdowns and that the current situation constitutes *force majeure*.

**Author:** Chiagozie Hilary-Nwokonko

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### 4.2. Asia-Pacific

#### 4.2.1. Aviation



#### **Air passenger rights curtailed by COVID-19 pandemic** *Malaysia - SKRINE*

According to the Malaysian Aviation Commission (MAVCOM), the COVID-19 pandemic constitutes 'extraordinary circumstances' under the Malaysian Aviation Consumer Protection Code. As a result, MAVCOM is temporarily providing some leeway in terms of how airlines can respond to passenger refund requests. However, in doing so, it may have inadvertently exposed passengers to the risk of losing their entire ticket cost.

**Authors:** Raja Nadhil Aqran bin Raja Ahmad Aminollah, Eric Gabriel Gomez

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#### 4.2.2. Capital Markets



##### [Extension of filing deadlines for disclosure documents in response to COVID-19 outbreak](#)

*Japan - Nagashima Ohno & Tsunematsu*

In response to the COVID-19 outbreak, the Financial Services Agency has announced an extension of the deadlines to file certain mandatory disclosure documents, including annual securities reports. This article explains this unprecedented measure taken in recognition of issuers' difficulties in preparing their disclosure documents in light of the current COVID-19 crisis.

**Author:** Takashi Tsukioka

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#### 4.2.3. Construction



##### [COVID-19: construction industry players, start your engines!](#)

*Malaysia - SKRINE*

As Malaysia transitions into the third phase of the Movement Control Order (MCO Phase 3), the government has moved to allow additional economic sectors to operate during this period. This includes construction projects and services related to construction works. However, construction industry players that intend to resume operations during MCO Phase 3 should take note that they must comply with the third set of frequently asked questions issued by the Ministry of International Trade and Industry.

**Authors:** Shannon Rajan, Rachel Chiah, Jeremiah Ch'ng

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#### 4.2.4. Litigation



##### [COVID-19: courts go online to regulate administration of justice](#)

*Malaysia - Gan Partnership*

In order to curb the spread of COVID-19, the government introduced the Movement Control Order (MCO). During the MCO period, all courts and offices of advocates and solicitors are closed. However, a judicial notification of 26 March 2020 stated that parties can apply to the courts for an online hearing of civil matters via an e-review system, an exchange of emails or a video conference, subject to certain conditions.

**Authors:** Gan Khong Aik, Lee Sze Ching (Ashley)

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## 4.3. Europe

### 4.3.1. Aviation



#### **Additional COVID-19 measures introduced for aviation industry**

*Italy - Studio Pierallini*

The government recently introduced additional measures to tackle the COVID-19 pandemic. A number of specific rules were introduced for the transport of airline passengers which must be complied with by airlines and airports to contain the spread of COVID-19 in Italy. The new rules will be in force until 17 May 2020, but they remain subject to extension or amendments in light of the continuously evolving scenario.

**Author:** Laura Pierallini

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### 4.3.2. Banking



#### **FINMA: temporary exemptions for banks due to COVID-19 crisis**

*Switzerland - Meyerlustenberger Lachenal*

The Swiss Financial Markets Supervisory Authority (FINMA) recently provided banks with clarifications on dealing with COVID-19 credits with federal guarantees within the framework of the capital and liquidity requirements and temporary exemptions relating to the leverage ratio. FINMA will likely further specify these guidelines or issue additional rules depending on the development of the current crisis.

**Authors:** Alexander Vogel, Reto Luthiger, Lukas Lezzi

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### 4.3.3. Corporate Finance/M&A



#### **Support for start-ups in Switzerland**

*Switzerland - Meyerlustenberger Lachenal*

Following the widespread outbreak of COVID-19 in Switzerland, the Federal Council implemented several emergency measures to mitigate the virus's economic impact. After weeks of pressure from the growing Swiss start-up ecosystem, the Federal Council acknowledged that start-ups had little or no access to the existing emergency aid and, considering their importance for the economy as a whole, stated that it would devise a liquidity support programme specifically designed for innovative start-ups.

**Authors:** Alexander Vogel, Marco Fusi

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#### 4.3.4. Corporate Tax



##### [Tax exemptions introduced to protect businesses during COVID-19 pandemic](#) *Croatia - Macesic & Partners*

The second package of government measures for mitigating the effects of the COVID-19 pandemic on the Croatian economy, which recently entered into force, includes a number of tax exemptions for companies. For example, companies whose revenue in April 2020, May 2020 and June 2020 has fallen by 50% or more compared with the respective month in 2019 will be completely exempt from their tax liabilities – namely, from paying profit tax, income tax and contributions.

**Authors:** Anita Krizmanić, Ivana Manovelo

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#### 4.3.5. Employment & Immigration



##### [Continued remuneration during COVID-19 pandemic](#) *Austria - Graf & Pitkowitz Rechtsanwälte GmbH*

The COVID-19 pandemic has caused employers to use various methods to support employees and maintain business performance. Old and new legal remedies provide for continued payment of salaries (and in some cases also corresponding grants to employers) if performance of work is impossible. This article outlines the routes that employers and employees can take where normal working is impossible, such as sick leave and care leave to look after sick children.

**Author:** Jakob Widner

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##### [Social elections procedure postponed due to COVID-19](#) *Belgium - ALTIUS*

As a result of the COVID-19 crisis, the social partners have decided to suspend the current social election procedure and postpone its continuation until after the summer. This article outlines the most important consequences of this postponement for employers.

**Authors:** Phillipe De Wulf, Esther Soetens

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## [COVID-19: health and safety considerations when establishing return-to-work plans](#)

*Ireland - Lewis Silkin*

As the COVID-19 crisis begins to ease, employers must think carefully about how to safely manage the process of returning employees to the workplace. Companies must ensure the health and safety of their employees and visitors to their premises and comply with any continuing government guidelines, including in relation to physical distancing. This article summarises the legal landscape and various considerations that employers will need to take into account in Ireland.

**Author:** Síobhra Rush

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### 4.3.6. Insurance



## [Non-payment of insurance premium – legal consequences during COVID-19 pandemic](#)

*Germany - Arnecke Sibeth Dabelstein*

In response to the COVID-19 pandemic, Parliament recently passed an act whereby insurers, under certain circumstances, despite non-payment of an insurance premium, are temporarily prohibited from either terminating the insurance contract or refusing cover. Further, the act grants consumers and micro-enterprises a temporary right to refuse performance in the context of contracts for essential continuing obligations, including insurance contracts.

**Authors:** Dieter Schwampe, Karen Lorenz, Lina Wiedenbach

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### 4.3.7. Intellectual Property



## [IP-related measures adopted due to COVID-19](#)

*Spain - Grau & Angulo*

The health crisis caused by the rapid spread of COVID-19 led to the approval and entry into force in Spain of Royal Decree 463/2020 on 14 March 2020, which declared a state of alarm. The situation led to the adoption of measures in the judicial and administrative areas. This article highlights the measures of interest for IP owners and practitioners that are adapting to the progressive changes in the situation.

**Author:** Paula Gutiérrez

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## Licensing during COVID-19 pandemic: compulsory or not?

Turkey - *Deriş Patents and Trademarks Agency*

Since the World Health Organisation declared COVID-19 a global pandemic, compulsory licensing has remained a hot topic in the IP world. As of 30 April 2020, Turkey had 120,204 confirmed cases of COVID-19. Although the official authorities have so far made no public announcements concerning compulsory licensing, this article sets out why Turkey has a significant role to play in the discussion.

**Author:** Okan Can

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## 4.4. Latin America & the Caribbean

### 4.4.1. Capital Markets



## Essential considerations for Cayman funds in challenging times

Cayman Islands - *Ogier*

To help Cayman hedge funds navigate the myriad issues brought about by COVID-19, this article offers a high-level checklist for fund directors and investment managers to consider. The checklist covers operational issues, issues around liquidity and possible termination and communication and reporting considerations. Each of these topics is considered in turn in relation to a typical standalone corporate open-ended Cayman fund. That said, most of the checks can be applied using a variety of Cayman vehicles.

**Authors:** James Bergstrom, Gemma Lardner

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### 4.4.2. Litigation



## At a glance: COVID-19 court protocols

Bahamas - *Lennox Paton*

COVID-19 has forced society to embrace all things technological and forced individuals to adapt to working remotely. As it stands, court operations before the Magistrates Court and the Supreme Court are restricted to essential services until the first working day after the expiry of the Emergency Powers (COVID-19) (No 2) Order 2020, which may be extended by amendments. This article sets out what is permitted according to the judiciary's latest Mitigation Protocols concerning civil and commercial matters.

**Author:** Al-Leecia Delancy

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## 4.5. North America

### 4.5.1. Aviation



#### **DOT to impose minimum air service obligations on carriers receiving CARES Act financial assistance**

USA - *Cozen O'Connor*

The Department of Transportation (DOT) has issued an order proposing parameters for implementing the authority granted to the secretary of transportation under the Coronavirus Aid, Recovery and Economic Security Act. The order sets out the DOT's expectations regarding the required service levels. This article provides a summary of the key provisions.

**Authors:** David Heffernan, Rachel Welford

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#### **Considerations when aviation travel is a necessity**

USA - *Cozen O'Connor*

Although the idea of aircraft travel may currently be the last thing on many people's minds, for some people, access to aviation travel for business or personal reasons may be necessary even during these difficult times. Moreover, access to business jet travel in lieu of commercial flights will become even more in demand, as commercial airlines reduce the number of available flights, curtail routes or shut down operations altogether.

**Author:** Steven Haas

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### 4.5.2. Employment & Immigration



#### **COVID-19: FAQs on furlough and financial help for employers**

USA - *McDermott Will & Emery*

With rapid developments in local, state and federal guidance and law, the appropriate approach for each employer in relation to COVID-19 will vary depending on the nature of their work, the industries served and their location and size, among other considerations. This article outlines what employers need to know about furlough and the financial help that is available for employers.

**Authors:** Michelle Strowhiro, Carole Spink

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### 4.5.3. International Trade



#### [OFAC's COVID-19 response: existing exceptions, filing and compliance flexibility and some relief for Iran](#)

USA - *Arent Fox LLP*

Recognising that COVID-19 is further straining humanitarian needs in sanctioned countries and complicating compliance with economic sanctions, the Department of the Treasury Office of Foreign Assets Control recently issued web-based guidance to remind the public of the many ways in which medical exports and other humanitarian services, supplies and donations can legally flow to sanctioned countries, offer reporting and compliance flexibility and provide some Iran secondary sanctions relief.

**Authors:** Matthew Tuchband, Kay C Georgi, Regan K Alberda, Marwa M Hassoun

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### 4.5.4. Litigation



#### [COVID-19: approach to court proceedings](#)

USA - *Norton Rose Fulbright*

Existing proceedings in the national courts are inevitably experiencing the impact of the COVID-19 outbreak. Where possible, hearings have been delayed or relocated. However, with many lockdowns extended for the foreseeable future, hearings will still need to be held. As such, many national courts are looking into solutions to these issues, particularly technological ones.

**Authors:** Paul Stothard, Clinton Slogrove

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## 4.6. United Kingdom

### 4.6.1. Employment & Immigration



#### [Conducting workplace investigations remotely during COVID-19](#)

United Kingdom - *Lewis Silkin*

COVID-19 has changed the ways in which businesses run and there is still some time before it is 'business as usual'. Most employers are grappling with new ways of working, with many employees working from home. However, what should employers do if they become aware of an allegation of misconduct or wrongdoing? This article considers whether a remote investigation is the right step to take and what employers should bear in mind if they conclude that it is.

**Authors:** Karen Baxter, Lucy Lewis

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## [COVID-19: Tier 2 workers' changes to salary, furlough scheme and redundancy](#)

*United Kingdom - Lewis Silkin*

The spread of the COVID-19 pandemic across the globe is having significant and wide-ranging economic and public health impacts. Businesses are already feeling the adverse side effects of profoundly changed trading circumstances. This article highlights the immigration implications of a number of actions that employers may be forced to take to protect their business over the coming months.

**Authors:** Joanna Hunt, Priya Gandhi

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## 5. About ILO

ILO delivers expert legal commentary, in the form of concise weekly newsletter emails, to senior corporate counsel and law firm partners worldwide. Free to receive, the ILO newsletters have been providing tailored, quality-assured updates on global legal developments to more than 72,000 registered subscribers since 1998.

ILO content is generated in collaboration with over 500 of the world's leading experts and covers more than 100 jurisdictions.

Produced in partnership with a team of specialised editors, the ILO newsletters provide editorially-driven, high-quality legal news in the form of concise, regular updates from a single leader in their field.

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