

# COVID-19 in Southeast Asia

## Angles in M&A

APRIL 2020

The perspectives and interests of buyers and sellers rarely align when it comes to investments (whether M&A or financing) especially during unprecedented and unusual situations. COVID-19 is creating just such set of unprecedented, unpredictable and unusual special situations. While the pandemic is impacting businesses across the developing markets of Southeast Asia where DFDL operates, and the prevailing legislation and reactions by the authorities in each country vary greatly, common features nonetheless emerge. Businesses substantially impacted by COVID-19 that are cash-constrained and cannot obtain financing through traditional channels will soon find themselves urgently requiring the assistance of local or foreign professional investors.

In this special context, prospective special situation investors will need to thoroughly investigate intended targets to form a clear and accurate view of their business and financial condition in order to make prudent investment decisions based on accurate valuations.

Correspondingly, sponsors and sellers must anticipate such investigations, formulate mitigation strategies and well-designed plans, to address risks and identify opportunities that the pandemic may hold in relation to their own potential acquisition targets as well as refinements to strategy and associated business activities.

All of these factors viewed independently or together have the potential to impact valuations, deal structures and related financing arrangements. In particular, special attention should be given to price adjustment mechanisms, earn-outs, management control rights, indemnities, conditions precedent, priority rights upon liquidation, anti-dilution rights and so on.

Investors, targets and sponsors alike must look at any proposed M&A or financing transaction from a variety of different angles to align their respective interests in order to mitigate the risks and capture the opportunities presented by COVID-19. Below we highlight the various legal angles and factors that DFDL reviews for clients when it comes to advising on special situation investments especially in light of unique and unprecedented challenges and circumstances presented by this global pandemic.

## KEY CONTACTS



**Jerome Buzenet**  
*Partner, Vietnam*  
*Head, Regional M&A Practice*  
jerome.buzenet@dfdl.com



**Chris Robinson**  
*Partner, Cambodia*  
*Co-head, Regional M&A Practice*  
chris.robinson@dfdl.com

ISSUE	RISKS	OPPORTUNITIES
<b>FORCE MAJEURE / CONTRACT FRUSTRATION</b>	<ul style="list-style-type: none"> <li>▪ Key client contracts: payment delays and termination.</li> <li>▪ Key supplier contracts: supply chain interruptions and termination.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Client contracts: opportunity to deploy goods/services in a new, more cost effective manner.</li> <li>▪ Supplier contracts: chance to ease short-term cash flow constraints with permitted payment holidays.</li> <li>▪ Supplier/lease contracts: chance to terminate or renegotiate more favourable terms.</li> <li>▪ Decentralization of production or supply to non-affected areas and access to new sources of supply.</li> </ul>
<b>HUMAN RESOURCES</b>	<ul style="list-style-type: none"> <li>▪ Regulated confinement of skilled/unskilled employees.</li> <li>▪ Regulated travel restrictions on skilled workers.</li> <li>▪ Inflexible labor laws restricting workforce adjustments, suspension of employment or reduction of compensation (or allowing such measures but at a high cost and/or slow pace).</li> <li>▪ Health and safety risks for employees.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Use of favorable labor regime where available to expedite workforce adjustments.</li> <li>▪ Migration to more flexible work arrangements.</li> </ul>
<b>STATE INTERVENTION</b>	<ul style="list-style-type: none"> <li>▪ Production, trade and transport restrictions preventing key income generating activities or blocking of key supplies/services.</li> <li>▪ Nationalization of businesses, suppliers or customers.</li> <li>▪ Currency controls or devaluation.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Availability of bailout and stimulus programs (tax or otherwise) directly beneficial to the target or its clients.</li> </ul>
<b>SOLVENCY &amp; RELATIONSHIP WITH CREDITORS</b>	<ul style="list-style-type: none"> <li>▪ Increased costs of financing.</li> <li>▪ Acceleration possible under existing financing where solvency, MAC or financial covenants or cross-default provisions are not met.</li> <li>▪ Debtors defaulting on their obligations.</li> <li>▪ Customers subject to bankruptcy.</li> <li>▪ Suppliers subject to bankruptcy.</li> <li>▪ Targets subject to bankruptcy.</li> <li>▪ Difficulty in obtaining written authorizations.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Possibility of negotiated waivers, debt buy back, moratorium or better terms with creditors.</li> <li>▪ Benefits of protective bankruptcy regime in some jurisdictions.</li> <li>▪ Strategic vertical or horizontal acquisitions (subject to compliance with anti-trust/competition laws).</li> <li>▪ Use of electronic execution/authorization.</li> </ul>

ISSUE	RISKS	OPPORTUNITIES
INSURANCE	<ul style="list-style-type: none"> <li>▪ Exclusion of coverage due to pandemic.</li> <li>▪ Exclusion of coverage due to increased risk.</li> <li>▪ Risk to health of workforce due to travel restrictions and lack of access to medical care.</li> <li>▪ Increase of insurance costs due to increased risk.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Possible insurance claims, particularly business interruption.</li> </ul>