

## Contracts, Leases and Renegotiation

A good place to start when a business finds itself unable to fulfil its contractual obligations, is to try to negotiate a compromise with the other party. Most contracts provide a means for parties to vary or renegotiate terms.

### Contract Renegotiation Tips

Tip	Things to Consider
<b>Know the Contract</b>	
<ul style="list-style-type: none"> <li>• Become familiar with the relevant sections.</li> <li>• Review the mechanisms for amending the contract.</li> <li>• Many contracts have cancellation, termination, delayed performance or delayed payment provisions that include “act of God” clauses</li> <li>• If the contract has a “Force Majeure” clause that excuses performance, review the relevant notice provisions needed to trigger the provision.</li> </ul>	<ul style="list-style-type: none"> <li>• What are the business’s rights and obligations?</li> <li>• Would an email sent to the other party that is acknowledged constitute an amendment to the contract or lease?</li> <li>• Are there possible options for substitute performance, waivers, and extensions</li> <li>• Is there a direct link between an alleged breach and any circumstances surrounding COVID-19?</li> <li>• If the contract has a “Force Majeure” clause, did COVID-19 cause the business’s inability to fulfil its contractual obligations?</li> </ul>
<b>Know the Company’s Needs</b>	
<ul style="list-style-type: none"> <li>• When renegotiating a contract due to changed circumstances such as COVID-19, it is important to have a clear picture of what the business needs (i.e. its goals) and what the business can live with (i.e. its fallback position).</li> </ul>	<ul style="list-style-type: none"> <li>• Before contacting the other party, it is important to understand where there is room to negotiate.</li> <li>• Understand what the business cannot negotiate (i.e. its non-negotiables)</li> <li>• Understand what would be valuable to the business and where there is room to give.</li> </ul>
<b>Know External Factors</b>	
<ul style="list-style-type: none"> <li>• Research and understand the external factors driving the need to renegotiate the contract.</li> <li>• Gather evidence (e.g. industry figures) to support the business’s position.</li> </ul>	<ul style="list-style-type: none"> <li>• Use research results to determine what can reasonably be expected and what might be unreasonable.</li> <li>• Prepare to demonstrate the business’s position to the other party.</li> </ul>
<b>Know what was Said</b>	
<ul style="list-style-type: none"> <li>• Keep notes on all communications among the parties during the negotiation process.</li> <li>• To avoid disputes, create a paper trail of what was discussed and agreed to by both parties.</li> </ul>	<ul style="list-style-type: none"> <li>• Written records will be helpful if a dispute arises at a later point and can be used to correct miscommunications.</li> <li>• Ideally, all contract changes should be documented in a legal amendment.</li> </ul>

For more information and assistance renegotiating contracts and leases, please contact us by filling out our [intake form](#).