

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

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