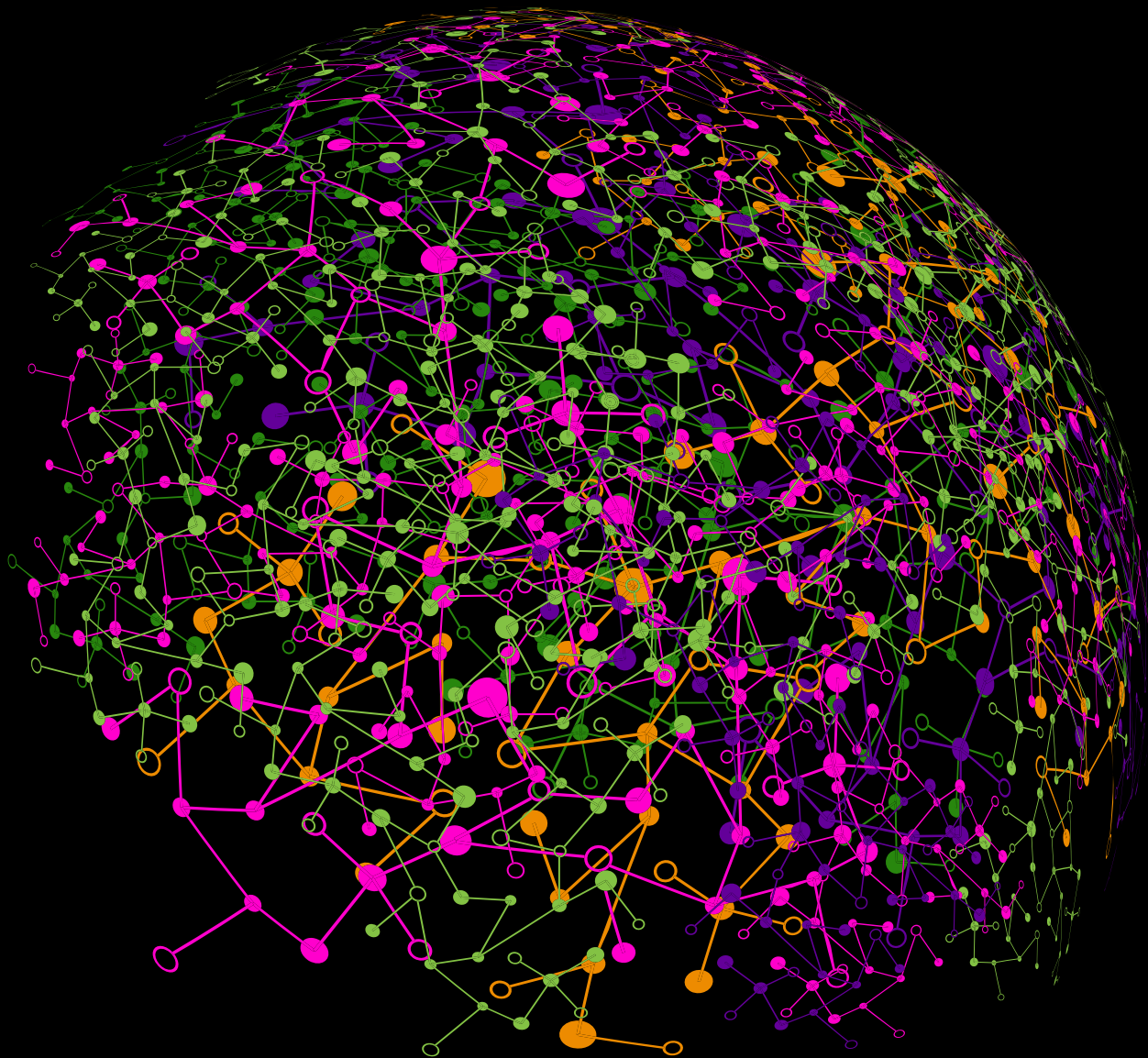


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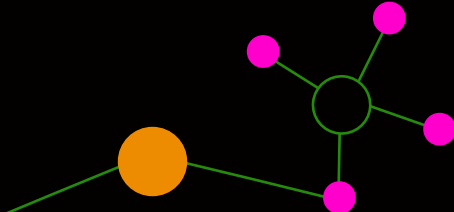
OmniaAI

COVID-19

Managing contractual relationships
in the face of disruption

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Contractual challenges in the face of disruption

COVID-19 is having an unforeseen impact on businesses. Measures taken to contain the spread of the virus—border closings, restricted air travel, quarantines, and shutdowns of non-essential businesses—are driving companies to take immediate action. One key area of concern for organizations is what this situation means for their contractual obligations.

The suspension of many business operations means that companies may, in the short term, struggle to meet the obligations of their existing contracts, which is likely to lead to a high volume of insurance claims. With such a large impact on both the buy and sell side, it is valuable to organizations to understand their entire contract inventory to help determine the risks and steps required to mitigate them.

Due to the extent of impacted contracts, companies will need to review contractual relationships held with customers, suppliers, contractors, insurers, employees and more. Such

reviews may include the identification of applicable law, insurance provisions, contractual obligations (such as *force majeure*) and terms relating to failure to deliver.

Companies will also need to be aware of the long-term ramifications of business paralysis. This may include: understanding their payout risk; identifying instances that may result in costly and time-consuming litigation; and remediating *force majeure* clauses to make them robust enough to cover such unforeseen events as the COVID-19 pandemic. 

The imperative for risk mitigation

Businesses face increasing pressure to mitigate the impact of COVID-19. As a result, a diligent review of existing contracts may be necessary to minimize loss, protect the business and ensure continuity. In reviewing such contracts, businesses will be required to:



Identify impacted contracts. Focusing on areas of high risk such as those held with key direct suppliers. Within these high-risk areas, organizations may need to evaluate their ability to alter suppliers to mitigate supply risk. This can help organizations move in an agile manner to establish secondary supplier relationships.



Understand and actively track relevant provisions. Provisions for each company will vary based on factors such as industry, relationship type and contract type. *Force majeure*, which provides for instances where an unforeseen circumstance prevents an organization from fulfilling its contractual obligations, could be particularly relevant.



Determine the applicability and enforceability of clauses. Clauses relating to the inability of an organization to meet its contractual obligations should be considered in the context of COVID-19. This could include review in relation to governing law and identification of any notice requirements which will need to be carefully followed.



Renegotiate and create a plan of action. Depending on the outcome of the review, organizations will need to take necessary action to mitigate risk and protect their business interests. Such action could include the renegotiation or termination of the contract, where the terms allow, which could potentially increase the workload of those in business functions such as legal and procurement.



Understand long-term costs. Organizations will need to forecast their potential payout or litigation risk as a result of the business paralysis and no-fault failure to meet obligations. This will enable them to approach long term business planning with these costs in mind. *Force majeure* clauses may need to be remediated to account for similar challenges in the future – costing significant legal resources.

Sector-specific example challenges

The specific needs of an industry sector may include:



Insurance. Insurers face high volumes of claims in relation to non-performance of obligations and other issues related to sudden, severe events like COVID-19. Extracting terms from contracts, assessing payout risk for each contract and understanding potential liabilities will be key in understanding business risk. Enabling insurers to review the extracted clauses from policies, prioritize those with the highest risk, and visualize key information is essential in forecasting key high-value claims.



Construction. Labour and supply chain issues could cause construction projects to be delayed. Contracts will need to be reviewed to understand who bears the risk and whether there is provision for an extension of time for excusable delay events. Parties may wish to terminate their contracts, and should want to understand the commercial implications of doing so. Notification may be required by contractors to delay works.



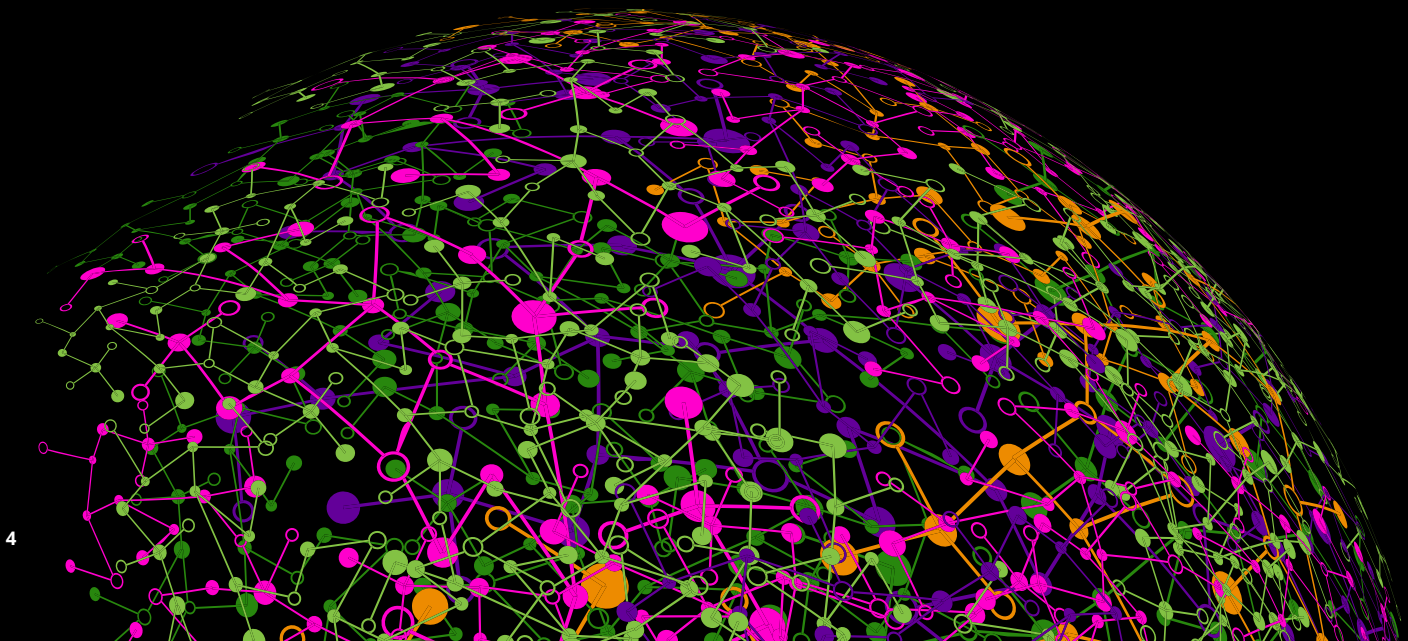
Events. The potential cancellation of high-profile events could lead to significant challenges for organizers, talents and suppliers in terms of understanding the performance of their contractual obligations. Parties will need to review the terms of their agreements to understand on what basis events can be cancelled and the ramifications of this to both the organization and its suppliers. Organizers will also need to understand the liabilities of providing refunds to consumers and of non-refundable supplier costs. Insurance policies should also be reviewed to establish whether a payout would cover losses and liabilities.



Fast-moving consumer goods. Organizations may seek to review their agreements with key global suppliers and service providers to consider how they may be affected by COVID-19-caused supplier shut-downs. *Force majeure* or material adverse change clauses will need to be assessed to identify whether contractual obligations can be suspended, terminated, or reduced. Sub-contracting agreements should also be assessed to understand supplier risks throughout the chain and how these may impact delivery.



It is imperative for organizations operating in these areas to immediately monitor and understand their contractual risk and exposure. As the COVID-19 crisis continues and the business uncertainty it's creating is prolonged, organizations should be fully prepared—with a holistic understanding of their contractual portfolios—to make informed assessments and decisions about their contracts during this uncertain period.



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