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Planning for prolonged pandemic preparedness

A primer for financial services firms for 2022

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Quick Take

As 2021 draws to a close, COVID-19's variants and mutations continue to present challenges. This extends both to the medical response as well as the economic outlook for businesses including also for some financial services firms. Just when consensus had largely thought COVID was under control, the Delta variant began to disrupt the outlook. Once Delta was tackled and under control along came Omicron (including sub-variants) to rear its ugly head and present a number of known and unknown unknowns due to its high-level of mutations, which have also led to concerns that conventional vaccines may not work, and the tentative green shoots of the economic recovery could be hampered.

Since the start of the present pandemic and largely regardless of which letter of the Greek alphabet refers to the present threat, firms (and equally their staff) have had to continue to deal with often overlapping and conflicting rules. They have also had to deal with new risks from cyber or more conventional threats and a range of new and very different economic conditions. Some of these challenges and solutions are of a shorter-term nature while others will require longer-term planning with multiple action points, contingency plans and fallbacks during both the worst of the pandemic as well as during the anticipation of the recovery curve that will emerge when COVID-19 and its variations and mutations move from containment to ultimately control and cure.

In this Background Briefing from PwC Legal's RegCORE, we set out a number of considerations financial services firms may wish to adopt. Financial services firms provide critical services to an array of counterparties, clients and customers they serve as well as the communities they operate in. This is ever more critical during the COVID-19 pandemic where households and businesses need access to their deposits as well as funding. While these are certainly by no means a catch-all cure, they may act as a primer for how to deal and adapt to an operating environment under prolonged pandemic conditions.

The key principle of "prudent preparedness prevents paralysis" should be set both as a tone from the top but also from the bottom up and be done so across all business, operational and control functions (legal, risk, compliance, governance and audit). More so than ever before, especially as the pandemic persists, preparedness' objectives and how plans are operationalised needs to be agile.[1] They will need to operate on a risk-based approach to identify, mitigate and manage risks to all business operations and to ensure the resilience of both human and financial capital and be applied through adverse market conditions in the midst of the pandemic as well as in the eventual recovery phase, which may be subject to additional volatility. Some of these priorities for firms may include:

[1] The European Central Bank (ECB) in its oversight role of financial market infrastructures (FMI) as opposed to its Banking Union role at the head of the Single Supervisory Mechanism (SSM) set out best practices for overseers of FMIs and their business continuity plans. This publication is available here. In this publication the ECB observed that for FMIs "Different approaches have been noted, ranging from more standardised step-by-step pandemic-specific business continuity plans to more flexible arrangements entailing ad hoc decision-making." While the ECB's own proposals for FMIs to link up their actions (at least those expectations that are set out by the ECB) with the six risk levels set by the WHO in respect of pandemics is welcome, these may be eclipsed by more stringent restrictions and conduct expectations set by health and other public authorities that quickly eclipse what is required or seen as best practice by financial services policymakers and supervisors.
Equally on 3 March 2020, the ECB-SSM sent a letter to SSM direct supervised institutions (banks and investment firms) requesting that they at both group and individual legal entity level consider contingencies where operations are dependent on their staff remaining healthy and available to work as well as having access to the suitable systems and processes. Crucially, the ECB-SSM calls on firms to:

A. Establish adequate measures of infection control in the workplace, including systems to reduce infection transmission and worker education;
B. Assess their contingency plans, in particular, to ensure that the plans include a pandemic scenario and provide for scaling measures appropriate for the firm's geographic footprint and business risk, taking into account the stages of a pandemic outbreak;
C. Assess how quickly measures could be implemented and how long operations could be sustained in a pandemic scenario;
D. Assess whether alternative and sufficient back-up sites can be established;
E. Assess and test the firm's capabilities for large scale remote working;
F. Assess and test the capacity of existing IT infrastructure;
G. Assess the risks of increased cyber-security related fraud; and
H. Assess the ability of their critical service providers to ensure continuity of services.

1. ensuring that coordination and teamwork of decentralised resources (including those operating in location-independent working arrangements) have centralised reporting channels and that strategy is set with a sufficient tone from the top to flow throughout the financial services firm as a whole;
2. periodically reviewing whether preparedness planning is fit for purpose both in design and deployment. This applies to all forms of assets and exposures, including cyber-risks and resilience against a changing regulatory and supervisory environment as well as a host of new bad actors and threats. Plans, assumptions and communication systems (as well as workarounds) should be periodically re-tested to account for unforeseen or threat-based actions that could put pressure on these resources;[2]
3. ensuring relevant protocols as well as tolerance for any flexibility are established;
4. revisiting health & safety arrangements as well as educational and awareness efforts;
5. managing contractual risks with counterparts, clients and customers as well as suppliers to the firm;
6. testing resilience of financial arrangements as well as funding channels;
7. improving monitoring of insolvency risks of counterparties and clients as well as suppliers and having action plans (including as to vendor management) in place in addition to one's own recovery and resolution planning;
8. considering the adequacy of insurance and re-insurance coverage;
9. revisiting policies and procedures for dealing with vulnerable customers; and
10. ensuring early, clear, frequent and consistent internal, external and regulator-facing communication.

Those financial services firms that have done well during the current extent of the pandemic quickly realised that despite having a business continuity and/or pandemic preparedness plan in place, these were designed for shorter term and largely event-driven emergency conditions. Looking over the longer term, prudent firms were quick to put in place a more permanent and centralised pandemic planning coordination team as well as appoint deputies. In order for such teams to perform well, clearly defined responsibilities, powers and resources were allocated to them. This included having sufficient and continued budget access in order to rapidly implement plans, manage preparations in an agile manner and revisit and adapt as necessary to meet rapidly-changing requirements as applicable within individual but equally across borders.[3]

Firms that have also particularly done well in terms of rolling-out robust resilience measures include those that have taken a 360-degree view of their actions. This means specifically aligning their own actions with those taken by their peers (including competitors) to assess how one's own actions measure up against those of others as well as make up the operating environment as a whole. As has become readily apparent during the pandemic, during a time when people are being asked to self-isolate and distance themselves and do so more frequently, it has never been more important for firms and their staff to be more connected, to communicate and collaborate more with one another but also with the wider markets and communities in which the engage with.

[2] Temporary relaxation of regulatory standards may provide some firms with necessary flexibility but also carries with it new risks and vulnerabilities to business operations in addition to wide-spread and prolonged remote working. Personnel of all levels of seniority need to be aware to these risks and that often humans are often the weakest link. For dedicated Background Briefings from PwC Legal's RegCORE on both location-independent working as well three lines of defence during location independent working arrangements please see our dedicated Thought Leadership section.

[3] COVID-19 restrictions have been and remain an area of uncoordinated and fast-paced change. This has and continues to lead to confusion and concern given that restrictions can affect the freedom of movement of persons as well as availability of goods within but also across judications.

What got us here will not get us there

The various stages of COVID-19 and the continuing evolution of variants and mutations present various threats. They also are reshaping how business is transacted in the EU-27 including after the pandemic eventually subsides. What has become readily apparent is that the pandemic knows no boundaries, no borders and certainly does not discriminate and can certainly resurface in new forms even after the all-clear has been sounded.

The same is also true of the resulting economic pressures and fallouts that have taken aim at public sentiment but also corporate balance sheets. While by and large, e-commerce has boomed, the successive (often rolling) lockdowns have disrupted the real economy. A number of countries experienced economic recessions and in some jurisdictions, financial market crises have followed. Some trading venues have seen the worst crashes since 1987. The pandemic has also put pressure on household finances as well as a looming debt crisis for low- and middle-income but equally for certain more economically developed countries.

The impact from these concerns is being felt by various types of financial services and non-financial services both large and small (collectively "firms"). Corporate credit ratings downgrades across "real economy" industries such as energy/oil, entertainment, retail, travel/leisure but also banking were most heavily impacted by the pandemic as certain corporates failed to adapt or provide an outlook on how they might do so. The largest credit rating agencies had initiated as many credit rating downgrades in 2020 as during the start of the 2008 Global Financial Crisis (GFC).

As a result, some of these more general factors and thus pressures on firms include:

1. Shifts and changes to how business is conducted across different sectors or how supply and delivery chains operate prior to and since the onset of the COVID-19 pandemic. Some business and operating models may have been or are still yet to be altered completely by what is turning out to be a very different set of stresses, shortages and uncertainty as to what they had been used to – including during and following the GFC. Consequently, if this time is different, then some firms may need to look at operational as well as funding resilience quite differently as well as to cope with shortages of various goods and services;
2. A more fundamental shift to and thus greater reliance on internet-, virtual and metaverse-based infrastructure. This presents new commercial opportunities but also exposure to a range of cyber- and conventional risks;
3. Concern that mutations and variants may cease to be capable of being curtailed and combatted by current vaccinations and medical responses being administered as timely as before. Ultimately this could translate into large-scale absenteeism of employees across firm's own business operations but equally across those of their clients as well as suppliers whether due to illness, caring for relatives, home-schooling or a host of other issues;
4. Continued pressures on economic sentiment plus a subdued outlook that may be jolted by more frequent sectoral shocks and disruptions have persisted and thus drive greater uncertainty on the length and extent of downturns and the prospective paths for recovery;[4] and
5. Uncertainty on adequacy of insurance coverage during rapidly changing events.

Given the above, extraordinary central bank-led as well as governmental fiscal and other public-sector-led support measures have and may likely continue on for much longer with a larger pool available than during the GFC. This may also include a greater role for public-private sector partnerships along with possible support as a result of fiscal stimulus packages along with tax reliefs for businesses but also (perhaps more importantly) the human capital that work and buy from those businesses. Crucially, fiscal stimulus may take longer than monetary policy measures to affect change and improve the outlook.

Not all of these support measures are able to reach companies, their clients and the broader "real economy" at the same time. This too may continue to impact the recovery prospects, especially since Delta and Omicron and any other further variants could cause delay and at points derail green shoots taking hold. Such delays may also, certainly over the longer-term, cause challenges in how to refinance the extraordinary support that has been provided to date and how to drive the recovery as well as who will pay for it. This future financing effort risks causing challenges for some companies right now unless they can update their business models.

All of this has put pressure on financial services firms who, for the moment, will be expected to extend support to such firms during the pandemic and its economic impact but also in order to drive the first tentative green shoots of recovery in what across many industries may be a very different operating model. Financial services firms have had to both during the (prolonged) pandemic but also with a view to a new economic and business operating model had to adapt their risk tolerance and how they measure their exposures.

[4] Which may mutate into widespread financial pressures on meeting or receiving obligations when due, concerns on insolvency risks more generally.

Identifying, mitigating and managing risks in the known and unknown

Many financial services firms will have already implemented the following types of risk-monitoring metrics. Some of these may be an extension of their business-as-usual monitoring practices, as adapted to the pressures and new range of risks arising during the pandemic. Either way, firms now more so than ever, will want to ensure they have conducted and maintain an updated "inventory" of their:

1. Relationships with and exposures to counterparts and customers along with the respective supplier base. In many instances this can be segmented not only by how material these relationships and exposures are, along with the degree of reliance and concentration of such exposures. Such metrics can assist firms when assessing the impacts of the stopping of business with such parties would mean for the firm. It can also be used to measure how many non-material exposures would need to arise in order for these to be considered material. Adding the use of "alternative data"[5] may also help model the impact of real-world logistical issues (including shortages) and their impact on financial services firms' corporate clients but equally (A) their suppliers and (B) their customers and consumers;
2. Assessment of direct and indirect contractual linkages so as to identify dependencies as well as how to mitigate and manage exposures that may be at risk of being unlikely to pay, subject to non-performance, termination, frustration or otherwise sustain loss and/or risk including any issues of force majeure and/or material adverse change clauses and/or penalty, break fees and replacement costs arising out of any such changes. By taking a wider-reaching view across exposures, firms are able to better assess their own exposure to default risk but also cross-default scenarios. Firms should take note of both events-based and ratings-based triggers and will want to also in consideration of the above, delineate exposures according to whether they are:
    a. Connected as part of a chain of contractual exposures and interdependencies (incl. hedging of credit exposures) or whether they arise due to an indirect set of exposures (incl. due to cross-default or similar clauses arising across one or more sets of documentation);
    b. Material or non-material to the business continuity of the firm (i.e., not related to business continuity arrangements but economic viability);
    c. Subject to or otherwise contingent upon regulatory and/or public authority-based consents; and
    d. Capable of being actively managed both in solvent and in an orderly wind-down perspective without much disruption/loss due to legal, regulatory and/or reputational risks connected to such exposures;
3. What level of consumer harm could be caused by a prolonged disruption of service or provision of goods by a firm? The concept of consumer harm and contingency planning for operational resilience has been gaining traction since 2018 amongst financial supervisory firms and following the failure of many transportation and tourism firms in 2019 this has carried over into the focus of "real economy" policymaking priorities even before COVID-19 put this front and center. Key considerations for firms (and ultimately policymakers) include assessing the:
    a. size and nature of the consumer base including the scope and extent of "vulnerable" consumers who are more susceptible to and more impacted by a disruption;
    b. ability of consumers to obtain services/goods from alternate suppliers (substitutability, availability and accessibility);
    c. time-critical nature of delivery of services/goods;

[5] Alternative data continues to grow as a crucial and powerful resource, not only because the world is awash with new data sets, but also because of the increasing challenge of alpha generation. Knowledge is money in capital and financial markets. However, as a lot of traditional data is everywhere, finding a niche to exploit can be difficult. Being first is no longer enough. Low-latency technologies have been democratised, so the speed of execution is no longer a guarantee of market success. The mainstream definition of "alternative data" aims to cover data sources "from chat rooms/social media to satellite imaging of plants, etc." However, such definition can be extended to clarity that such data (including from internet of things, retail traffic and shipping figures) can be compiled through traditional means but equally, through (but not limited to) artificial intelligence and machine learning methods. Furthermore, in that context, "artificial intelligence" refers to the theory and development of computer systems able to perform tasks normally requiring human intelligence, such as visual perception, Natural Language Processing, speech recognition, decision-making and transition between languages." More clearly, "Machine learning refers to methods that allow computer systems gradually to improve their performance on a specific task without being explicitly programmed (usually employed in areas where explicit algorithms are difficult to program (e.g., email filtering, network monitoring)). It is closely related to computational statistics, focusing on prediction-making (based on data) and discovery of patterns / "hidden insights"." Lastly, and perhaps more importantly, alternative data can use traditional data in a new way.

4. Material employees and critical inputs, suppliers, subcontractors, as well as service/product-based dependencies and connected logistics that are required to maintain business continuity (in accordance with the business continuity arrangements and otherwise) during prolonged pandemic operations as well as the recovery to normal operating procedures. Where possible, identify alternate components, goods and/or suppliers as well as the ability to – for legitimate and sustainable projects – to repurpose products/services for COVID-19 prevention efforts;[6]
5. Interdependencies within the organisation in mapping functions and operational elements that are connected with one another and whether there are any alternate arrangements or solutions;
6. Products/services performance and demand during times of stress and impact on business financials and resources;
7. Where permitted by law and culturally appropriate, the number of staff (equally at key suppliers and dependent/contingent service providers) with:
   a. school-age children or other dependents at home. Under such extreme conditions, an employee's family becomes an essential supporting or risk element for the employee and the business;
   b. dual-income working parents or single head of household parents; and
   c. vulnerable circumstances notably with respect to health care and insurance plans and/or financial difficulty;
8. Availability of committed capital as well as cash-pooling arrangements – including access to physical cash to pay suppliers and/or staff in the event of bank-runs and other liquidity shortages as well as stand-by capital and the resilience of such funding channels;
9. Extent of insurance cover and the resilience of insurance providers and reinsurers; and
10. Availability of sufficient existing resources to be able to function in the ebbs and flows of a given wave of a rise in infections and resulting lockdowns as well as to prepare for any further COVID-19 eruptions or other more virulent threats. This may include a further triaging to determine which services/functions may need to be further suspended or ultimately discontinued for a specific period of time. These considerations should ideally be benchmarked against any models and assumptions on the impact of the "surge increase potential" for the firm's products/services and/or the ability to provide them.

The issues above and below may also raise important questions on whether firms have any facilities, assets or services that a firm should offer or may be called upon to offer support to the community in which they operate? Regardless of actions and the further development of the pandemic firms will also, across all of their operations, need to take account of language and cultural issues and barriers in how they engage with internal and external persons and other stakeholders.

Improving operational as well as cyber-resilience

As the pandemic, lockdowns, remote and/or hybrid working took-hold, certain operational and cyber-resilience pressures arose at financial services firms but also in private households. Moreover, various complications ranging from shortages of industrial products and consumer goods hampered some firms in sourcing sufficient and/or suitable hardware (ranging from computers needing semiconductors and graphic cards through to all types of paper-based products) needed to conduct financial services work whether in an office-centric or a more location-independent based working environment. For those firms that have stepped up their assessments of their own resilience, including beyond the pandemic, applied a greater use of scenario planning and stress testing their sourcing needs, procurement channels and relevant fallback arrangements with respect to:

1. Securing appropriate business critical hardware, software and other resources in a manner that observes applicable purchasing standards and does not distort the fair functioning of the relevant market;
2. Securing funding lines for actual capital as well a future (priced-in) stand-by capital;
3. Assessing target operating levels and "permitted downtime" of operations, as well as estimated "time to recovery" of operations, for systems but also networks, and assessing fallbacks;
4. Implementing preventive measures that are necessary to safeguard working capital availability and sufficient operational liquidity in the event of capital controls and/or other similar restrictions that may go beyond what was put in place in the EU-27 during the 2010 Sovereign Debt Crisis and beyond; and
5. Considering compliance with or pressures of others to comply with conduct of business rules on dealing with NPLs, credit servicing and whether proactive forbearance measures might prolong to solve or prolong to worsen the viability of an exposure.

[6] Examples of legitimate and sustainable projects to date have included repurposing of industrial face masks for medical healthcare protective purposes or perfume production and dispensers for hand sanitizers or indeed financial services client analytical and credit-scoring tools for COVID-19 spread tracking tools. Projects that carry additional risk may include renting out computing power of on-site computing resources to non-governmental actors.

In terms of cyber-resilience, firms, large and small, have gone through a fast-paced evolution. Office-centric working was, first out of necessity and for certain firms and staff out of convenience, largely replaced firstly by remote "working from home" arrangements and subsequently, for those that could, through more location-independent work arrangements. Such change, during large-scale switchovers in 2020, placed a lot of stress on IT systems and access to suitable hardware. Such systems were and very much are often targeted by criminal elements. They can also fall foul to more mundane and innocent hindrances and outages that nevertheless compromise business continuity and cause frustration for colleagues and clients alike – in particular if office-centric designed fallbacks do not extend into work conducted from private households.

In addition to points already introduced above, some firms may want to ask themselves, in addition to complying with specific cyber-resilience rules set by regulatory authorities, whether they should:

1. Deploy additional training on cyber-hygiene, cybersecurity and resilience in terms of risk mitigation and best practice including the use of complex passcodes for business connected as well as remote working (incl. personal hardware/software and Wi-Fi passwords) and to prohibit use of personal email as well as mobile chat software for work purposes and instead use secure collaboration tools;
2. Proactively monitor threat levels, which are likely to arise across multiple attack vectors, and general network performance conditions during normal operating conditions and extraordinary conditions;
3. Raise firm-wide awareness of the need that cyber-hygiene also includes cyber-clean-up in terms of deleting download folders and trash bins as well as internet browser history files on a periodic basis to reduce leakage of proprietary and/or confidential information;
4. Be prepared to handle security and other outage driven remediation measures from remote locations in respect of remote working locations;
5. Take additional measures to reinforce permitted downtime and time to recovery;
6. Update and/or expand cyber-insurance coverage and ensure it covers pandemic-related working conditions; and
7. Embed social-media risk into reputation risk management.

Over the longer-term firms may want to also revisit their "Bring Your Own Device" policies and strategies. Some might want to move to employ company-issued or approved hardware for use in remote as well as hybrid working environments. More longer-term measures, that some firms have also deployed, include rolling-out separate firm-specific secure WiFi-networks in the private residences of key staff and for certain key functions.

Challenges for human capital management teams now and if the pandemic persists or remerges

The present pandemic's path also changed how human capital teams engage with their employees. While a number of firms have faced challenging circumstances on how to source, retain and manage the right quality and number of staff during challenging times, many subsequently moved to ensure they place a greater emphasis on caring for the wellbeing of employees, in particular whilst these are working from outside the office. Virtual meeting fatigue, quarantine envy as well as how to foster collaboration in a decentralised working environment all moved to become new challenges in search of new solutions.

Moreover, human capital teams were often at firms' frontlines in establishing and educating staff on appropriate health and safety measures, including measures to prevent the spread of the virus through promoting good respiratory hygiene and social distancing measures in line with World Health Organisation recommendations and jurisdiction-specific rules and guidance. This required new skills amongst human capital professionals.

Firms have had to assess and establish protocols relating but not limited to the following issues below and adapt them to accommodate relevant legal and regulatory obligations which apply across various different jurisdictions in which they operate and in which their staff reside[7]:

1. The need for face-to-face interaction/meetings and digital alternatives;
2. Setting what is really "business essential" and who qualifies as having a need to take part in such matters;
3. Taking strategic decisions on how to manage planned and actual human capital retention and staffing levels and what options and benefits might exist in cross-training appropriate existing staff including with respect to overseas operations;
4. How to balance the following issues:
   a. Employer protection responsibilities with permitted business and non-business travel protocols;
   b. Engaging with employees (as well as members of same household) that become diagnosed with COVID-19 and how to deal with data privacy;
   c. Compensation levels if employees are in quarantine and/or unable to perform functions and on what grounds such compensation might be refused; and
   d. How to adjust employment terms in light of force majeure or prolonged operational difficulties;
5. Whether the firm should and indeed has a duty to consider advising employees (and possibly connected persons) on what public and/or government-sponsored information and support might be available? Will a firm, as in previous medical crises (SARS/MERS), stockpile anti-viral medication if and when available and if yes, who would it be available for? Have measures been considered to plan for grief counselling or arranging other forms of special family care? If so, have liability concerns connected to that support been assessed? If not, should it?;
6. Has the firm prepared pandemic-adjusted (non-punitive) policies and protocols on childcare or relative care time-off or any additional adjusted measures to account for extended sick leave or compassionate leave? If not, should it? Has consideration been given to when a person that has been considered infectious may return to normal working conditions and under what further measures? If not, should it and how does this depend on variant and mutation type?;
7. Has consideration been given to meeting or temporarily waiving occupational health and safety standards as applicable in the office-centric workspace certainly if for what are now likely to be more "permanent" home office set-ups? Should the firm undertake dedicated training sessions for safety at "work" in the home office i.e., how to deal with self-care and first aid etc. Should it adjust its respective insurance policies and possibly also work proactively with its insurers to ensure existing coverage is adapted to reflect new realities?;
8. Has consideration been given to whether to and, if yes, how to support employees, notably those that qualify as "vulnerable" due to the extent of the virus' impact and/or discrimination (economically, socially, medically) in the event they face hardship? It is worth looking at how to provide further support to provide fair treatment as well as reduce reputational along with litigation and other forms of legal risk?;
9. Are the firm's data protection standards as well as relevant data protection legislation being complied with? Is the firm collecting and processing COVID-19 data related to its staff (and possibly connected persons) in a manner that is compliant in normal operating conditions? Is this reflective of the principles of lawful, necessary and proportionate use of such data? Is it in line with confidentiality and security requirements and any additional safeguards that may be required to be put in place in line with guidance or directions of public health or other relevant authorities that permit companies to process personal including health data and/or suspend the requirements of data subjects to provide consent?;
10. Are firms permitted to require all staff and/or visitors to provide information about their general health conditions, recent travel history and other COVID-19 related interactions both on-site (including back-up/ disaster recovery sites) but equally in the respective persons' homes? And, if so, can an employer disclose that a relevant person is suspected and/or confirmed as COVID-19 infected and/or recently recuperated to relevant colleagues and/or stakeholders of the firm?;
11. How should firms tackle with invariable "quarantine fatigue" and offering related mental well-being support as the approach of spring and summer months lead to a temptation to migrate outdoors even if this coincides with projected spikes and healthcare capacity strains? Should and can firms impose additional warnings to those that may be issued by competent authorities?;
12. Other overarching challenges include how best firms' management and other teams should communicate internally and externally in a manner that minimizes fear and anxiety, curbs rumours and misinformation so that key messages related to COVID-19 or otherwise are communicated and understood clearly and consistently as early and as frequently as possible.

COVID-19 has equally raised new issues on how to ensure firm-wide efforts can comprehensively cover various types of labour and employment relationships across various jurisdictions that had to be adapted to meet official health protocols but equally financial services' firms crisis management plans and do so in an agile fashion.

[7] A policy applicable in say to a workplace in Luxembourg, may also need to consider how those laws apply to such staff that physically may reside across the border in Germany, France or Belgium etc. Such considerations also apply to a number of other cross-border relationships.

Updating the crisis management playbook for prolonged preparedness

While the above highlights certain issues, many financial services firms found that there is no exact blueprint on how to prepare for all possible scenarios. Plans need to be agile to change and pragmatic in implementation. They also should consider employing some of the following general principles that might be relevant for a financial services firm's business continuity plan (BCP) and a pandemic preparedness plan (PPP). Any updates of a PPP for prolonged use will need to also make corresponding changes to a BCP so that it is appropriately reflective of remote as well as hybrid working arrangements.

The following (very much non-exhaustive) list of key priorities should act as a primer for firms across all sectors and types of business both at the group level as well as across subsidiaries and other local operating units with appropriate measures being taken according to the severity of an outbreak/restriction and a corresponding phase of the PPP and any response plan:

1. Centralise and coordinate teamwork: Set-up or reinforce a sufficiently resourced and empowered central coordination team (CCT). Ensure that the CCT is comprised of senior management contacts (and an appropriate amount of sufficiently briefed delegates/alternates around global locations) representing business functions but equally control functions (legal, compliance, risk, governance, audit and BCP/contingency planning), IT and cyber-resilience, procurement, as well as human capital and business premises functions, including employment lawyers, security and premises management, as well as a secretariat function to manage communication with CCT members and wider stakeholders. Consider also appointing documented channels with agreed counterparts at key counterparties, clients and stakeholders (in particular supervisory authorities), as well as external lawyers. Firms should also ensure that the context, debate and outcome of decisions are appropriately recorded – this would assist in the event of future investigations by supervisors and/or disputes with contentious parties;
2. Ensure that appropriate succession planning is in place: to establish how and when authority should be delegated if key management and/or control function staff are unavailable due to illness or otherwise. Succession planning should consider both situations of temporary and permanent transfer of powers and ensure clear communication to staff so persons, policies and procedures know who has the authority to act if fallbacks need to be put in place;
3. Adapt preparedness planning by periodically revising BCP and contingency measures and the assumptions these are based on. BCPs should also:
   a. identify core activities and critical economic functions that must continue according to regulatory and supervisory authorities, those that are economically viable and those that are non-critical activities, which the firm will cease providing at each phase of a response – while at the same time adapting such functions and activities as demands change over time;
   b. identifying the amount of and what type of key employees and resources needed to support core activities and critical economic functions is needed. Firms may wish to consider employing scenario analysis, which can be used to plan for a range of possible effects and actions (e.g., maintaining core functions with, 2 percent, 20 percent, and 50 percent absences);
   c. consider creating fallback/deputy teams for all critical staff functions in order to ensure that operations continue in the event that key staff become unable to work due to illness or other factors;
   d. adapting staffing plans that identify which work requires office-centric and which can be conducted using location-independent working arrangements, with scenarios identifying procedures if employee unavailability i.e., absenteeism lasts a week, a month, or several months;
   e. reviewing the adequacy, from a PPP perspective, of back-up sights and notably pandemic prevention and hygiene measures for activities that must be done from centralized locations (including, for example, dealing rooms and treasury functions) which require significant advance preparation. For this option to be effective, a number of further steps are needed, including establishment of the physical locations, equipping the sites with IT and office equipment, and securing the locations and ensuring these meet relevant health & safety requirements;

f. determining how and when staff will be transported to alternate sites and policies concerning family members e.g., for childcare;
g. undertaking regular tests of the equipment and procedures for alternate sites that are not staffed or operational in normal times. Consider the need for further potential fallbacks as well as periodically test the design and implementation fitness for purpose of remote (home-based or location-independent) working access (including cloud-based solutions) along with systems channels connected to relevant trading, business and compliance systems (including by way of apps) across all off-site electronic devices and private permissioned devices and take corrective measures including potentially through routing orders/information through skeleton staff who are operating on-site systems at respective business and/or back-up locations;
h. identifying critical suppliers of outsourced services and entering into a dialogue to understand whether, and ascertain how, services continuity would be provided. Contingency and fallback plans for shifting to alternate suppliers should be considered in case they become necessary;
i. considering the impact of customer reactions and the potential demand for, and increased reliance on, online banking, telephone banking, ATMs, and call support services. If demand for cash is expected to increase, financial institutions may have to stockpile cash and identify how cash will be transported to branches and ATMs; and
j. firms with a presence over a wide geographical area should develop protocols to shift business from highly affected areas to safer ones. Issues to consider include how to notify customers and how to provide services to customers from alternate sites. This may prove challenging in certain areas within "Low Income Developing Countries" due to the lack of supporting infrastructure;

4. Establish protocols that are agile: for both internal (restricted and unrestricted) as well as external-facing communications for "business as normal" as well as emergency situations. This ideally may also include setting "connection protocols" and priorities for connection channels (i.e. handheld versus laptop/desktop remote connectivity) and when and whether to use firm issued versus own devices to connect depending on who needs to connect and for what purpose as well as confidentiality and data protection concerns. This is important as it will help firms to regulate the pressures on systems, networks (VPNs and cloud-based systems) caused by mass migrations to remote working if supporting systems come under pressure as has indeed been the case across certain jurisdictions since the onset of the pandemic and various rolling-lockdowns. Some firms may want to ensure regulating connection paths and protocols for connection for (A) email purposes; (B) firm's own internal/proprietary systems such as trading-based infrastructure; (C) desktop mirroring; and (D) video/VOIP telephony etc.;
5. Revisit health & safety arrangements, education and messaging: Ensure consistency on how health & safety messages are communicated across the firm's operations and for these to be jurisdiction-agnostic so as to apply best practices consistently whilst still reflecting local law considerations on what precautions staff (and related parties) need to take during business and out-of business operations. Some firms may wish to consider implementing and communicating policies and procedures on the reporting of concerns/absences/feeling unwell, flexible/home-working policies, dynamic resourcing, i.e., rotating of staff members (certainly those that are willing to head back to an office-centric environment), as well as policies on voluntary/mandatory self-isolation or other forms of social distancing as well as mental well-being support (see above re quarantine fatigue), restrictions on private/business travel, especially to high-risk areas (although this may be difficult in terms of compatibility with the law), clarity on permitted expenses and insurance, as well as provision of facilities to staff and related parties, including childcare/creche, on-site healthcare and other facilities that could contribute to contamination. Firms may also wish to consider how to communicate to staff (and related parties) as well as other precautions they may wish to take with respect to daily life, access to resources and medical care, including in light of global to local recommendations and/or restrictions due to COVID-19 or otherwise;
6. Ensuring that the management and contractual relationships, exposures and risks is captured in agile policies and procedures: While short-term measures have largely worked, a number of firms may be best placed in updating policies and procedures to ensure that contracts can continue to be concluded as well as disputed, including revisiting or establishing protocols on the legality and use of electronic signatures and who may be approved to do so (i.e. this may require updating relevant signing authorities), as well as assessing the rights and risks that the firm and its counterparties have in respect of contractual obligations (whether directly relevant or due to issues at third parties) and what this might mean for events of default, including cross-default and cascading/linked insolvencies, force majeure and/or MAC provisions, change in law/illegality, suspensions and/or moratoriums, enforceability rights and ease to enforce, as well as counterparty and regulatory reporting etc., along with a readiness and/or willingness to renegotiate contractual terms and/or enter into forbearance or other relief measures;

7. Periodically test resilience of financial arrangements as well as short- to longer-term funding channels: both in terms of their access to sufficiently stable normal and/or contingency funding, as well as with respect to the ability to meet one's own obligations. This will include looking at susceptibility to and resilience against financial and non-financial risks, but also at requirements under representations, warranties, undertakings, covenants and compliance with other forms of periodic reporting it or its credit support providers receive and/or provide;
8. Step up monitoring and transition of (in)solvency risks of own and counterparty positions: including strength of monitoring of ratings-based and other triggers, along with an assessment of adequacy of fallbacks, including transition measures to transfer exposures and/or identity of counterparties to another person, as well as obligations with respect to regulatory and/or corporate public disclosures;
9. Consider the adequacy of insurance and reinsurance coverage: in the event of heightened claims or whether existing claims cover COVID-19's extraordinary circumstances, including those that arise as a result of contingency planning;
10. Revisit policies and procedures for dealing with vulnerable customers, as well as for customer, client and counterparty engagement: more generally in terms of fairness and clarity, whether from conception and conclusion of financial products, to any complaints handling and/or contentious disputes; and
11. Ensure early, frequent clear and consistent communication across all internal and external channels: so as to ensure all recipients are on the same level during times of rapid change and stress.

As evidenced above, the considerations that arise as part of prolonged pandemic preparedness are different to those that arose at the start of COVID-19 and are certainly very different to events and their scale and duration that are covered by BCPs aimed at covering non-pandemic related events and equally PPPs that are adopted for prolonged impacts require prudent and consistent planning.

Returning to normal operating conditions

As a final consideration, financial services firms which trigger their BCPs and/or their PPPs and let them run, notably during prolonged emergency and crisis management considerations, must also consider when to return to normal operating conditions and if it is the right time to do so. This became an issue as lockdowns and restrictions were loosened but then rapidly reimposed – often in a more severe form as the pandemic progressed. As important as moving to a crisis management state is the importance of how to transition back to normal operating conditions. Key questions however become apparent and these will themselves require careful planning:

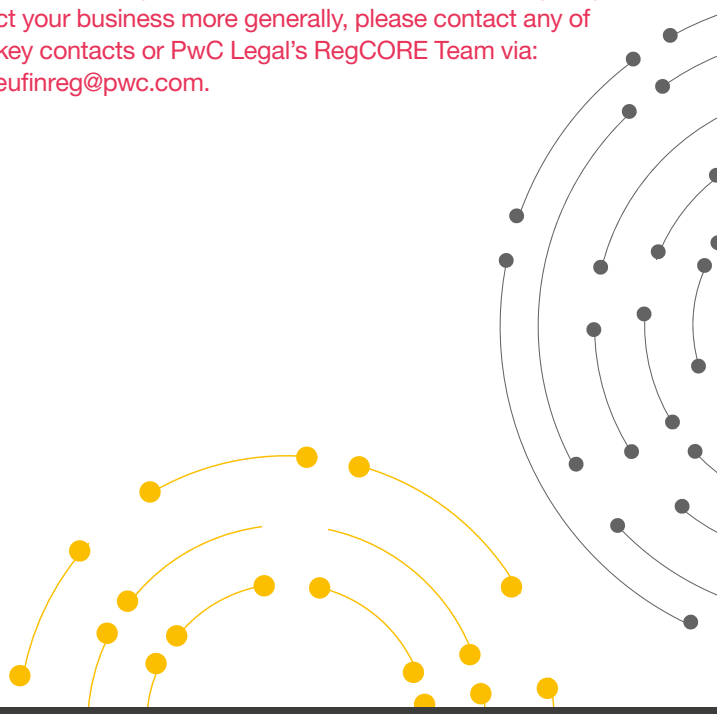
1. Is guidance that has been issued by relevant competent authorities sufficiently clear to support a return to normal operating conditions or if not can a sudden flare-up be managed?;
2. Is a full return to business as usual achievable (and indeed desirable) across all business lines and if not, should a phased return be rolled-out instead?;
3. Are employees comfortable to return to office-centric work and are there instead some functions (or indeed employees) that are better served in continuing remote-working and/or location-independent working conditions?;
4. Do offices as well as client-facing venues such as branches or physical facilities require any sanitisation efforts before more full-scale reopening?; and
5. What type and for how long during a return to normal operating conditions will a financial services firm need to maintain an increased reliance on a digital-only distribution and client engagement channels and which arrangements should transition back to more "in-person" engagement?

Outlook

Undoubtedly the persistence of COVID-19 has caused terrible suffering and hardship across large parts of the world. Businesses have been forced to adapt. Even if (hopefully) the worst of the COVID-19 pandemic may be over, many will not be able to adapt (or do so as fully) and not all traditional operating and business models as well as customer value propositions may be able to recover and transition to post-COVID-19 realities.

Financial services firms have a role to play in assisting in supporting economic green shoots. While they may have weathered the current storm they cannot afford to be complacent about adopting the lessons they have learned as well as borrowing from those of their peers. Financial regulatory policymakers and supervisory authorities are likely to place a greater emphasis on monitoring operational resilience for individual firms and across markets more generally, especially for those that provide critical economic functions. If the risks of regional and global outbreaks of pandemics are likely to become more prevalent, then planning for appropriate agile resilience measures should become a more prominent priority for financial services firms as well as their counterparts and clients they engage with.

PwC Legal is assisting a number of financial services firms and market participants in forward planning for changes stemming from these announcements as well as those in the pipeline ahead of the next supervisory cycle. If you would like to discuss any of the items mentioned, or how they may affect your business more generally, please contact any of our key contacts or PwC Legal's RegCORE Team via: de_eufinreg@pwc.com.



Contact

Dr. Michael Huertas LLM., MBA
Partner, Head of Financial Institutions
Regulatory Europe
PwC Legal Deutschland
Mobile: +49 160 9737-5760
michael.huertas@pwc.com

About us

In today's rapidly evolving marketplace, our clients are increasingly concerned with business collaborations, restructuring, mergers and acquisitions, financing and questions of social responsibility. They need legal security when dealing with such complex issues. That is why we work closely with PwC's tax, human resources and finance experts and draw on the resources of our legal network in more than 100 countries to deliver comprehensive advice. Whether a global player, a public body or a wealthy individual, each client can rely on a personal account manager to address his or her specific legal needs. This dedication helps us ensure our clients' long-term business success.

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