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Impact of COVID-19 Gives Good Reason to Consider Emergency Cooperation Agreement

In light of the unprecedented public health concerns caused by COVID-19, Day Pitney has been actively working with clients to create bespoke solutions for their businesses. One common concern shared by many of our clients is the possibility that this pandemic might cause an interruption to their business, including a forced shutdown resulting from an infected employee.

One strategy we have utilized for clients involves entering into an emergency cooperation agreement with one or more competitors. For both legal and competitive advantage purposes, we are always concerned about getting too close to competitors. However, we recognize that part of emergency preparedness involves taking precautions for worst-case scenarios, where carefully thought-out cooperation with a competitor may be justified.

Under a typical emergency cooperation agreement, the counterparties would agree to service some or all aspects of the other's business in the event of a COVID-19 induced closure. For instance, under such an agreement, a business that involves delivering packages might "outsource" vital shipments to the other party during the shutdown, or a medical provider might outsource patient care to the other party if there is a self-isolation or shutdown scenario.

Some key aspects of an emergency cooperation agreement include:

- Identifying a counterparty: Many businesses have "friendly" competitors where years of mutual respect can assist in these trying times. We are also finding that some aspects of a client's business can be handled by non-competitive counterparties.
- Developing appropriate triggers to require the parties' compliance with the agreement
- Determining payment terms for the goods and services provided
- Addressing confidential information in a manner that protects each party without stifling the party who is called on to perform
- Providing adequate non-solicitation and non-compete obligations

Businesses that do not already have plans in place should promptly consider their supply chains and delivery models to identify areas where cooperation with another party might make sense. These emergency cooperation agreements are only useful if put into place before you need them. And the agreement should be carefully drafted to avoid antitrust issues. We are available to swiftly draft and assist you in the implementation of an emergency cooperation agreement if you feel it would be beneficial for your business.

For more Day Pitney alerts and articles related to the impact of COVID-19, as well as information from other reliable sources, please visit our COVID-19 Resource Center.

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