

M&A and Capital Markets in (Denmark and) the U.S. Following COVID-19

And a Brief Look at U.S. Aspects of Relief Packages and Travel and Immigration Restrictions.

May 27, 2020

Holland & Knight

Our Presenter



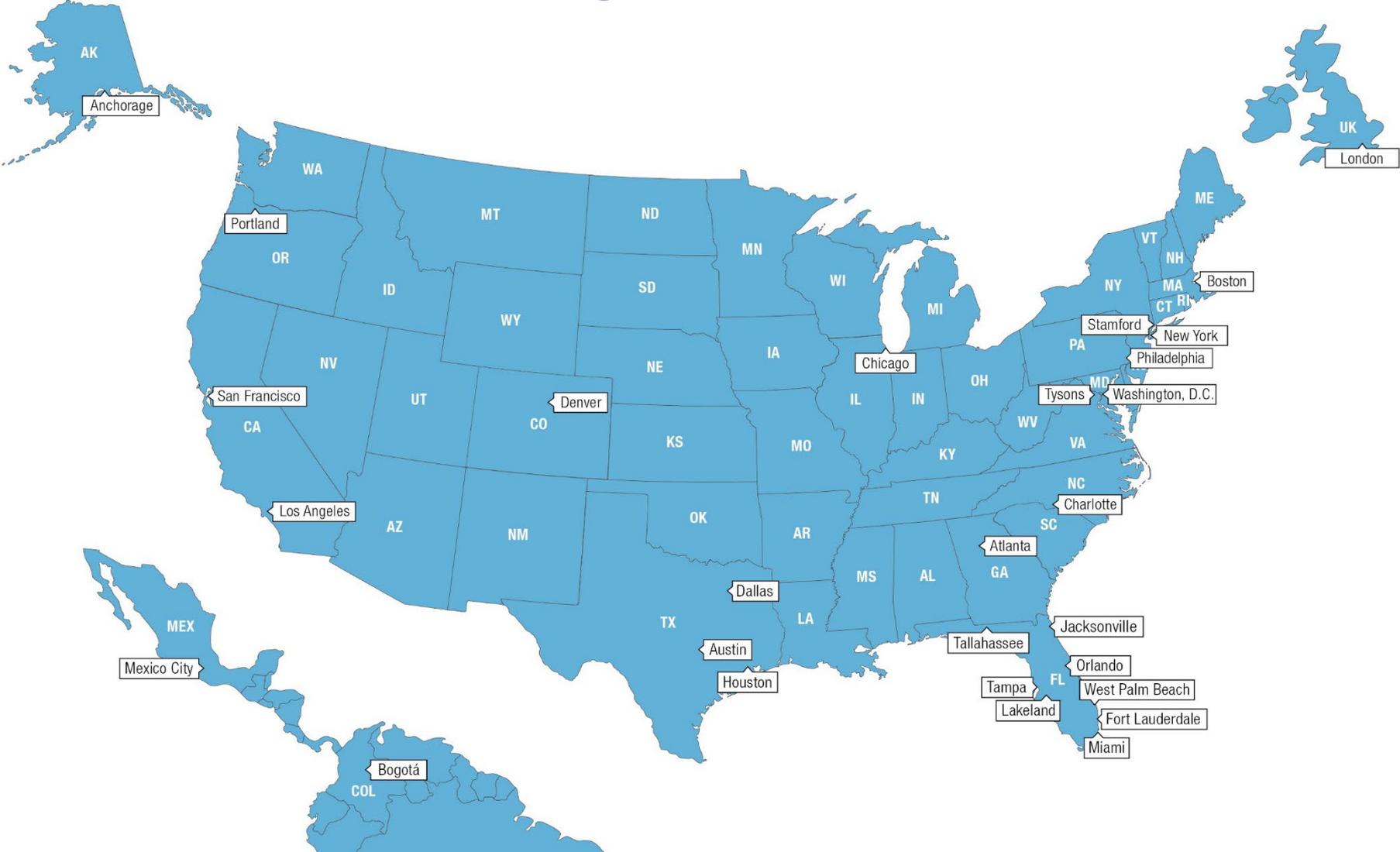
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Holland & Knight Office Locations



COVID H&K Response Teams

- Government Contracts and Small Business Administration
- Treasury Coronavirus Economic Stabilization Fund
- Healthcare and Life Sciences
- Labor and Employment
- Employee Benefits
- State and Local
- Tribal Governments
- Immigration
- Nonprofit and Tax-Exempt Organizations
- Government Relations
- Federal Funding
- Aviation
- Risk and Crisis Management

Agenda

- M&A and Capital Markets in the U.S. Following COVID-19
- Overview of Congressional Responses to COVID-19
- Federal Funding Opportunities in the CARES Act
- SBA Loan Eligibility Process for Existing and New Loans
- Business Tax Provisions
- U.S. Travel and Immigration Restrictions
- Resources
- Questions and Answers



M&A and Capital Markets in the U.S. Following COVID-19

Capital Markets and M&A in the U.S. Following COVID-19

- **Current Situation:**

- Mergers and acquisition activity is at a grinding halt.
- Deals that were close to closing pre-COVID, typically have closed or are in the process of closing, with smaller delays. In cases where buyers or banks/lenders have gotten cold feet, review of the “no materially adverse effects” closing conditions have taken on a new significance and are being scrutinized.
- Deals that were in earlier stages are in a fair number of cases abandoned and in many cases on hold until the fallout of the COVID-19 crisis becomes clearer and stock markets stabilize.
- Exceptions: A few businesses have benefitted extraordinarily from the COVID crisis, and may be looking at their positive cash flow to make strategic purchases in a depressed market. E.g. Amazon, Facebook, Target, FedEx, Costco, Netflix, Lowe’s, as well as grocery stores, pharmacy/drugstore chains, online education, and to some extent pharmaceutical and medical manufacturers. For instance, Amazon is currently rumored to be looking at J.C. Penney (a clothing retail chain), which filed for bankruptcy in the middle of May.

Capital Markets and M&A in the U.S. Following COVID-19

- **Future Trends:**

- M&A activities will be very slow until the COVID impact is clearer. Many issues will affect the risk analysis. E.g. risk of “second wave”, path to “new normal” lives for the population as employees and consumers, survival rates of businesses impacted by COVID-19, unemployment rates, consumer spending, U.S.-China trade war, the presidential election in November, to name a few.
- For a while, acquisitions will likely be more strategic than investment based, and strategic buyers will take advantage of depressed prices in business segments they have considered buying into.
- Consolidation in certain industries should be expected, e.g. technology and internet based businesses, telecom, engineering and construction, hospitals, private medical and dental clinics, universities & colleges, airlines, cruise industry, fashion and retail.
- Acquisitions to create vertically integrated businesses will become more common. The COVID crisis has exposed the risks of relying on vendors and competing for the same materials, e.g. medical equipment manufacturers have been unable to produce to satisfy increased market demands because of a shortage of supplies.
- International diversification, as it becomes clearer which countries have been better at weathering the pandemic.

Capital Markets and M&A in the U.S. Following COVID-19

- **Future Trends - Continued:**

- Purchase prices will reflect the new business reality and lenders and investors will likely be cautious and possibly cash-strapped.
 - Some businesses will be bought in Chapter 11 (bankruptcy / restructuring) proceedings.
 - We should expect to see more acquisitions where the purchase price is paid fully or partly in stock.
- The difficulty in assessing the future earnings as well as shortage of cash funding will also likely result in more earn-out arrangements.
- We would also expect to see more transactions with spinoffs, where the healthy part of a business is sold, while the unhealthy parts are liquidated.
- Representation and warranty insurance has been an increasing trend, and will likely continue, but most insurance providers currently have COVID-19 exceptions. This may continue after the COVID-19 crisis has subsided, and it is also possible that clauses concerning pandemics will generally be more restrictive.
- “Materially adverse effect” clauses will be heavily negotiated. The COVID-19 crisis has reinforced the importance of these clauses as closing conditions. Purchasers will not want to be forced to close a bad transaction and sellers will want to make sure they don’t give purchasers a free pass to walk away, after having invested time and effort in negotiating a transaction and having shared confidential materials.

Overview of the CARES Act and Federal Response to COVID-19

Federal Response to COVID-19

- The novel coronavirus strain (COVID-19) has led to unprecedented economic and public health impacts
- In the United States, there have been three primary Congressional responses (as well as more legislation, executive orders, and agency regulations):
 - [Coronavirus Preparedness and Response Supplemental Appropriations Act of 2020](#) (Public Law 116-123 – March 6, 2020): To provide \$8.3 billion in emergency funding for federal public health agencies to respond to the coronavirus outbreak related to developing a vaccine, medical supplies, grants for public health agencies, and assistance for health systems in other countries. Allowed for temporarily waiving Medicare restrictions and requirements regarding telehealth services.
 - [Families First Coronavirus Response Act](#) (Public Law 116-127 – March 18, 2020) (“FFCRA”): To provide **paid sick leave**, **enhanced unemployment insurance**, expanded food security initiatives, increased federal Medicaid funding, tax credits, and free COVID-19 testing.
 - [Coronavirus Aid, Relief, and Economic Security Act or CARES Act](#) (Public Law 116-136 - March 27, 2020): To provide \$2.2 trillion in economic and tax relief for individuals and employers. The legislation will send \$1,200 to each American making \$75,000 a year or less, add \$600/week to unemployment benefits for four months, give \$100 billion to hospitals and health providers, **make \$610 billion of loans or investments to businesses**, additional funds for states and municipalities, and \$32 billion in grants to the airline industry, and more.



Federal Funding Opportunities in the CARES Act

CARES Act

Federal Funding Opportunities

- **The CARES Act includes four different funding opportunities:**
 - Small Business Administration (“SBA”) Paycheck Protection Program Forgivable Loans
 - SBA Economic Injury Disaster Loans
 - SBA Express Loans
 - Treasury Coronavirus Economic Stabilization Fund
- Each opportunity has detailed eligibility requirements and limits on the use of the funds received
- Clients should consult with qualified legal counsel and/or the SBA/Treasury before entering into a loan under one of these opportunities to ensure eligibility and potential impact on your existing business and debt instruments.



Eligibility Considerations for Existing and New Loans

CARES Act

SBA Paycheck Protection Program Eligibility

- **Clients must confirm their small business eligibility if they intend to seek an SBA forgivable loan under the CARES Act**
 - A business concern must have fewer than 500 employees, including among all “affiliates”.
 - Worldwide employees of the corporation and its U.S. and foreign affiliates.
 - **Note!!! Initial legislation (passed March 4, 2020 – approved by the president on March 27, 2020) appeared to only require U.S. employees to be counted, but an interim final rule released on April 6, 2020, provided that worldwide employees of employer and affiliates are to be counted, and granted a safe harbor date of May 14, 2020 to return the funds.**

Business Tax Provisions

Income Tax Return and Payment Extension

- Affected Taxpayers (any person with a Federal income tax payment or a Federal income tax return due April 15, 2020):
 - Automatic postponement until July 15, 2020
 - No limitation on the amount of the payment that may be postponed and no interest, penalties or additions to tax with respect to such returns or payments will accrue during such postponement.
- Applies to Federal estimated income tax payments due April 15, 2020 for an Affected Taxpayer's 2020 taxable year.

U.S. Travel and Immigration

U.S. Travel and Immigration

- **TRAVEL TO THE U.S.:** General U.S. Travel Ban issued April 22, 2020 – in effect until June 23, 2020. We don't know if it will be extended. Affects all non-U.S. citizens not already in the U.S., except green card holders, spouses and children of U.S. citizens, those who already have e.g. E, L, H-1B, or O visas, and a few other select groups of people. In addition, travel into the U.S. by anyone (except U.S. citizens and their families) who has been in in certain countries (Denmark included) within 14 days of the arrival date in the U.S. have also banned since March 11, 2020, and such ban currently does not have an expiration date.
- **VISA APPLICATIONS:** Since March 18, 2000, USCIS has suspended in-person routine services until at least June 4, 2020 USCIS continues to process non-in-person activities, but significant delays are expected. Most U.S. embassies and consulates have suspended all visa services, except for emergency situations. Anyone with an in-person interview at USCIS (for green card or naturalization) will automatically be rescheduled once USCIS resumes normal activity. All premium processing has been suspended. As a practical matter, E, H, L, and O visa processing is currently either entirely suspended or very slow.

U.S. Travel and Immigration

- **EXTENSIONS & RENEWALS:**

- **H-1B visas:** Layoffs ,obligation to notify USCIS and DOL and employee must leave the U.S. within 60 days if new employment status is not secured. Furloughs, obligation to apply for advance USCIS approval of change of terms. Workplace change: Temporary work from home in same area may be acceptable, but larger changes require advance approval. Salary cuts across the board – precedent to the effect that this is allowed, provided the salary does not go below the salary presented in the application, but USCIS must be notified when visa is renewed.
- **ESTA travelers** can apply for a 30 day extension (by telephone – “satisfactory departure”), if they are unable to leave, and USCIS has advised that I is also able to grant an additional 30 day period of satisfactory departure, if circumstances warrant it. For travelers who entered the U.S. through JFK or Newark Airports, they are able to request the extension at the airport. They may be asked to provide old and planned flight itinerary.
- **Employees on E, H, L, and O visas due for renewal:** Renewals should be filed with USCIS as usual prior to expiration of the employee’s current form I-94 to ensure that the foreign national is able to temporarily remain in the U.S. while the extension of the stay is being processed.

- **The Future:** The current U.S. administration is very focus on preservation of jobs for U.S. citizens, and actively looking at several initiatives to make it more difficult to bring international employees to the U.S. H-1B visas in particular may be targeted in terms of new issuances, renewals, and even travel bans for those who have them. It is expected that the USCIS and DOL will recommend new immigration suspensions in the coming weeks that will perhaps even prevent extensions or new visa petitions from being filed for foreign nationals currently in the U.S.

Resources

Resources: www.hklaw.com

COVID-19 Response Team

Heiress' \$300 Million Estate Dispute Settled

Linking CEQA to California's Housing Crisis

Staying Strong Against Patent Infringement

Transforming the Online Notarization Business

Safe Harbor Deadline for Repayment of PPP Loans Extended from May 7 to May 14

The U.S. Small Business Administration (SBA), in consultation with the U.S. Department of the Treasury, has extended the deadline to repay Paycheck Protection Program (PPP) loans by one week.

[View Article](#)

CMS Releases FY 2021 Inpatient Prospective Payment System (IPPS) Proposed Rule

MAY 14, 2020

Colombia modifica plazo para pago de segunda cuota del impuesto de renta y complementarios

14 DE MAYO DE 2020

Federal Court Finds Massachusetts AG's COVID-19 Debt Collection Regulation Unconstitutional

MAY 14, 2020

IP Considerations During COVID-19: IP Housekeeping

MAY 14, 2020

Resources: www.hklaw.com

- <https://www.hklaw.com/en/case-studies/covid19-response-team> (overview of resources, legislation, and more)
- <https://www.hklaw.com/en/general-pages/covid19-state-orders> (summaries of state orders and regulations in 50 states)
- <https://www.hklaw.com/en/general-pages/covid19-workforce> (Back to work guide)
- <https://www.hklaw.com/en/insights?keyword=COVID> (350+ Articles)
- <https://bit.ly/HKsubscribe> (subscription for newsletters)
- <https://www.govtrack.us/covid-19>

Biography



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I will help you or connect you
with the relevant experts!

Thank you!

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