

UNLOCKDOWN, COVID-19 & OPENING OF BUSINESS: LEGAL RISKS & CONSIDERATIONS

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With the initiation of “Unlockdown” for opening of business in India, to navigate the challenges brought on by the rapid spread of COVID-19 (coronavirus) is now more complicated than ever as the companies are been forced to confront the way of doing business with the continuous spread of COVID-19 and to be more vigilante and preparation is requisite by the companies to address the business risks as they arise.

COVID-19 has caused serious disruptions for every businesses, where some have had direct commercial impacts along with interruptions to supply chains, challenges in meeting contractual obligations, payment of commercial leases, whereas there are some universal impacts on each and every business- workplace health and safety obligations, travel restrictions, increased burden of data protection with the implement of work from home policy.

As business risks, legal, regulatory and other commercial implications due to COVID-19 will continue and evolve in coming days with further disruption, we have summarized following business & legal risks & key considerations:



1. Employment & Workplace Safety: -

The employers are required to maintain a safe working place for its employees, which includes taking steps to reduce the risks associated with the COVID-19 outbreak but not limited to the followings:

- a. The Central and State Government have issued various notifications w.r.t. COVID-19 and workplace safety, hygiene and training materials. Has your organization carried out such awareness training to your employees?*
- b. Most of the companies have adopted work from home policy. Has your organization assessed the nature and requirement of your employees to work from office/home depending upon the organization's requirement and the said employee's role in the organization?*
- c. Does your organization have analyzed & assessed the impact w.r.t. compliance and accountability with a greater number of employees working from home?*
- d. Does your organization have a data protection policy in place and taken necessary steps to protect client's data as most of the employees to work from home would access the client's confidential data through their private broadband connection?*
- e. Have you made sufficient arrangement for quarantine facilities for your employees working from office premises/manufacturing facilities and preventive measures to prevent the spread of COVID-19?*
- f. Do the health plans offered to the employees cover COVID-19 testing or treatment? If yes, under what cost sharing arrangement?*

- g. *Restriction on business travels for some time may be somehow feasible but cannot continue for a long duration and when employees visit on need basis for official work, do the company have implemented any self-quarantine facility for such employees and COVID-19 test as safeguard measures?*
- h. *Does your organization has created a mechanism of self-declaration and reporting by any employees who has traveled (business/personal) for any reasons and health monitoring for such employees?*
- i. *If any of the employee fails to attend the office work due to pandemic, is there any policy in your organization to consider such absence of work- paid holiday or leave without pay?*
- j. *Due to loss of business, most of the organizations throughout the world has failed to meet the salary expenses for last few months. Does the management have discussed the deduction in salaries with employees and taken them in confidence for future payments? Has the organization shared its framework policy w.r.t. employees' salaries?*

2. Supply Chain: -

As the global economy has been impacted due to continuous spread of COVID-19, the organizations are facing disruptions in supply chain due to various factors such as lack of staff, suppliers/vendors; transportation is disrupted; regulatory restrictions on cross border controls with additional inspection; lack of cash flow/financial crunch etc. The organizations need to assess their supply chain function and need to address issues which includes but not limited to the followings:

- a. *Have your organization analyzed your rights and obligations due to any disruption in supply chain?*
- b. *On the event, where the “Time is Essence” for supply of materials/finished goods, has your organization assess the availability of an alternative vendor/cancellation of contract and its impact on it’s supply chain?*
- c. *Have you reviewed the government restrictions imposed due to COVID-19 and its impact on your supply chain?*
- d. *What are your rights and obligations in case of your failure to deliver/receipt of goods/services?*
- e. *What are the challenges for induction of new supplier/vendor due diligence from supply chain compliance perspective?*
- f. *What are the additional liabilities which your organization may be exposed due to any failure/default in the supply chain?*

3. Contracts: -

The organizations need to review each and every one of its contracts as the outbreak of COVID-19 is likely to have a profound impact on all the commercial contracts.

The disruptions in the economic and business sector may cause either the organizations or their counter party or any of vendors to default or fail to perform under an existing commercial contract. Therefore, the parties to existing contracts that are or may be disrupted by the outbreak of COVID-19 should promptly assess their legal rights and obligations along with damages that could happen because of any breach of contract/s, for their existing contracts or currently negotiating which includes but not limited to the followings:

- a. *Have you analyzed your rights and obligations under ongoing contracts and under what circumstances, it can be frustrated or events which can lead to force majeure?*
- b. *Does the COVID-19 is an event of force majeure and you or your counter party can excuse itself for performance of commercial contracts?*
- c. *When should a force majeure notice be issued and what steps should be taken in response to a force majeure notice received from the counter party?*
- d. *What will be the impact of any trade restriction & regulatory changes as announced by the Central/State government authorities in recent times?*
- e. *Who is responsible for loss due to disruption cause of COVID-19 and what's the most efficient way to resolve the disagreement with the other party?*
- f. *Have you assessed the risks, damages and impact on your organization on failure to deliver goods/services?*
- g. *Have your organization devised an alternative means of performance under the contract?*
- h. *Do the payment terms in your contracts needs a revision and if yes, what's the best way to revise the payment terms?*
- i. *What steps your organization should take if it's been threatened with litigation over breach of contract?*

4. Financing & Credit Management: -

The COVID-19 has severely impacted the cash flow and finance of most of the organizations throughout the world and as a result, many of the organizations may default in their existing loan/debt financing obligations.

You need to assess your finance situation and cost control mechanism which shall include but not limited to the followings:

- a. *Whether your loan agreements covenants need to be review and may result into triggering of default?*
- b. *Have your organization review and reassess the material adverse change on your payment terms with third parties?*
- c. *Do your organization need to seek waivers or extension of time to comply with your commitments and obligations?*
- d. *Have your organization assessed whether is there any need to review and revise the warranties and representations?*
- e. *Have you reviewed the corporate guarantees given on behalf of related party and ensure that you may not become an easy target for early recovery in case of default by the related party?*
- f. *Do your organization need to renegotiate the terms of loan/finance/credit facility arrangement and to ensure the liability pass on your counter party for delayed payment?*
- g. *Have your organization analyzed the payment terms from the counter parties and on event of default, to recover with minimum hassle and legal routes for the earliest recovery?*

In conclusion, we can expect disruption in business to continue and it will take some time to reach normalcy in the business and it's advisable to consider seeking proper legal advice which includes but not limited to the following:

- i. *To get your contracts reviewed and take prior legal advice on any new contracts or addendums to be executed and understand the impact of COVID-19 on your existing contracts, restrictions imposed due to government notifications or to protect yourself from any claim or untimely termination of the contract by the other party;*

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- ii. *The obligations towards your employees and any action including termination/lay off/ reduction in salary due to current pandemic/ loss of business;*
- iii. *To review your contractual/commercial obligations and mitigate your risks associated with any failure to achieve the agreed business target;*
- iv. *To ensure your payment terms should not be impacted by COVID-19 and recover the due payment hassle free with minimum delay;*
- v. *To execute an effective business plan in coherence with the new norms of business operations as instructed by the government; and*
- vi. *To review the application of force majeure events and performance of specific contracts and reliefs which can be claimed/availed under the circumstances.*

To know further details, clarifications or any advice on business & legal risks, please connect with us at admin@equicorplegal.com / +91 8448824659

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