

## **ALERT - CORONA AND THE LAW**

### **Background**

The impact of the outbreak of the novel Corona virus known as COVID-19 and the decisions taken across the world in the context of lockdown and shutdown has and will continue to have severe impact on businesses.

The possible safeguards that may have to be taken in this connection from a legal perspective is given below:

### **Employees**

Most companies, either as a precautionary measure or on account of a potential exposure by an employee to an affected victim, have implemented the concept of 'Work from Home'. While bigger companies and technology driven companies operate on their own IT platforms, and the employee is in a position to access the network from his/her residence, it is not the same for other companies which may not have that kind of a facility.

This would mean that the employee would be given access to documents and records of the company through storage media or shared emails or would be provided the physical copies. Even in the first case, while the employee would be logging in to the network of the Company, the employee would be using systems at his/her residence which may not have the same degree of protection and security. In this context, the following precautions should be taken:

- (i) Ensure that matters of secrecy or significant confidentiality are not subject matter of 'work from home' policy.
- (ii) Wherever 'work from home' is inevitable in respect of these matters as well as in respect of routine matters, ensure that the employee has executed appropriate confidentiality/ Non-Disclosure Agreements or the terms of employment clearly provide for the same.
- (iii) Ensure that the IT team provides adequate policy of dos and don'ts to the employee to ensure that the data of the company is adequately protected and is not compromised.
- (iv) Wherever such agreements have not been signed, ensure such agreements are executed before implementing the 'work from home' policy.
- (v) In case the business involves services to other clients and the company has signed Service Level Agreements which deal with confidentiality, examine the same to

ensure that there is no restriction in getting the work done from the residence of the employees or obtain necessary permissions.

### **Customer Contracts**

Companies would have executed contracts/ agreements with customers in the context of supply of goods or services. These contracts would also have timelines and commitments. There would be severe impact in adhering to these timelines on account of non-availability of raw materials, disruption of production schedule, non-availability of means of transport, non-availability of air or sea connectivity, non-availability of key employees, etc. In this context, the following precautions should be taken:

- (i) Keep in touch with the customer and identify the issues of concern.
- (ii) Review the Agreement or contract to analyse the impact of '*Force Majeure*' clauses and check whether the Covid-19 outbreak would fall within the ambit of the said clause. *Force majeure* would protect a business from non-compliance under certain circumstances, but it is a creation of a contract.
- (iii) In case *force majeure* is applicable, exercise the option in accordance with the agreement.
- (iv) In case there is no *force majeure* clause or the clause is inadequate, it may have to be examined whether the doctrine of frustration or principles of doctrine of impossibility can be applied.

### **Vendor Contracts**

A business could depend on a critical service or a raw material from a vendor and the vendor may be supplying the said service or product by using a sub-contractor who could be located in one of the countries which have been significantly impacted. This would mean that the business would face disruption. In this context, the following precautions should be taken:

- (i) Identify critical vendor of goods and services, and keep in touch with the vendors to be aware of any possible disruption in schedules or timelines.
- (ii) Wherever possible identify alternate sources within the country in case the procurement challenges from abroad are likely to continue.
- (iii) Examine contractual obligations in case firm order commitments have been given.

## **Government**

Every business has to comply with applicable laws and regulations which will include a number of forms, returns, etc. to be filed. These are all timebound and delays are inevitable on account of disruption in business as well as non-availability employees, consultants and professionals. In this context, the following precautions should be taken:

- (i) Wherever possible, either through sector specific associations or through chambers of commerce, representations should be made to the government to extend applicable due dates.
- (ii) In case due dates are not extended and the company is not in a position to file the necessary forms and returns by the due date, have adequate evidence of disruption to ensure that possible fiscal and penal consequences arising out of such non-compliances can be defended on account of reasonable cause provided such a window exists in the relevant provisions.
- (iii) Implement an adequate cash flow management system to ensure that the business does not default during the period of disruption and wherever possible seek waiver or extensions of time for payments.
- (iv) Be aware of all communications issued by the Government, specifically the Ministry of Health and directions, if any, given by the Centre or State Government under the provisions of The Epidemic Diseases Act, 1897, and implement the same.

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