

LEGAL PREPAREDNESS FOR BUSINESS ENTITIES:

URGENT NEED FOR BUSINESSES TO ADAPT IN THE WAKE OF THE COVID 19 PANDEMIC



KINGS & ALLIANCE LLP
LAW FIRM

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The end of the Financial Year 2019-20 is marked by the Covid 19 Pandemic which has



nearly engulfed the majority of the nations of the world. Amidst lockdown measures, nations are trying all practical measures

to keep the damage at bay, however there is a heavy economic cost that every surviving entity is bearing day after day. This financial distress is extraordinary as it permeates into every possible economic sphere from the Government and largest of organisations to the smallest of business establishments, MSME's, proprietorship concerns and individuals. Shutdown of work has been the most significant and immediate response measure so far, at an institutional and individual level. But the question that begs an answer is: Are the Lockdown measures truly

temporary in their spirit or do these indicate a more long-lasting change in the way businesses will fundamentally operate in the country? While the Nation prepares to cope with the current face of the disaster, business entities cannot sit back with the hope of an economic upliftment. It would be a grave mistake to let the pandemic govern the commercials for too long. Optimistically stated, the economy will eventually prepare for a new phase of development after the current downfall systematically ends. It is thus necessary for business's to be prepared to adapt to the coming change.

The Insolvency and Bankruptcy Code, 2016 was changing the way companies functioned before the current crisis. Those aggrieved by defaults in payments were quick to take the companies before the NCLT and NCLAT for resolution or liquidation by filing petitions under Section 7, 9 and 10.

Force Majeure was not an accepted defense at these forums. The Code being at its nascent stage was being frequently amended keeping the commercial interests of companies and creditors at priority. However, in the wake of the Covid 19 pandemic, when economic deterioration has become a global phenomenon, defaults in payments are being looked at differently. At this stage, companies need to take a re look at their



business models and procedures yet again. The larger attempt at this stage is to protect companies from insolvency

proceedings, particularly MSME's so as to stabilise the economy. So far, it has been done by increasing the threshold default amount from Rs. 1 lac to 1 Crore.

It is further expected that the very same provisions being section 7, 9 and 10 through which the Code was invoked, would be suspended for a period of time. In such circumstances, while defaulting companies are definitely expected to get some respite, but a balancing act would not be far away so as to not leave the creditors remediless in toto as absence of that would create a reverse havoc for the economy.

Epidemic diseases have had a pronounced effect on the course of human history and the governing laws. Till the time the nation recovers from the effects of this crisis, various changes are expected to have made a mark on the system which may not eventually be reversed. This time again, laws would develop accordingly and business entities would be required to adapt to the same.

➤ DIGITIZATION OF BUSINESS AND ECONOMIES

Digitization of business and economies is expected to become prevalent and it would no more be an optional way of functioning if business procurement is to be prioritised. Companies which are looking to digitise their work, must immediately review and modify their existing contracts and enter into new agreements as per requirements.

➤ INTER-SE DISPUTES

At the hour of crisis, there may be fertile grounds for rise in Inter-se disputes within shareholders and members of companies with respect to corporate liabilities, personal liabilities, guarantees, (mis)management and oppression. Companies need to evaluate the role of majority and minority shareholders; nature of resolutions being passed by the Board and inter-se financial obligations.

➤ EMPLOYER-EMPLOYEE RELATIONSHIPS

There would be a paradigm shift in the matters arising from employer-employee relationships including health and safety of employees, work commitments and timings, work from home, termination, lay off, leaves, payments of dues etc. and companies need to carefully set reasonable expectations on this front to avoid unnecessary legal claims in the times to come.

➤ FORCE MAJEURE

Companies need to evaluate whether Force Majeure clause or Defence of Act of God would sufficiently protect them upon failure to meet contractual obligations and need to take necessary steps to invoke the same. Frustration of contract, Termination of contract, Novation of contract, Breach of contract, Delay in execution of contract where time is of essence are other predominant issues that will be on the rise and would require immediate legal intervention.

➤ INSOLVENCY AND BANKRUPTCY

Insolvency and Bankruptcy of Companies may take unexpected turns in the given circumstances. Companies must immediately re-assess the nature of liabilities and nature of defaults being incurred, possibility of raising pre-existing disputes, issuance of demand notices and re-negotiation of terms of finances granted and borrowed.

As the beginning of the financial year 2020-21 marks a drastic change in the socio-financial fabric, the survival of business's largely depends upon their extent of preparedness and flexibility to adapt. It is in the best interest of business entities, whether incorporated entities or otherwise to be sufficiently prepared on the legal side. Though the precise nature of impact is unknown and will only be discovered as it evolves, business ventures ought to be well equipped to re-establish control when the time is ripe again.

Please be encouraged to discuss business concerns with professionals with respect to the Legal responses required in the wake of the COVID-19 impact.



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