

CLIENT UPDATE

June 2020

SIGNS OF COVID-19 IMPACT ON M&A NEGOTIATIONS

AN 'ON THE GROUND' UPDATE FROM OUR CORPORATE TEAM

With the COVID-19 situation, buyers are negotiating harder to protect their position where the impact of COVID-19 remains uncertain in the target business. We are seeing enhanced due diligence, particularly on order book, pipeline, and forecast reliability. Additionally, there has been an increased focus on payment being linked to future performance, leading to a greater emphasis on earn-out structures.

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Delays Due to COVID-19

- Parties that had already entered into transactions before the impact of COVID-19, are facing **difficulties in fulfilling pre-closing covenants and conditions precedent**. The lockdown and travel restrictions have resulted in slowing down the due diligence process, and have, in some cases, caused deals to be postponed.
- **Physical verification of documents, inventory**, etc., is not practicable in a number of cases, and registration and **stamping of documents** continues to prove more difficult than usual.
- Additionally, requisite **government, regulatory, or third-party approvals** have been delayed due to operations with limited staff and other restrictions.

Key Contractual Clauses

Material Adverse Change: The Material Adverse Change (“MAC”) clause, which gives the right to either party to terminate a contract if there is an event which has a large impact on the economic viability of the transaction, is now being amended to include events such as pandemic, lockdown, closure of borders.

Force Majeure: The list of Force Majeure events is being expanded to include epidemics, pandemics and government imposed lockdowns.

Representations, Warranties and Indemnities: Certain buyers are assessing the risks to target companies arising due to COVID-19 and seeking detailed warranties.

Change in Law: Due to the ever-changing situation, new laws and measures are being announced by the government on an almost daily basis. Thus the allocation of risk on account of such a change in law would need to be decided, keeping in mind the limitations on due diligence due to COVID-19.

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