



26 March 2020

The world is in an unprecedented situation with the outbreak of the 2019 novel coronavirus (officially renamed, “COVID-19”). Numerous countries have instituted stringent policy measures to prevent the spread of the outbreak. While, for now, such policy measures comprise of widespread travel restrictions, workplace closures, city-wide lockdowns and mandatory quarantines, with the World Health Organization having declared COVID-19 as a pandemic, there are growing concerns of restrictions on trade with infected regions being imposed soon.

As crucial as such policy measures are in curtailing the rampant spread of this outbreak, business operations of companies, both, inside and outside of China, Italy and South Korea, are facing considerable commercial disruption as a consequence of these measures.

In this edition, we begin with key issues for boards to consider. Boards will need to take a stock of the situation to evaluate the present and future impact of COVID-19 on the operations, financing, business, production-supply chain, sales and on the internal systems of the Company to take proactive steps to respond to the situation that has unfolded both at a national and at a global scale which is bound to have an impact on companies, its business and its stakeholders.

Ensuring Continued Solvency

Financial solvency is the cornerstone of any Business. The impact of COVID-19 being at global scale is bound to affect the financial framework under which any Company operates. On the trail of the pandemic, with ‘social distancing’, economies are expecting a sharp decline in consumer demand with the hospitality and transportation sector feeling an immediate impact. Disruptions to a business’s supply chains and receivables may create working capital pressures, and moreover could have a domino effect on its own ability to discharge its own scheduled payments and dues. The ability of the Company to understand this global risk and its impact on the financial markets and institutions will enable the Company to adapt and be better equipped to remain financially solvent and prevent business disruption on account of a financial crunch.

Board members should review the preparedness and steps taken by the Company for proactively addressing financial solvency by evaluating the progress on the collection of the outstanding dues, the steps being taken to keep business going, taking fresh orders, sales or engagements (as applicable).

Companies need to look at innovations or technological solutions to ensure effective cash flow management by collection of outstanding amounts and having communications with their Bankers to ensure credit lines remain available while curbing expenses, where possible. Care must be taken to strategise for scenarios where such issues are likely to trigger cross-default clauses under lending facilities or other financing arrangements.

CFOs need to establish a mechanism to monitor financial solvency of the company and the checks and balances to recover outstanding amounts, push sales, cut expenses and keep the credit lines solvent.

The Board should be provided with regular updates of the situation to ensure that until the situation improves, there is real time monitoring of the situation and its impact on the business continuity, operations, administration, finances and human resources.

Risk Mitigation and Management

Companies are required under Section 134 of the Companies Act, 2013 and SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (in case of listed entities), to have a risk management policy. Companies need to assess the risk and its impact on the company’s business, identify proactive steps to manage such risk and put in place measures to monitor the situation on a real time basis to ensure that the company is able to cope with the rapidly evolving impact of COVID-19 in the most strategic and constructive manner. Directors, including independent directors, should take an update from the management of the company of the actions planned and taken by its management to mitigate the risks that are both eminent and to plan for future contingencies.



26 March 2020

Under Indian law, the fiduciary responsibilities of a company's board of directors extend to not only shareholders, but also a wide variety of other stakeholders, such as employees. Therefore, to pre-empt or prepare for adverse claims, boards must be pro-active in formulating, documenting, and demonstrating risk mitigation and management plans. These plans should be continually updated at regular intervals taking into account the factors affecting the company, its finances, operations, sales, personnel and business in the backdrop of the legal, regulatory, economic, national and international trends and market forces.

Some of the initiatives directors and managers can keep in mind include:

- setting up of broad-based COVID-19 response teams;
- customer awareness and protection initiatives;
- disaster management, recovery and business continuity audits and stress-tests;
- financial planning to protect cash and assets; and
- contingency planning.

Shareholders' Interests

Companies will have to take effective steps to protect the value of the company in order to safeguard the interest of the shareholders.

In this situation, it is important to ensure there is effective and timely corporate communication released to present the shareholders, the true and correct picture of the impact COVID-19 has had on the company and to ensure that there is no panic amongst the shareholders of the company on account of volatility across the stock markets. The board's evaluation and guidance in this regard will be of utmost importance and will also bring forth a wider perspective.

Stakeholder Communications

The board will have to prepare a strategy and approach towards stakeholder communication which sets out clear communication from the company with an overview of the risk that COVID-19 poses to the company. In addition to formulating, documenting, and demonstrating risk mitigation and management plans, it is critical to communicate such measures to the appropriate stakeholders appropriately and selectively.

Disclaimer

This article is provided by Shardul Amarchand Mangaldas & Co for informational purposes only, and is not intended to provide, and does not constitute, legal advice.

© Shardul Amarchand Mangaldas & Co

The preparedness of response to risks and the risk mitigation plan will go a long way in giving the stakeholders the comfort they need in terms of their own relationship and investment in the company and the steps they need to take to protect their own interest.

The stakeholders communication must be effective and constructive in order to go a long way in creating stability and rallying support for the company during the period of uncertainty and unforeseen circumstances. It will also help in creating stable environment for the stakeholders. However, when making these communications, as well as any internal correspondence, it would be prudent to assume that future litigation by or against the business in question may result in the discovery of such communications and correspondence.

Regulatory Compliance and Communications

Companies are governed by regulatory framework which encompasses Central, State and Local Laws. While regular compliances, filings and record keeping may continue as normal, Companies need to evaluate their reporting requirements under various applicable laws in light of the COVID-19 to determine any materiality or event based disclosures or compliances.

This will need to be monitored and updated from time to time especially if there is an impact on the personnel, operations, business, business continuity of the company. The reporting under applicable laws including those under the Companies Act, 2013, SEBI regulations and the LODR need to be under the applicable prescribed formats. Work closely with your legal advisors to remain abreast of the fast-changing regulatory environment, to ensure compliance.

Be prudent in the use of internal and external communication on matters pertaining to COVID-19, and caution employees as to the same – in addition to existing criminal laws that could be used against careless communication that could be construed to be scare-mongering, states such as Karnataka and Delhi have issued notifications curtailing the use of print or electronic media to make unauthorised statements regarding COVID-19.