

Corporate Spring Cleaning

Managing the Business Impact of Lockdown



New Delhi

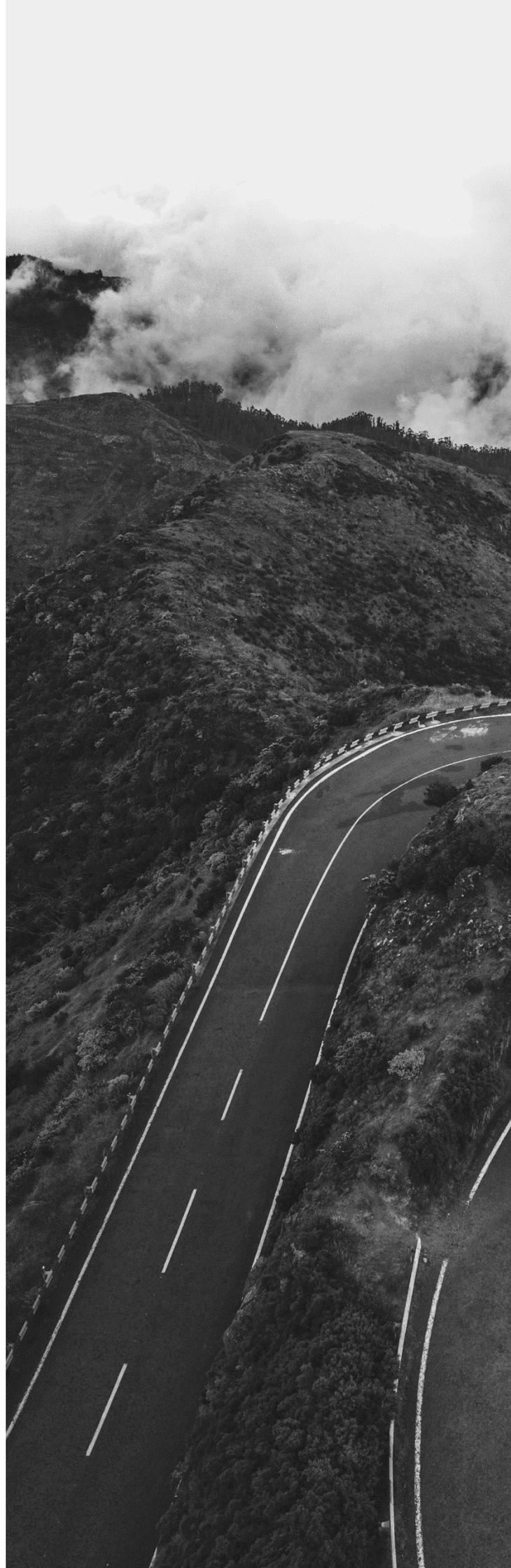
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Corporate spring cleaning

Black swan events change the trajectory of governments, economies and businesses – altering the course of history. With Covid-19, we are already seeing early signs of a shift in how consumers and businesses behave. Some of these changes are direct, short-term responses to the crisis. However, some of these shifts will continue, creating a long-term disruption that will shape businesses for decades to come.

Given the restrictions on businesses and households by governments desperately trying to contain the ongoing Covid pandemic, the global economy is taking a battering not seen in decades. India imposed a three-week nationwide lockdown for its 1.3 billion people, the most far-reaching measure undertaken by any government to curb the spread of coronavirus pandemic. While these unprecedented measures are indeed required to ‘flatten the curve’ of infections, it’s taken an obvious toll on the economy. Pegging the cost of lockdown at USD 120 billion or 4% of the GDP, analysts have sharply cut their growth estimates and stressed on the need for economic relief from the government to support domestic industry.

Even as most of India Inc. is confined to their homes, it is pertinent to consider whether the present circumstances can be used for ‘**corporate spring-cleaning**’, that will help companies’ de-risk themselves in the times to come. While focusing on operational, financial and other aspects of day-to-day functioning, companies often relegate non-critical aspects to the back burner. This note is an attempt to draw attention to a series of activities that businesses should focus upon, in order to effectively utilize the increased availability of management bandwidth during the national lockdown.

Corporate spring-cleaning list: Top 5 to-do’s

- **Reviewing the Standard Form Contracts (SFCs):** Most businesses have a range of SFCs that are used to enter into a series of contractual arrangements in the normal course of business. A sample survey conducted by HSA highlighted that almost 7 out of 10 companies fail to update their SFCs to reflect the latest position in law, which can potentially expose the organization to heightened risk. There have been series of developments spanning a range of statutes – Specific Relief Act, IBC, Arbitration Amendment Act, Companies Act, MSMED Act, to name a few – that can materially impact contractual rights, payment terms, representations, warranties, indemnities, termination, etc. Businesses can use this lull in operations to revise and update their SFCs as a risk-mitigation exercise, to ensure increased compliance with legal and regulatory requirements.
- **Analyzing the implications of non-performance under contracts:** With the disruption in supply and sourcing networks, businesses are actively considering provisions pertaining to Force Majeure clauses in their contracts or taking recourse to alternate provisions, such as Doctrine of Frustration as per the Indian Contract Act, 1872. Proactively understanding the specific requirements and consequences of such decisions can prove helpful once economic activity resumes.
- **Planning ahead for potential disputes:** With Courts taking up only urgent matters and the extension of period of limitation in all proceedings, businesses essentially have significantly more time available to plan and prepare for potential disputes that were being earlier contemplated. Utilizing this time to properly strategize with your legal advisor, dig deeper and prepare a robust case will yield clear downstream benefits.
- **Stressed asset investment opportunity:** Stressed asset investment in India has been steadily increasing over the last couple of years. As uncertainty looms over the economic situation, stressed asset investment opportunities are likely to expand further. Companies under the bankruptcy resolution process might witness potential buyers pulling out given the uncertainties regarding viability of businesses and attendant valuation, which will be a compelling proposition for businesses exploring inorganic growth. Utilizing this time to proactively understand the stressed asset investment space and attendant considerations will help in taking informed decisions down the line.
- **Enhancing corporate governance:** Businesses should focus on updating their internal compliance frameworks, including statutory and non-statutory compliances as well as internal policies, in order to ensure heightened corporate governance focus.