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## The ₹ 20 Trn Booster



The stimulus is 10% of India's GDP. Like the US president Franklin Delano Roosevelt's New Deal for a battered US economy during the Great Depression, infrastructure is one of the main pillars of Prime Minister's package. But will Modinomics deliver on its intent for a New India?

**OPINION** – Optimists See Silver Lining on the Flipside of the Pandemic  
**INTERACTION** – Dr. Niranjan Hiranandani, President, ASSOCHAM, & Founder, Hiranandani Group

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# Optimists See Silver Lining on the Flipside of Pandemic

COVID-19 might have put the world in a miserable spot, but optimists have already spotted light even when the tunnel is yet to be crossed. The deadly coronavirus pandemic has, in a way, given a shot in the arm to Prime Minister Narendra Modi's vision of Digital India that had been struggling to pick up pace all these years. Companies are fast-tracking their digital transformation and using tools like video conferencing to hold meetings and webinars. Customers are relying more on online shopping and the culture of work from home is here... and here to stay! **By SRISHTI SINGHANIA**



▲ It is often said that any challenge is usually an opportunity in disguise

**T**he coronavirus or COVID-19 pandemic has swept across 196 countries, rudely jolting the global economy. The UN Conference on Trade and Development (UNCTAD) has estimated the economic impact of COVID-19 at a minimum of \$1 trillion in 2020. The Indian economy, too, is taking a beating.

On March 24, 2020, the Indian government imposed a countrywide lockdown for 21 days in an effort to ward off the global pandemic. Subsequently, the lockdown was extended until May 31, 2020. The lockdown may push the country into recession. India's GDP growth, too, might slip below the estimated 5 per cent for FY2020.

The severity of the outbreak has thrown up unprecedented challenges. The challenges can be navigated only through comprehensive

planning, a robust action plan for the present and preparedness for the future. The Indian government is leaving no stone unturned to provide relief to businesses in these difficult times. Among other relief measures, the government has allocated Rs 1 trillion and Rs 110 billion to agriculture and marine infrastructure. Measures have also been announced to strengthen post-harvest and storage infrastructure facilities. Separately, the real estate sector has also got a fresh lease of life as now they can treat COVID-19 as a force majeure event. Measures pertaining to affordable housing for migrants have also been announced.

Through this article, we aim to educate businesses about the steps being rolled out by the Indian government, and explore measures that can be adopted by companies to mitigate



their losses and, perhaps, see these times as an opportunity to boost their capabilities.

### RELIEF MEASURES

Between May 13 and 16, 2020, the finance minister announced a slew of relief measures. These measures are targeted across different sectors. The major focus of these reforms is on land, labour, liquidity and laws. COVID-19 has made it difficult for companies to adhere to the existing compliance measures. Hence, the government has extended deadlines of many of these compliances and tax returns can now be filed till November 30, 2020. Some compliances have also been digitalised, for instance, board meetings can now be held through video-conferencing. Insolvency laws have also been suspended and the defaults during COVID-19 times are not to be treated as debts for the purpose of insolvency. Some of the relief measures which are specifically targeted at providing ease of doing business to companies are detailed below.

### CORPORATE COMPLIANCE AND COMPANY LAW

With regard to company compliances, the payment of any additional charge for late filing of any document or form with the Ministry of Corporate Affairs (MCA), due to be filed before or during the moratorium period from April 1, 2020 to September 30, 2020, has been waived off.

Companies have also been allowed to hold the mandatory board meetings within a period of 180 days instead of 120 days, as prescribed under the Companies Act 2013, till September 30, 2020. In order to facilitate social distancing, the MCA has permitted board meetings to be held through video conferencing or other audio-visual means till June 30, 2020, including for matters such as approval of financial statements and the report of the board of directors. The MCA has also issued elaborate guidelines on how an extraordinary general meeting needs to be conducted before June 30, 2020, with the help of video conferencing and e-voting facility. Towards ease of doing business, newly incorporated companies have been granted 12 months (instead of 6 months) from the date of incorporation to file a declaration for commencement of business.

Certain violations under the provisions of the Companies Act 2013 have also been waived. For example, in case the independent directors have not been able to hold at least one meeting without the attendance of non-independent directors and members of management for the year 2019-20, the same will not be viewed as a

violation of Schedule 4 of the Companies Act 2013. Similarly, a resident director, not residing for 182 days in India would not be viewed as a violation.

Further, the government has decriminalised Companies Act defaults involving minor technical and procedural violations. Seven compoundable offences have been dropped and five would be dealt with under alternative framework.

The Companies (Auditor's Report) Order, 2020, that makes it mandatory for companies to disclose all whistleblower complaints to the auditor, has been now made applicable from the financial year 2020-21 instead of 2019-20. Further, the timeline for creating a deposit reserve of 20 per cent of deposits maturing during the financial year 2020-21 has been extended till June 30, 2020. The requirement to invest 15 per cent of debentures maturing during a particular year in specified instruments before April 30, 2020 has also been extended till June 30, 2020.

The MCA has clarified that any expenditure towards COVID-19 for promoting healthcare and disaster management, including donations to PM CARES Fund and payment of ex-gratia to temporary, casual or daily wage workers shall be considered as eligible corporate social responsibility (CSR) expenditure.

Apart from changes in the corporate compliances, the government has also introduced a plethora of reliefs for micro, small and medium enterprises (MSMEs). The key reliefs introduced for MSMEs are:

Definition of MSMEs has been made broader and the monetary thresholds have been revised upwards.

Rs 200 billion to be given as subordinate debt to stressed MSMEs. A mother fund with Rs 100 billion is to be set up. Collateral-free loans to MSMEs will be granted and MSMEs' dues can be cleared within 45 days.

Some other liquidity measures for the benefit of companies are the reduction in employers' contribution from 12-10 per cent, government bearing the employers' contribution of Employees' Provident Fund (EPF) till August, 2020 for certain entities and reduction of TDS and TCS by 25 per cent till March 31, 2020.

### SAFEGUARDING FROM BANKRUPTCY OR INSOLVENCY

In order to prevent companies, especially MSMEs from going into bankruptcy, the threshold of default under Section 4 of the Insolvency and Bankruptcy Code (IBC) 2016 has been increased to Rs 10 million from the existing



threshold of Rs 100,000. Further, a special insolvency framework for MSMEs will be notified under section 240 A of IBC. The government has clarified that COVID-19 related debt will be excluded from the definition of default.

The Central Government has suspended the right of a financial creditor, operational creditor and company to file an application to initiate insolvency proceedings under Sections 7, 9 and 10 of the IBC, respectively, for up to a year.

In order to give further relief to companies, the Insolvency and Bankruptcy Board of India has introduced Regulation 40C by way of an amendment to the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Regulation 40C provides that the period of lockdown imposed by the Central Government in the wake of COVID-19 outbreak shall not be counted for the purposes of the timeline for any activity that could not be completed due to such lockdown, in relation to a corporate insolvency resolution process.

### REVIEWING FORCE MAJEURE CLAUSE AND RE-NEGOTIATING AGREEMENTS

Force majeure refers to "events outside the control of the parties and which prevent one or both of the parties from performing their contractual obligations". The outbreak of COVID-19 has made it difficult for companies to comply with their contractual obligations and they want to know whether they can take the defence of force majeure. If force majeure clause is present in the contract, then depending upon its wording and scope, the parties can avail of the same. In some instances, the parties invoking force majeure would need to prove that they could not have performed their obligations by any other alternative method.

In case the contract is silent with respect to such an event, the parties can take recourse under Section 56 of the Indian Contract Act, 1872, which states that the contract becomes void if it becomes impossible or unlawful for the parties to fulfil their obligations by reason of some event beyond their control. Another practical solution for the contractual parties could be to re-negotiate their contracts and ensure that the interest of both the parties is protected.

On February 19, 2020, the Ministry of Finance, had issued an office memorandum clarifying that the disruption of the supply chain due to COVID-19 outbreak would be a ground to claim force majeure. The Finance Minister during her recent announcements further

clarified that the relief of force majeure based on COVID-19 would also be available to infrastructure projects registered under RERA.


### THE WAY FORWARD

Apart from taking benefit of the concessions granted by the Indian government, companies can take the following practical steps to mitigate the losses due to the present crisis:

**Reviewing Insurance Policies:** Companies should review insurance policies to determine whether they may be covered for losses due to business interruptions attributable to COVID-19, and comply with all notice requirements under the policy.

**Leverage Technology:** With the culture of work from home being implemented, companies are fast tracking their digital transformation. They are using tools like video conferencing to hold meetings and webinars, and are continuing to provide uninterrupted service to their clientele. Technology companies are coming up with products that can assist companies to work remotely. This also comes in as a benefit to employees who are now able to maintain a work-life balance. Customers are relying more on online shopping. Video calling and messaging on Facebook has exploded and online collaboration has increased by 40 per cent in a week as reported by Microsoft. On a lighter note, COVID-19 is taking us closer to Digital India that Prime Minister Narendra Modi has been envisioning since the beginning of his tenure in 2014.

**Draft Commercial Contracts for the Future:** This crisis has made companies revisit the force majeure clause in their commercial agreements. It is time to re-negotiate these agreements to ensure that the interests of both parties can be protected and losses can be mitigated. It is also important to keep such a pandemic in mind when negotiating future contracts and drafting company policies.

It is said that challenges are opportunities in disguise. The unprecedented challenges will definitely ensure that companies become more resilient, technologically advanced and come up with greater innovative and out-of-the-box solutions to overcome these troubled times. 



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