COVID19 Action: Routes to reclaiming losses

It can be a daunting task to make sense of the current environment and keep abreast of all the information needed for you to make informed choices.

It is essential now that we consider next steps to ensure that costs and losses are minimised, while also making certain that we have identified all mechanisms to recoup losses through either contractual or insurance routes.

Identifying your commercial relationships

Whether it is your business, your supplier’s business or your customer’s business, there is potential to suffer disruption, putting strain on commercial relationships and increasing the risk of failing to meet contractual obligations.

Whatever the circumstance, it is important that you are thinking ahead so as to be in a state of readiness to resolve those contractual challenges or navigate contentious scenarios to protect the future of your business and preserve important commercial relationships.

Protecting your future business - Key considerations

Failing to meet contractual supply obligations

- What is the financial impact on your business, as well as the rest of the supply chain, of failing to meet obligations to supply particular quantities of goods or levels of service within a defined timeframe?

- Can the failure be resolved, or at least mitigated, by alternative routes for supply or by changing supplier? Is there a longer and more complex impact on the operation and performance of the business or the environment in which the business operates?

- Does your business have insurance coverage to take into account business interruption or credit risk arising from, for example, the loss of a key supplier? Is it currently enforceable?

Under-performing contracts

- Has the impact of Covid-19 created or exacerbated a contractual under-performance? Does the contract set out specific performance metrics that a party is already breaching or at risk of breaching?

- Do you have the “right to audit” under the contract and can that “right” be evoked remotely?

- Are you able to take mitigating actions and to accurately identify and capture the associated internal and external costs?

Changed context for a transactional contract

- Does the transaction agreement allow for the impact of an “uncontrollable factor” to be taken into account? Would that be beneficial to your business or potentially damaging?

- Does the impact of Covid-19 change the financial performance of the business during an earn-out period? If that earn-out period has not yet elapsed, can actions be taken that will be to your advantage?

- Have any transaction warranties been provided which may be claimed upon as a consequence of the changed circumstances or financial performance?

How we can help

Deloitte Forensic can support you in assessing and quantifying damages caused by an event like Covid-19 and in claiming for such losses either under your applicable insurance policies or as part of warranty or contract breach claims.

Using analytical software, we can extract key contractual clauses to identify risks and contractual protections as well as potential legal routes to making good on your losses. Our team is a group of individuals with diversified professional backgrounds, including accountants, lawyers, brokerage and claims adjusting specialist and analytics specialists.

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