



The Q&A roundup series 3: Addressing disruptions in your supply chain – actions for now

You asked, we answered.

Here are our responses to the questions you had in store for us, during our webinar on 'Addressing disruptions in your supply chain – actions for now'.



Could you share more insights on supply chain realignment and its impact on taxes?

Businesses may identify newer supply chains (as locations or vendors, suppliers, distribution partners, etc.) to rebalance or mitigate risks. Some possibilities for supply chain realignment could be as follows:

- a) New vendors may be identified to make the supply chain more resilient and for de-risking purposes. Some vendors may need to be substituted; similarly, new dealers or distributors may be appointed. This may trigger compensation or pay-outs to existing vendors/dealers for termination or reduction in volumes or special payments to new vendors/dealers for commencing provision of supplies or purchases. These monetary flows could trigger consequential tax impacts. There is also a dimension around aggressive incentives, inventory subsidies, inventory buyback, etc. for existing dealers and retailers; this too, could trigger tax consequences.
- b) There could be changes in the country of sourcing, which may result in a change in benefits under free-trade agreements or value addition norms.

- c) Within group entities, it is possible that in certain jurisdictions, there could be rebalancing of risks and functions of group entities, vis-à-vis from a limited risk to an entrepreneurial model or vice-versa. This would impact the transfer pricing basis between group entities under income tax, customs and GST laws.
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You referred to four paradoxes in your presentation. The first paradox was survival and this could vary by industry. What about organisations that may take a longer time to get back to normalcy? They may take a call to cut and reorganise later?

While the 'cut and reorganise later' strategy appears to be plausible, a key aspect for organisations to consider is the cost of rebuilding (including the time to rebuild) which is likely to be influenced by competitor actions and their relative size as compared to the organisation. Hence, a simple evaluation around this aspect would therefore be insufficient. It is likely that the organisation may prune many non-core activities (both insourced or outsourced) to help them achieve the desirable scale. The rest of the activities may remain untouched by companies unless the COVID-19 scenario of disruption gets extended.



There was a reference to an international parent company who got access to financial assistance through insurance. Could you share more insights around this?

This reference was made in the context of an insurance policy having the necessary provisions for providing cover for loss of profit on account of pandemics. In this specific situation, which was discussed during the webinar, the company had already informed the insurance company about its intent to invoke the insurance policy. A claim can only be made after the disruption is over and losses assessed and computed. Once the claim is submitted to the insurance company, it will then be assessed for payment. During the assessment, the company may also be required to demonstrate steps that have been taken by them to mitigate or minimise such losses, while evaluating losses that are directly attributable to the pandemic. At this stage, the company has not received any financial assistance.



What is the likely effect on machine sales and servicing approaches and how can we stay prepared?

In a situation where conserving cash becomes critical, the component of re-manufacturing or refurbishment with a performance guarantee (as warranty or any other model) is expected to become very relevant, especially in machine categories which are branded commodities and are not specialised.

Secondly, it is very likely that clients may not pay for products and services separately but will move towards paying for solutions – as we had seen in the case of excavators where machines are paid for use by tonnage of earth cleared or removed.

For ongoing service related obligations, one would need to review which machines are due for preventive maintenance, and where is their geographic placement, to assess whether any existing channel partner (located closest in proximity to the customer) has the ability to undertake that service. If not, the existing situation may lead organisations to review their channel partner networks, in terms of capacity or ability to service customers and/or for their financial strength. In case of a breakdown maintenance or in instances where channel partners are unavailable, alternative models around training customer staff or remote, video based assistance may need to be evaluated.



What is a non-pharma intervention (NPI)?

Non pharmaceutical interventions (NPIs) are actions that people, communities or governments take to reduce the spread of an illness, where vaccines are not yet available and where people have little or no immunity against it. The objective therefore is to control the spread from person to person. Social distancing, lockdowns etc. are examples of NPIs.



What are some of the leading parameters like the Baltic Dry Index (global and India Specific) that can be monitored over the next few months to get a pulse of how economy is trending?

Outside macro-economic parameters and to understand the pulse of global trade, we could consider the TAC Index (for air cargo) or, the Shanghai Containerised Freight Index (SCFI) and the China Freight index for sea movements.



What is BCP? (Exposure in BCP)

BCP is Business Continuity Planning. It is a process that involves creating a system of prevention and recovery from potential threats to a company. In the context of COVID-19, it refers to a plan that each company is expected to create on how a pandemic-related crisis would be handled by them.



Let's take a scenario where contracts do not specify who will bear what costs between primary organisation and vendors. What are the trends you are seeing in resolutions?

We assume that this question has been asked in a context wherein a force majeure clause has been invoked; in such a situation a determination needs to be made about who bears the costs for the period when force majeure was in place. At the moment, we don't have insight into this type of situation as it is unprecedented. We could presume that, the intent of signing such a contract and principles of natural justice in that context will get examined. A commonly used principle in relation to cost allocation during such situations in contracts, is that each party bears its respective share of cost without an obligation for any of the parties to compensate the other. This is a situation that is likely to get legally tested.



How will the agricultural sector be impacted?

As the lockdown exempts the agriculture sector – seeds, labourers, and farm related activities, the sector is expected to witness minimal impact in the short-term. In addition, there have been special packages announced for different sectors. The Indian railways for instance, have been aligned to ease transport logistics. Going forward, we expect fresh produce and the food and agro processing sectors to showcase positive growth.



We are working closely with US hospital groups to manage their out-patient department (OPD) documentation. As these hospital groups are now moving their funds to cope with the COVID-19 situation, what could be our strategy, from a vendor perspective, to maintain long-term relations?

We see service providers of US and Global clients increase their investment in client relationships in anticipation of spending cuts or diversions. We are also witnessing providers diversify their relationships with clients (e.g. with multiple functions, business units), to minimise the impact on service delivery from India, due to the work from home (WFH) situation. They are seen placing importance on having adequate security safeguards built in, ramping up resources for critical processes if required (e.g. contact centres - if certain processes expect a surge in volumes), and maintaining proactivity in their communication to clients. In a few cases, we have seen providers deferring billing and offering piloting technology-enabled solutions, as investments. The broad mandate given to engagement and relationship managers is to show empathy, not try and sell (especially in times such as these) and stay in sync with clients. Providers are aware that once the situation improves, this might drive a sustained program to digitalisation and it is in their best interest to stay invested.



Are there any emergency insolvency provisions being enacted or proposed to protect companies from insolvency during this period?

The following emergency insolvency provisions* have been enacted or proposed during this period:

a) Increase in minimum default value, in wake of COVID-19 events

- i. The Ministry of Corporate Affairs notified that the minimum amount of default under Section 4 of the Insolvency and Bankruptcy Code, 2016 ("**IBC**") is raised to INR 1,00,00,000/- (Indian Rupees One Crore only) from the existing INR 1,00,000/- (Indian Rupees One Lakh only). Accordingly, an application under Section 7 or Section 9 of the IBC can be made only if the default of the corporate debtor amounts to INR 1,00,00,000/- (Indian Rupees One Crore only) or more.

b) Exclusion of Period of Lockdown

- i. The Insolvency and Bankruptcy Board of India ("**IBBI**") has amended the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 for providing that the period of lockdown imposed by the Central Government in the wake of the COVID-19 outbreak shall not be counted for the purposes of the time-line for any activity that could not be completed due to the lockdown, in relation to a corporate insolvency resolution process. However, the overall time limit for completion of corporate insolvency resolution process remains unaffected.

c) May suspend section 7, 9 and 10 of IBC

- i. Other than this, the Finance Minister of India in a press release dated 24 March 2020 had issued a statement that if the situation of COVID-19 continues beyond 30 April 2020, sections 7, 9 and 10 of the IBC 2016 may be suspended for a period of 6 months, so as to prevent companies at large from being forced into insolvency.

d) Relaxations issued by the Ministry of Corporate Affairs:

- i. No additional fees shall be charged for late filing during a moratorium period from 1 April 2020 to 30 September 2020, in respect of any document, return, statement, etc.
- ii. The mandatory requirement of holding meetings of the Board of Companies within the prescribed interval provided in the Companies Act 2013 (120 days), shall be extended by a period of 60 days till next two quarters i.e., till 30 September 2020.
- iii. Applicability of Companies (Auditor's Report) Order, 2020 shall be made applicable from the financial year 2020-2021 instead of from 2019-2020.
- iv. In case Independent Directors of a company have not been able to hold even one meeting, the same shall not be viewed as a violation.

**(from various publicly available documents)*



How much will the Make in India initiative be impacted? Will the government incentivise further and what reforms could potentially take place?

With increasing awareness of the risks and experiences of disruption in the supply chain, companies are expected to focus on localisation or import substitution from single sources (country) for their supplies, which could provide a thrust for the Make in India movement.

We envision that the government is likely to provide incentives and initiate reforms towards enhancing the ease of doing business in India that will involve multiple addressable dimensions.



What is co-opetition?

Co-opetition is a term that refers to an activity where companies which compete with each other, also cooperate with each other; they are both competitors and co-operators.

We spoke about the example of medical devices where in specific categories like ventilators, companies have open-sourced their design. Given this context, a number of Indian organisations have begun manufacturing specific components or sub-assemblies of these devices. Organisations which are competing with each other in their specific sectors are coming together to produce these devices.

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